GLOBAL INFORMATION SOCIETY WATCH 2016

Economic, social and cultural rights and the internet

ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
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Why focus on economic, social and cultural rights?
Reflections on trends, achievements and challenges in building a global movement working for human rights on the internet

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Introduction

The Association for Progressive Communications (APC) uses research and documentation as a way of understanding problems, and to help find solutions to them. This edition of Global Information Society Watch (GISWatch) addresses the problem posed by the one-dimensionality and exclusivity of current policy discourse on the internet and human rights. Concerns about civil liberties, on the one hand, and "security", on the other, dominate research and debate on human rights and the internet. States and rights activists are frequently in opposition to one another, and developing country governments in particular are resistant to exploring how the internet can support the realisation of human rights. North-South and East-West divisions are common, not only among governments[1] but also among research and advocacy groups. Little or no attention is given to the value that a rights-based approach to internet policy and regulation can add to efforts to enable people to have greater access to economic, social and cultural rights (ESCRs).

This has resulted in gaps in research, analysis, general discourse, decisions, advocacy and networking on the internet and human rights.[2] This is reflected in a deficit in human rights-related internet policy, regulation and governance. At both the global and national levels, internet policy and regulation are not focused on creating an enabling environment for advancing ESCRs.[3] Where policies do address links between internet regulation and human rights, they have done so almost exclusively in relation to civil and political rights – and most of these efforts have been driven by developed countries. The mainstream internet rights discourse often does not include many of the rights-related issues which are considered important by developing country actors. As a result, by and large, developing country governments have been either lukewarm followers of or active opponents to a rights-based approach to internet policy and regulation.

Trends in current "internet rights" discourse

The debate on "internet freedom" has intensified in recent years as governments and civil society organisations explore the tensions that result from the centrality of the internet in daily life, business and politics. Civil liberties are seen as key to maintaining thriving democracies, and the internet is more widely recognised as a critical means to their enjoyment. Civil society organisations and individual activists have campaigned vociferously over the last few years for a "fair and open" internet – free from censorship and characterised by respect for freedom of expression and freedom of association. Some governments support these efforts, but many remain more concerned with the rising tide of online crime and "terrorism" than with using the democratising power of the internet to strengthen governance and development. Some actively fear people's use of the internet to express dissent, and there is a trend for governments to implement legislation that gives them greater control over the internet; legislation that often undermines fundamental human rights and overlooks the internet's potential for development and democratisation.

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1   For a snapshot of government interest one can look at the Freedom Online Coalition. In October 2016, out of 30 member countries, 20 are from Europe and North America, two from Latin America, three from Africa and four from the Asia Pacific region, plus one Indian Ocean small island state. https://www.freedomonlinecoalition.com/about/members

2   Some states have passed legislation that recognises access to the internet as a human right, e.g. Finland, in 2010 (see: www.bbc.co.uk/news/10461048). Many recognise freedom of expression. At the 20th session of the Human Rights Council a landmark resolution that recognises that human right offline also apply online was adopted unanimously. It mentions the ICESCR and refers to development, but it singles out freedom of expression and makes no mention of ESCRs. See the full text at: daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/20/L.13&Lang=E

3   It is important not to confuse a focus on ICT for development with a "rights-based approach" applied to social and economic rights in internet policy and regulation.

A concrete way of changing this is to look at internet policy from the perspective of economic, social and cultural rights. ESCRs include the right to education, the right to housing, the right to an adequate standard of living, and the right to health.[4] Building on the concept that the internet is an enabler of human rights online and offline, in mid-2014 APC embarked on a new phase of work on the internet and human rights: research and advocacy towards building an approach to human rights on the internet that includes ESCRs; an approach that addresses broader social inequality and exclusion.[5] By broadening the discourse on human rights on the internet to include ESCRs, we seek to move beyond the civil liberties arguments for "internet freedom" to a position that encompasses the full range of human rights.

A broader approach will contribute to filling many of the current gaps and divisions (discussed below) in the discourse on human rights and the internet and will produce evidence and tools that can be used to support evidence-informed internet policy making, particularly in developing countries that have resisted a human rights-centric approach to internet policy and regulation.

Progress

Recognition of the internet as "a key means by which individuals can exercise their right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights" was first clearly stated in the June 2011 report of Frank la Rue, the UN Human Rights Council (HRC) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. He went on to say:

> The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an "enabler" of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and

expression, the internet also facilitates the realisation of a range of other human rights.[6]

In February 2012 the HRC held the first ever panel discussion on freedom of expression and the internet.[7] The panel, organised with input from APC, built on the work of Frank La Rue, and by mid-2012 it was clear that other Special Rapporteurs were also taking internet-related human rights issues very seriously – including the Special Rapporteurs on freedom of association and assembly,[8] cultural rights,[9] violence against women, and racism, racial discrimination, xenophobia and related intolerance.[10] The number of Special Procedures which are taking up internet-related issues in their diverse mandates suggests there is progress in recognising the relevance of the internet across the range of human rights, particularly as these start to reach beyond solely freedom of expression issues.

Further, on 5 July 2012, 85 countries signed the Swedish-led HRC resolution affirming the simple proposition that the same rights that people have offline must also be protected online.[11]

Since this landmark resolution of 2012, the HRC now considers an internet resolution every two years and has gone from recognising at a fundamental level the applicability of human rights in the online environment, to addressing critical issues like bridging the gender digital divide, attacks on people for exercising their rights online, ending intentional disruptions to internet access, and improving access to the internet and information and communications technologies (ICTs) for persons with disabilities. The most recent resolution was passed in July 2016 and links human rights online to the achievement of the Sustainable Development Goals.[12]

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4   The ICESCR has been reproduced in Annex I at the end of this edition of GISWatch.

5   For more information on the APC project "Connecting your rights: Economic, social and cultural rights (ESCRs) and the internet", see: https://www.apc.org/en/projects/internet-rights-are-economic-social-cultural-rights

6   La Rue, F. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/17/27). www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

7   www.unmultimedia.org/tv/webcast/2012/02/panel-on-right-to-freedom-of-expression-19th-session-human-rights-council.html

8   APC. (2012, 28 June). Internet: APC sees progress in the full recognition of the freedom of association and assembly. *APCNews.* https://www.apc.org/en/node/14676

9   Shaheed, F. (2012). Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed (A/HRC/20/26). https://daccess-ods.un.org/TMP/5280131.69765472.html

10   Ruteere, M. (2012). Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere (A/HRC/20/33). www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33_en.pdf

11   APC. (2012, 6 July). The UN recognises freedom of expression on the internet as a human right. *APCNews.* https://www.apc.org/en/node/14772

12   APC. (2016). APC welcomes Human Rights Council resolution on the internet and human rights. https://www.apc.org/en/pubs/apc-welcomes-human-rights-council-resolution-inter

It therefore appears that more governments are seriously committing to concretising internet freedom and are using the human rights discourse and mechanisms to do so. Further evidence of this can be seen in the launch of the Freedom Online Coalition of governments in December 2011,[13] greater prominence and acceptance of human rights as a legitimate topic in the Internet Governance Forum (IGF),[14] and events such as the Stockholm Internet Forum[15] convened by the Swedish International Development Cooperation Agency (Sida) and the Swedish Ministry of Foreign Affairs.

Ambivalence

But how deep is this commitment to internet freedom among governments really? Civil society groups remain suspicious, particularly when Freedom Online Coalition members such as the United States and the United Kingdom emerged – thanks to the Snowden revelations – as violators of privacy rights. Even three years post Snowden, the picture still looks quite bleak.

Content blocking and filtering[16] are common: in some countries the practice is endemic.[17] The Russian government passed a law in 2013 that allows it to selectively block content that it considers to be harmful to children. Human rights advocates believe the child protection law is designed "as a crack in the doorway to broader Internet censorship." Opponents of the law say that it "builds a system for government officials to demand that companies selectively block individual postings, so that contentious material can be removed without resorting to a countrywide ban on, for example, Facebook or YouTube, which would reflect poorly on Russia's image abroad and anger Internet users at home."[18] The UK government introduced compulsory opt-in pornography filtering in mid-2013. Many developing countries, particularly in Africa, Asia and the Middle East and North Africa, also actively support online censorship.[19] Even governments committed to free

speech in general are taking actions to limit it online – for example, Ecuador's June 2013 decision to institute a "real name policy" which prohibits anonymous online speech.[20] And internet shutdowns are becoming commonplace in Africa and parts of Asia, particularly during elections or when there is any kind of political protest.[21]

The UK's recent Investigatory Powers Bill[22] as well as other legislation being developed in many parts of the world suggest that rather than a reduction in encroachment on rights, the trend is for states to fill the legal loopholes exposed by whistleblowers and civil society-initiated litigation.[23] In other words, it does not take much scratching of the surface of the increased support for internet freedom to see a very different picture from what the hype about "internet rights" would suggest.[24]

North-South polarisation

Many developing country governments remain ambivalent.[25] They hold back from active support for internet freedom because: a) they are preoccupied with "security" and the threats of cybercrime and "terrorism"; b) they consider economic development and growth more important; c) they fail to see (or be convinced by arguments on) the link between human rights and development; and d) they view the internet freedom agenda as part of a broader US-driven foreign policy and free trade agenda which positions the US as "leader of the free world" while assisting US-based internet companies to access new markets and do business

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13 The coalition had its sixth meeting in Costa Rica in October 2016. For more information see: https://www.freedomonlinecoalition. com

14 intgovforum.org

15 www.stockholminternetforum.se

16 For a helpful overview of this practice see: https://opennet.net/about-filtering

17 La Rue, F. (2011). Op. cit.

18 Kramer, A. E. (2013, 31 March). Russians Selectively Blocking Internet. *The New York Times*. www.nytimes.com/2013/04/01/technology/russia-begins-selectively-blocking-internet-content.html?_r=0

19 Freedom House's *Freedom on the Net 2012* report considers only two of the six countries in sub-Saharan Africa that they rate as "free". See: www.freedomhouse.org/sites/default/files/resources/FOTN%202012%20Summary%20of%20Findings.pdf

20 APC. (2012, 15 August). New regulation threatens anonymity on the internet in Ecuador. *APCNews*. https://www.apc.org/en/node/14993

21 Vernon, M. (2016, 6 June). Pushing Back Against Internet Shutdowns. *CIPESA*. cipesa.org/2016/06/pushing-back-against-internet-shutdowns and Endalk. (2016, 11 October). Ethiopian Authorities Shut Down Mobile Internet and Major Social Media Sites. *Global Voices*. https://advox.globalvoices.org/2016/10/12/ethiopian-authorities-shut-down-mobile-internet-and-major-social-media-sites

22 Burgess, M. (2016, 1 November). Snooper's Charter is nearly law: how the Investigatory Powers Bill will affect you. *Wired*. www.wired.co.uk/article/ip-bill-law-details-passed

23 Gallagher, R. (2016, 17 October). U.K.'s Mass Surveillance Databases Were Unlawful for 17 Years, Court Rules. *The Intercept*. https://theintercept.com/2016/10/17/gchq-mi5-investigatory-powers-tribunal-bulk-datasets /

24 For an example of civil society concern about "double standards" see the Civil Society Statement to the Human Rights Council on the impact of State Surveillance on Human Rights addressing the PRISM/NSA case, issued on 10 June 2013, at: https://bestbits.net/prism-nsa and the civil society statement made at the closing of the Freedom Online Coalition meeting in Tunis in June 2013: https://www.apc.org/en/node/17861

25 See for example, the report of the Office of the High Commissioner for Human Rights, Summary of the Human Rights Council Expert Panel on Freedom of Expression and the Internet, Geneva, 2012.

there without paying tax or contributing to foreign direct investment.[26]

Political culture also contributes to countries responding differently to the internet. Some governments, particularly in Africa, are suspicious of the internet and its impact on traditional values, culture and identity. Some simply stifle free speech and association as a means of control and retaining power. This is particularly evident in countries with weak state institutions and high levels of corruption. State officials and politicians fear the consequences of citizens having the capacity to express themselves and participate in the public sphere.

This poses a huge challenge for activists and rights groups based in the global South, many of whom are concerned with broader social justice issues which require the protection of economic, social and cultural as well as civil and political rights.

As a result of these factors, polarisation is often present among civil society actors. Most of those driving the "mainstream" internet freedom agenda are based in the global North while those focused on broader social justice issues and economic, social and cultural rights, such as the right to health and the right to education, are located and/or active in the global South. This is discussed below in b) Participation gap.

Gaps in research, analysis, discourse, advocacy and networking

These ambivalent and polarised responses to internet policy and regulation can, at least in part, be attributed to gaps in current human rights and internet policy research, knowledge and discourse. These gaps can be described as follows:

a) Framing gap: All human rights – including civil and political and economic, social and cultural rights – are supposed to be "indivisible". Yet virtually all framing in the internet freedom discourse has been from the perspective of civil and political rights.[27]

b) Participation gap: The vast majority of participants in the "internet freedom" discourse have been from developed countries. Few have any experience or expertise in development theory, policy or practice. This is not to discount the many activists who have fought for a free and open internet who come from places such as Egypt, Tunisia, Syria or China, or from other countries where internet freedom was or is under threat. Nor should the contribution of organisations from the global South that are active in this area be overlooked. But in spite of the efforts of such groups, and also of APC and APC members, the "internet freedom" discourse is still generally dominated by voices (and issues) from the global North.[28]

c) Conceptual gap: The internet is often described as being ubiquitous, and integral to contemporary social, political and economic life; but there is no consistent conceptualisation of the internet from the perspective of how law, policy and regulation should deal with it. There is broad consensus that internet governance should be multistakeholder, but what is the internet itself? A public good? A public utility? A common-pool good? Or can it not be defined by a single concept? Many governments want greater control, whereas businesses, the technical community and civil society tend to resist this, although not always for the same reasons. The internet freedom movement has tended to adopt a libertarian approach rooted in the belief that governments should "keep their hands off the internet", consistent with the framing of freedom of expression as a negative right (one that government should not interfere with). This tends to support the notion that policy makers should view the internet as a marketplace which should be left to its own devices, rather than as a public means of knowledge sharing which involves economic, social and cultural rights and which states have an obligation to protect and keep open and free.

d) Research gap: Very little research has looked at the internet through an ESCR lens, which is distinct from an "ICT for development" lens. Even within the civil and political rights perspective, literature is heavily weighted towards a narrow range of civil rights (freedom of expression, privacy, and freedom of association). There are few researchers working in the area of ESCRs

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26 This is reflected in the focus on cybersecurity in the African Union Commission and at the International Telecommunication Union, a forum where developing countries are generally active participants, as well as in the negotiations related to the review of the International Telecommunication Regulations at the World Conference on International Telecommunications in December 2012.

27 Hawtin, D. (2011). Internet charters and principles: Trends and insights. In Finlay, A. (Ed.), *Global Information Society Watch 2011: Internet rights and democratisation*. APC and Hivos. https://giswatch.org/mapping-democracy/internet-rights/internet-charters-and-principles-trends-and-insights-o

28 See for example the Declaration of Internet Freedom. While it has signatories from other parts of the world, its proponents are US-based civil liberties groups: www.internetdeclaration.org. An exception are the principles of the Brazilian Internet Steering Group, CGI.br: www.cgi.br/principles

and the internet and a there is a clear gap in re-search capacity. There is little knowledge about how to monitor internet-related violations of ESCRs, how to conduct research, and how to use this research effectively in internet-related public policy discourse.

e) Principles gap: Most statements of principles for internet policy, regulation and governance focus on privacy, freedom of speech and asso-ciation, and freedom from censorship.[29] There is no coherent set of principles, to our knowledge, designed to ensure effective consideration of economic, social and cultural rights.

f) Advocacy and networking gap: Human rights organisations from the global South that focus on development rarely focus on internet-related rights. At a forum during the 23rd session of the HRC in May 2013, human rights defenders and policy makers alike expressed strong concerns about the lack of development progress and the dearth of apparent means for significant head-way in the short to medium term.[30] The result is a gap in how human rights groups conceptu-alise how the internet enables ESCRs and how these relate to development. An opportunity exists therefore to bring some of these groups together with researchers and internet activists, to build knowledge, develop shared research activities and outputs, and pursue collaborative strategies for research uptake into policy-mak-ing and policy-shaping forums.

These gaps mentioned above result in a political and analytical deficit and have deleterious con-sequences: internet rights activists often tend to portray the world as being divided between "good" pro-Western democracy and pro-internet freedom governments, and "bad" anti-Western democracy and anti-internet freedom governments, usually from Africa or Asia.[31] These dynamics reinforce the geopolitical divides that led to the creation of two separate rights instruments – the International Covenant on Civil and Political Rights and the Inter-national Covenant on Economic, Social and Cultural Rights – where one instrument would have been far easier to implement and monitor. It was the failure of governments to agree on the enforceability and importance of ESCRs that led to two separate agree-ments with different standards of accountability. These dynamics also affect internet policy-making and policy-shaping forums such as the Internet Gov-ernance Forum. The implications are clear: if we are to broaden the discourse about the rights-based approach to internet governance, we must broaden the discourse to include *all* rights – including eco-nomic, social and cultural rights.

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29 Hawtin, D. (2011). Op. cit. See also, for example, the Internet Rights and Principles Charter of the Dynamic Coalition on Internet Rights and Principles (2011): internetrightsandprinciples.org/site; the APC Internet Rights Charter (2006): https://www.apc.org/en/node/5677; and the Electronic Frontier Foundation's Bill of Privacy Rights (2010): https://www.eff.org/deeplinks/2010/05/bill-privacy-rights-social-network-users

30 See, for example, Langford, M., Cousins, B., Dugard, J., & Madlingozi, T. (2013). *Socio-Economic rights in South Africa: Symbols or Substance?* Cambridge University Press.

31 The dynamics during the ITU World Conference on International Telecommunications (WCIT) held in December 2012 illustrated this very clearly. Generally pro-rights governments, e.g. South Africa, who had supported resolutions passed in the Human Rights Council that affirmed the importance of human rights on the internet, ended up signing a document which the US government felt would undermine internet freedom.

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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