

GISWatch
10th Edition

GLOBAL INFORMATION SOCIETY WATCH 2016

*Economic, social and cultural rights
and the internet*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND INTERNATIONAL DEVELOPMENT RESEARCH CENTRE (IDRC)

Global Information Society Watch

2016



Global Information Society Watch 2016

Economic, social and cultural rights and the internet

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More information at: <https://www.apc.org/en/projects/internet-rights-are-economic-social-cultural-rights>



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Preface

Lea Shaver

The internet has widely been hailed as a force for advancing freedom of expression. This dominant narrative understates the importance of communication and connectivity for the full range of human rights. This year's Global Information Society Watch (GISWatch) highlights socioeconomic human rights. Among the connections explored here are the rights to work, livelihood, health, education, social security and culture, among others.

The contributions that follow paint a diverse picture of the interactions between internet technologies and socioeconomic rights. Collectively, they persuasively make the case for internet access as a human right, grounded not only in the value of freedom of expression and cultural participation, but as a gateway to the realisation of other rights.

As a human rights scholar focusing especially on the right to science and culture, I have often tried to make the point that technology and culture are not two separate worlds, but rather two sides of the same coin. Cultural life and technology are increasingly tied. The stories of national experiences within this volume make the point more eloquently than I ever could.

One significant theme that emerges from the contributions is the use of communications technologies to demand socioeconomic rights accountability. Leveraging social media, information and communications technology for development (ICT4D) has proven itself to be not only about accessing information and services, but about empowering public scrutiny and criticism, especially for popular and marginalised voices.

The advantages of the digital over the physical are also being realised in a variety of ways. Groups who face threats to their physical or economic security if they organise to claim rights can leverage virtual organisation to shield their persons and identities. Technologies that make distance irrelevant are empowering communities limited by geography.

Unlike freedom of expression, socioeconomic rights have a shorter history of recognition, and even their basic understanding remains considerably in flux. What degree of socioeconomic opportunity and justice is owed to every person by virtue of their humanity is still an evolving question. The success of civil society efforts to leverage the internet for socioeconomic rights will determine the extent to which popular participation helps to answer this question.

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

Anriette Esterhuysen

Association for Progressive Communications

www.apc.org

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 governments¹ 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.

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 rights 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

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 Forum¹⁵ 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 filtering¹⁶ 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 Bill²² 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

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-mis-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

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 there is a clear gap in research 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 association, 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 headway in the short to medium term.³⁰ The result is a gap in how human rights groups conceptualise 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-making and policy-shaping forums.

These gaps mentioned above result in a political and analytical deficit and have deleterious consequences: 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 International 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 agreements with different standards of accountability. These dynamics also affect internet policy-making and policy-shaping forums such as the Internet Governance 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 economic, social and cultural rights.

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): internetrighsandprinciples.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.

Thematic reports



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

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/ICESCR.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

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 15¹⁴ (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 are piloted in underserved 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.

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

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 Püras, 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 policies 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.

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

ICTs, SDGs and economic, social and cultural rights

David Souter

www.apc.org/node/22140

Introduction

This is a critical time for development, rights and the emerging information society.

- In 2015, the United Nations agreed a comprehensive programme of action – the 2030 Agenda for Sustainable Development – to pursue the three linked goals of sustainable development: economic prosperity, social equity and environmental sustainability.¹
- Also in 2015, in the 10-year review of the World Summit on the Information Society (WSIS+10 review), the UN assessed progress towards a “people-centred, inclusive and development-oriented Information Society” since the Summit ended in 2005. It recognised that information and communications technologies (ICTs) and the internet are becoming ever more pervasive and critical to society, economy and development.²
- In 2014, the UN Human Rights Council recognised that rights must be equivalent offline and online.³ The centrality of human rights to development was emphasised in both the 2030 Agenda and the outcome document from the WSIS+10 review.

This report brings together these three themes – sustainable development, the information society and human rights – and considers the relationships between the sustainable development goals (SDGs), ICTs, and those rights which are set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The link between economic, social and cultural rights and sustainable development

Human rights are crucial to development. The 2030 Agenda for Sustainable Development envisages “a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realisation of human potential and contributing to shared prosperity. ... A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.”

Human rights are set out in a number of international instruments, the most fundamental of which is the Universal Declaration of Human Rights (UDHR).⁴ Commitments by governments to the rights included in the UDHR are formalised in the International Covenant on Civil and Political Rights (ICCPR)⁵ and the ICESCR.⁶ Other crucial instruments are concerned with the rights of women (Convention on the Elimination of All Forms of Discrimination against Women, CEDAW),⁷ children (Convention on the Rights of the Child, CRC)⁸ and with racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination, ICERD).⁹ Governments must refrain from violating rights and are responsible for enabling citizens to exercise them.

The ICCPR is concerned particularly with the rights of the individual, including freedoms of expression and association and the right to privacy. The ICESCR is concerned with broader social rights, whose achievement requires policy commitment and investment over time by governments – a process described as “progressive realisation”. As well as asserting self-determination and gender equality, the Covenant’s principal clauses are concerned

1 Transforming Our World: the 2030 Agenda for Sustainable Development. www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

2 United Nations General Assembly. (2015). Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society (A/RES/70/125). unctad.org/en/PublicationsLibrary/ares70d125_en.pdf

3 For example, United Nations General Assembly. (2014). The right to privacy in the digital age (A/RES/68/167). www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/167

4 www.un.org/en/universal-declaration-human-rights/index.html

5 www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

6 The Covenant can be found at www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

7 www.un.org/womenwatch/daw/cedaw/cedaw.htm

8 www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

9 www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

TABLE 1.		
Intersections between ESCRs and SDGs		
	Articles and themes of ICESCR	Principal related SDGs
1	<ul style="list-style-type: none"> • Right of self-determination • Right to freely dispose of natural wealth and resources 	<ul style="list-style-type: none"> • 10 & 17 (self-determination) • 14 & 15 (natural resources)
2	<ul style="list-style-type: none"> • Progressive realisation of rights within the Covenant • Non-discrimination 	<ul style="list-style-type: none"> • 1 (resource mobilisation and policy frameworks in general), sectoral SDGs (specific sectors) • 1 (equality), 5 (gender equity), sectoral SDGs (specific sectors)
3	<ul style="list-style-type: none"> • Gender equality (see also CEDAW) 	<ul style="list-style-type: none"> • 3 (gender equality), sectoral SDGs (specific sectors)
6	<ul style="list-style-type: none"> • Right to work, including vocational training 	<ul style="list-style-type: none"> • 8 (employment and economic growth)
7	<ul style="list-style-type: none"> • Just and favourable conditions of work, including remuneration, health and safety 	<ul style="list-style-type: none"> • 8 (employment and economic growth)
8	<ul style="list-style-type: none"> • Trade union rights 	<ul style="list-style-type: none"> • 8 (employment and economic growth)
9	<ul style="list-style-type: none"> • Right to social security, including social insurance 	<ul style="list-style-type: none"> • 1 (social protection), various (specific aspects of social welfare)
10	<ul style="list-style-type: none"> • Protection of the family, including women/ mothers and children (see also CEDAW and CRC) 	<ul style="list-style-type: none"> • 5 (gender equity)
11	<ul style="list-style-type: none"> • Right to an adequate standard of living • Freedom from hunger and equitable food production and distribution 	<ul style="list-style-type: none"> • 1 (poverty reduction), 2 (freedom from hunger), sectoral SDGs (specific sectors) • 2 (freedom from hunger and equitable food production and distribution), 17 (trade)
12	<ul style="list-style-type: none"> • Right to high standards of health • Reduction of infant mortality and of disease 	<ul style="list-style-type: none"> • 3 (health), 6 (water), 11 (human settlements), 12 & 15 (environment)
13 & 14	<ul style="list-style-type: none"> • Right to education 	<ul style="list-style-type: none"> • 4 (education)
15	<ul style="list-style-type: none"> • Right to cultural life, including benefits of scientific progress • Authorial rights • Freedom of scientific research 	<ul style="list-style-type: none"> • Sectoral SDGs (sectoral scientific progress and scientific freedoms)

with the right to work, working conditions and trade union rights, rights to social security and an “adequate standard of living”, freedom from hunger, protection of the family, rights to health and education, and rights to participate in cultural life, including the “benefits of scientific progress and its applications”. Some of these rights are further developed, where women and children are concerned, in CEDAW and the CRC.

The 2030 Agenda for Sustainable Development includes 17 Sustainable Development Goals (SDGs)

and 169 targets. The rights included in the ICESCR overlap and provide an underpinning framework for many of these SDGs, while the goals establish quantifiable and other targets that will support realisation of the rights. Goals to end poverty and hunger (SDGs 1 and 2), for example, and to ensure access to water and energy (SDGs 6 and 7) relate to the Covenant’s right to an adequate standard of living and to food. SDGs 3 and 4 relate to rights to health and education; SDG 8 to “decent work for all”. These relationships are detailed in Table 1.

ICTs and sustainable development

There has been much discussion about the relationship between ICTs and sustainable development, including the SDGs. Like many other organisations, the Association for Progressive Communications (APC) has expressed concern about the limited extent to which the role and potential of ICTs and the internet have been recognised in the 2030 Agenda and the goals.

The Agenda acknowledges that “the spread of information and communications technology and global interconnectedness has great potential to accelerate human progress, to bridge the digital divide and to develop knowledge societies.” However, there is no goal concerned specifically with ICTs and the internet, only one of the 169 sustainable development targets is concerned with access to ICTs, and they are mentioned in only three others (which are concerned with women’s empowerment, education, and research and development).

There is more recognition of the value of access to information in the Agenda, including both information which can enable people to make decisions about their lives and information which can enable policy makers to address economic, social and cultural development more effectively. However, the cross-cutting roles of both information and communications are poorly represented in the overall framework.

The UN’s WSIS+10 outcomes review urged stakeholders to build a more effective relationship between ICTs and the SDGs. APC believes that there are three important aspects to this, each of which is crucial to enabling and exercising economic, social and cultural rights:

- ICTs are changing the ways in which governments, businesses and citizens behave. Governments and other stakeholders need to understand these changes, take advantage of those which provide new opportunities to fulfil the SDGs, and remain vigilant to contain risks where they may undermine the goals.
- Development policies and programmes can take advantage of the potential of ICTs to implement the SDGs in many ways – from gathering evidence to designing and implementing development projects and facilitating access to information. Governments and other stakeholders should take full advantage of these to support achievement of each of the SDGs.
- ICTs can improve the monitoring and measurement of progress towards the SDGs. Governments and other stakeholders should take full advantage of this in order to improve

the effectiveness of SDG implementation, while protecting rights to privacy and information.

One way to bring these themes together is to place the relationship between ICTs and the SDGs within the framework of economic, social and cultural rights set out in the ICESCR.

ICTs and ESCRs

The UN General Assembly’s WSIS+10 review declared that human rights are “central to the vision of the World Summit on the Information Society.” As noted earlier, the General Assembly has also declared that “the same rights that people have offline must also be protected online,” implying that rights online and offline must be equivalent.

Most discussion of ICTs, the internet and human rights has been concerned with civil and political rights. The internet, in particular, has opened new opportunities for people to exercise freedom of expression and publish their opinions, to access information, to associate with one another online and offline and to engage in social and political activity. At the same time, it has raised new threats to privacy, from both governments and businesses, and has changed the ways in which rights to information and expression can be enforced or violated.¹⁰

Much less attention has been paid to the impact of ICTs and the internet on ESCRs. Yet these are as important in the international rights regime as civil and political rights. ICTs and the internet play an increasingly important part in every aspect of economic, social and cultural life – and their importance to economic, social and cultural life is growing year on year as ICTs and the internet become more pervasive, and the services, applications and devices people use become more sophisticated. The impending Internet of Things will mark a step change in their pervasiveness, sophistication and significance.

Linking ICTs, SDGs and ESCRs

ESCRs are fundamental to development. They should be protected and promoted because of the impact which education, health, employment and the other dimensions of life included in them have on individuals and communities. They are supportive of, and supported by, civil and political rights, but are not subordinate to them.

¹⁰ These issues are discussed in Souter, D. (2012). *Human Rights and the Internet: A review of perceptions in human rights organisations*. APC. https://www.apc.org/en/system/files/HumanRightsAndTheInternet_20120627.pdf

Most of the rights in the ICESCR¹¹ require investment and policy commitment over a period of time. Their implementation is therefore closely interwoven with the strategic frameworks for development, resource mobilisation and infrastructure deployment that are adopted by governments and supported by international financial and development agencies.

The SDGs provide an appropriate framework for advocating and implementing economic, social and cultural rights within an overall approach to sustainable development which enhances economic prosperity, promotes social equity and facilitates the expression of cultural identity. While ESCRs are expressed in broad terms of principle, the SDGs also provide a framework of targets that could be considered to establish rights objectives and/or against which progress towards achieving these can be measured.

The principal areas in which SDGs and ESCRs intersect have been identified in a matrix which has been published online by the Danish Institute for Human Rights.¹² These are summarised in Table 1. In some cases, ICESCR rights are reinforced by rights in CEDAW and the CRC (Table 1).

It is not possible in this brief report to analyse the links between ICTs, ESCRs and SDGs in any detail. However, there is space to draw attention to three important aspects.

The adoption of SDG targets related to ESCRs

The first concerns the way in which the SDGs have provided specific targets by which progress towards some ESCRs can be monitored and measured. Health provides a good example of this. Article 12 of the ICESCR recognises the right of all to “the enjoyment of the highest attainable standard of physical and mental health,” efforts to reduce infant mortality, prevent disease and improve hygiene. SDG 3 establishes specific targets for the reduction of maternal and infant mortality, mortality through epidemic and non-communicable diseases, and other targets with health implications.

Other ESCRs are likewise translated into specific targets by the SDGs. ICTs are important in this context in two main ways. Firstly, ICTs can be used in ways which improve access to and delivery of rights/goals such as those for health and education – for instance, through health promotion and remote diagnosis, through open educational resources and school computer access. Secondly, ICTs can improve

the quality of data gathering and analysis through which progress – in respect of both rights and SDGs – can be measured more effectively.

The importance of ICT access in achieving ESCRs and SDGs

Access to the internet and other ICTs is crucial if they are to play these roles. The ICCPR grants people the right to “receive and impart information and ideas of all kinds.” That right underpins the ability of citizens to take advantage of the resources which the internet can make available to improve their health and education, social security and quality of life – economic, social and cultural rights which are included in the ICESCR. The ICESCR itself grants people the right to “enjoy the benefits of scientific progress and its applications,” which should include the benefits of access to the telecommunications infrastructure and services which underpin the internet. Access to those networks and services can, therefore, be considered necessary within the rights regime.

As well as access, though, it is necessary for governments and other stakeholders to leverage the potential of ICTs in order to advance the SDGs which facilitate ESCRs. Pervasive connectivity is needed to enable governments and other stakeholders to deliver services equally to all their citizens. And citizens themselves need access in order to take the opportunities for self-empowerment that are required by both rights and goals. Access, in this context, reaches far beyond pervasive connectivity. It also requires networks to be affordable, and requires that people have the capabilities to make full use of the resources which they make available, including literacy, technical and research skills. Achieving ESCRs in the information society requires policy makers to address these requirements.

The complexity of ICTs’ relationship with ESCRs

ICTs can have negative as well as positive impacts on both rights and developmental goals. The threat which ICTs pose to privacy (ICCPR Article 17) is well known. The World Bank has recently argued that “in many countries the internet has disproportionately benefited political elites.”¹³ While ICTs can support achievement of ESCRs, therefore, those rights may also need new types of protection.

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

12 *The Human Rights Guide to the SDGs*. sdg.humanrights.dk

13 World Bank. 2016). *World Development Report 2016: Digital Dividends*. www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2016/01/13/090224bo8405ea05/2_0/Rendered/PDF/Worlddevelopmentoodigitaldividends.pdf

The employment rights set out in the ICESCR exemplify this challenge. Article 6 of the covenant recognises “the right to work,” including “the right of everyone to the opportunity to gain his [*sic*] living by work which he freely chooses or accepts,” while Article 7 adds to this “the right of everyone to the enjoyment of just and favourable conditions of work” including fair remuneration, health and safety requirements and equality of opportunity. Article 8 provides strong protection for trades unions. SDG 8, similarly, calls for “full and productive employment and decent work for all women and men,” and for the protection of labour rights in “safe and secure working environments.”¹⁴

There is, however, growing concern that the increasing digitalisation of economies will reduce employment opportunities, while more flexible employment arrangements in platform enterprises (sometimes called the “gig” economy) undermine job quality, remuneration and trade union membership. Much more research and analysis is needed to identify how employment rights can be sustained, and developmental goals achieved, in the rapidly changing work environment.

What is to be done?

The information society offers opportunities to enable economic, social and cultural rights, and their associated SDGs, in ways that were not possible before, but also has the potential to threaten rights. Unequal access to ICTs poses the risk that access to rights and to developmental outcomes will also prove unequal, undermining the achievement of greater equality which is crucial to sustainable development.

ICT stakeholders should aim *both* to maximise the potential value of ICTs for development and rights *and* to mitigate the problems that also arise.

Some of the gains for rights and goals which stem from ICTs are closely related to civil and political rights. For example, they enable greater access to information in areas such as health, education and agriculture, which individuals – as well as professionals – can use to make choices that will

enhance their lives and livelihoods. The interactivity which they facilitate enables people to share experiences, knowledge and concerns within groups as well as between individuals, fostering the kinds of solidarity which have lain at the root of trade unionism and wider community action. In areas such as health and education, food production and employment, social welfare and the family, improved access to information and experience can be critical to achieving economic, social and cultural as well as civil and political rights.

These factors illustrate the extent to which civil and political rights are linked to economic, social and cultural rights. The latter are, nevertheless, distinctive in important ways. The need for investment and progressive realisation of ESCRs means that they require a strategic, integrated approach which is consistent with the development agendas now being designed to implement the SDGs. The limited presence of ICTs within the SDGs, and therefore in those agendas, is potentially a problem. ICTs and the internet seem likely to have a much more powerful impact on SDG implementation than has been anticipated. They, too, need to be more deeply integrated in strategies for sustainability.

A crucial element in this is the need for greater dialogue and understanding between stakeholders involved in the three fields of activity discussed in this chapter – ICTs, rights and sustainable development. The multistakeholder approaches which have become more common in recent years in all three fields could help to stimulate this dialogue. So could the development of analytical frameworks to monitor progress towards the SDGs. Governments and development agencies could and should do more to involve the wide range of stakeholders within communities in governance processes which are transparent, accountable and adequately resourced. Civil society actors like APC can support this by continuing to emphasise the partnership between rights and development in the search for economic prosperity, social equity and environmental sustainability.

¹⁴ SDG 8, targets 8.5 and 8.7.

The right to educational resources and the internet

Andrew Rens

Introduction

This report considers the right to educational resources, and the role the internet should play in realising this right, with specific reference to South Africa.¹ South Africa is considered an example of a developing country with both a strong right to education and significant challenges in realising the right to education. One significant failure has been to provide the necessary textbooks required for education in a timely manner. This failure has led to public protest, with learners themselves taking to the street to protest against the denial of their right to education.² Court action against the state by civil society has compelled the authorities to provide textbooks. The result is unprecedented jurisprudence which makes explicit issues that have not yet been fully explored in other jurisdictions.

The internet offers South Africa an important opportunity to make up for many, although not all, of the deficiencies of its educational system in order to fulfil the right to education. Set in the context of global human rights commitments and a global and globalising internet, the specific case of South Africa offers greater understanding of similar challenges elsewhere in the developing world.

The South African context

Data sources for school enrolment and textbook provision in South Africa are inadequate at best. However, approximately 15.9 million people are enrolled in formal education in South Africa. The

majority (88%) are in primary or secondary school, while only 2.4% are in vocational training institutions (vocational colleges) and 4.7% in tertiary institutions.³ A major obstacle is lack of educational resources. In 2013 more children at public schools reported that the lack of books was the most pressing issue in their education.⁴ The South African government, through setting curricula, largely determines what is in textbooks, workbooks and the like. The state is also the main customer for the textbooks produced according to its specifications. While a few textbooks are sold to private schools which follow the national curriculum, they have no market power. Instead school textbooks are produced for purchase by the state.⁵ Failure to deliver educational resources, when it occurs, is thus primarily due to the procurement processes of the state.

The extent to which a population of approximately 52 million South Africans have access to the internet and the kind of access experienced is not entirely clear. We do know that bottlenecks and inequality in the provision of infrastructure limit internet access for the majority of the population. Information and communications technology (ICT) access in South Africa has also been overpriced by global standards due to regulatory failure, while the cost of both hardware and software remains high. Bad policy has led to failures in the roll-out of ICTs as much as poor implementation of policy.⁶ At the same time, failure by the state to invest in energy infrastructure has resulted in the chronic

1 Andrew Rens was a researcher on the Association for Progressive Communications (APC) project “Connecting your rights: Economic, social and cultural rights (ESCRs) and the internet” (<https://www.apc.org/en/projects/connecting-your-rights-economic-cultural-and-socia>). This is an edited version of his case study *The right to education and the internet*, on the role of the internet in the provision and accessibility of educational resources in South Africa. For the full version of this case study, see: <https://www.apc.org/en/node/21675>

2 For example, a learner, parent and teacher march to protest failure to deliver textbooks was held in Giyani on 21 November 2015. See: SECTION27. (2015, 9 November). #TextbooksMatter campaign launched. section27.org.za/2015/11/textbooksmatter-campaign-launched

3 Statistics South Africa. (2013). *General Household Survey 2013*, 17. www.statssa.gov.za/publications/P0318/P03182013.pdf

4 Ibid., 20.

5 Competition Commission South Africa. (2007). Reasons for Decision, Pearson Plc and The Harcourt Education International and Harcourt Assessment Businesses of Reed Elsevier, Case number: 2007May2952, 2. Note that the author was Intellectual Property Fellow at the Shuttleworth Foundation, which brought a public interest intervention in the merger proceedings.

6 Cloete, N., & Gillwald, A. (2014). South African Informational Development and Human Development: Rights vs. Capabilities. In M. Castells & P. Himanen (Eds.), *Reconceptualizing Development in the Global Information Age*. Oxford: Oxford University Press.

under-supply of power.⁷ Nevertheless, regardless of the source, the available data suggest a trend of rapidly increasing internet access. Most access is by mobile phone. It is predicted that by 2019 at least 50% of the population – a projected 27 million people – will use the internet.⁸ Smartphones will be 30% of all networked devices.

In a number of provinces in South Africa the government is moving towards digitising classrooms and using the internet as the primary way of providing educational resources. South Africa has been the site of a number of pioneering attempts to make use of digital technologies to offer educational services and support, especially to high (secondary) school students.⁹

The right to education

The right to education is a fundamental human right¹⁰ in international law and is entrenched as a fundamental right in the South African Bill of Rights. The right to education was first internationally recognised as a basic human right in Article 26 of the Universal Declaration of Human Rights; this right became legally binding in international law in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 13.

The provisions of Article 13 could be summarised as requiring education directed towards development of the person – through fulfilment of the human rights to free primary education, equal and increasing access to other kinds of education, and freedom to educate children in non-state institutions. Free primary education is so important to the right that it is also dealt with in a separate

article, Article 14 of the ICESCR. However, the right does not only include primary education but also increasing and equal access to further education, which includes university education. Article 13 is elucidated by the Committee on Economic, Social and Cultural Rights (CESCR).¹¹ The CESCR stipulates that generally education is required by the right to be available, accessible, acceptable and adaptable. One of the aspects of the right is provision of “teaching materials”¹² – or educational resources.

The rights set out in the ICESCR place obligations on a state to provide means for their fulfilment. This, in turn, requires use of financial and other resources by the state. The challenge for states with limited resources is addressed by Article 2 of the ICESCR. The “realisation”¹³ of a right is now understood to require at least the following elements, notwithstanding the constraints on available resources: immediate non-discrimination, no retrogressive measures, minimum obligations, and an obligation to take steps to fulfil the right and report on them. Because providing education is resource-dependent, the government of the day of a particular state does have some freedom in determining how to go about realising the right to education, referred to as a “margin of discretion”. This margin of discretion does not permit the current government of a state to take into account irrelevant considerations in realising the right to education; for example, a government official’s belief that the role of women is to bear children and therefore that women need not be educated is irrelevant. It also allows a state to take into account relevant considerations such as the requirements of the local job market in realising the right to education.¹⁴

The duty on the state to respect, protect and fulfil the right to education encompasses a number of interconnected obligations, not only to provide education directly but also to ensure that education procurement practices and the regulation of education realise the right to education. The right to education does not only require provision of

7 “Over the past 20 years South Africa has not made significant investments in the energy sector.” Department of Energy, (2012). Revised Strategic Plan 2011/12-2015/16. www.gov.za/sites/www.gov.za/files/DoE_RevisedStrategicPlan_2011_12-2015_16a.pdf

8 Cisco Visual Networking Index 2015. www.cisco.com/c/en/us/solutions/service-provider/visual-networking-index-vni/index.html

9 The potential of the internet to provide educational resources in South Africa is best demonstrated by Siyavula, an educational technology company started in South Africa. Siyavula offers an intelligent practice service for mathematics and science subjects. Intelligent practice uses adaptive learning technology to tailor instruction, sequence, difficulty and type of problem presented to the individual student. These services are available on feature phones. Siyavula has also produced open-licensed textbooks and workbooks. During the crisis in textbook supply Siyavula was able to rapidly supply workbooks to students who had not had textbooks for several months. Separately, during 2015 the wealthiest province in South Africa, Gauteng, began a project that has resulted in distribution of internet-enabled tablets to approximately 61,000 students at over 375 schools.

10 According to the Office of the United Nations High Commissioner for Human Rights, “human rights are rights inherent to all human beings.” Human rights are thus inherently different to other types of rights such as the rights of states under treaties, and rights such as contractual rights which can be held by corporations and transferred.

11 UN Committee on Economic, Social and Cultural Rights (CESCR). (1999, 8 December). General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10. Adopted at the Twenty-first Session of the Committee.

12 *Ibid.*, at 6 (a).

13 This development is often referred as progressive realisation, so this term is used in the case study. However, it is important to note that it is somewhat misleading, since some obligations are immediate.

14 The well-known distinction between a state and the government of the day is significant when a state makes a declaration in respect of rights such as the Declaration on Article 13 (2) (a) by South Africa on accession to the ICESCR. If the declaration is unconstitutional then successor governments are not bound by it.

education by the state, it also prohibits others from preventing education. Thus the right would operate against an individual or corporation which acted to prevent education. One example of this would be a corporation which prevented access to educational resources, such as an internet services provider (ISP) which disconnected a school because of an allegation of copyright infringement without investigating whether the allegation is true.

The right to educational resources: What the courts said

Although South Africa signed the ICESCR in 1994, it acceded only in January 2015. Nevertheless, the country has a fully justiciable Bill of Rights: all rights including ESCRs can be enforced through the courts. Most ESCRs are subject to progressive realisation. However, in South Africa the right to a basic education, as per section 29 (1), is not subject to progressive realisation;¹⁵ instead the state has an absolute obligation.¹⁶ Other aspects of the right, such as the right to further education, are subject to progressive realisation. In South Africa the right to education has both “positive” and “negative” aspects. The negative right ensures “people are not prevented from accessing existing educational resources”¹⁷ and may impose duties on private persons and corporations.¹⁸

On accession to the ICESCR on 15 January 2015, South Africa made a declaration that it would give progressive effect to the right to education in Article 13 (2) (a) and Article 14 within available resources. This declaration, whatever its effect in international law, does not diminish the immediate constitutional right in South Africa to basic education, since a declaration to an international instrument does not amend the Constitution. The Constitution remains the supreme law; as a result law and action inconsistent with it are invalid (Section 1 of the Constitution of 1996).

Section 29 (1) does not state that education should be free, unlike Article 13 of the ICESCR. Article 14 of ICESCR requires states which do not offer free education on becoming party to the ICESCR to

develop a detailed plan within two years. The declaration by South Africa that it will give effect to the right through progressive realisation “within the framework of its National Education Policy” may be understood as a claim that the National Education Policy is the detailed plan required by ICESCR Article 14. However, whether it meets the requirements of ICESCR Article 14 has not been authoritatively decided. Since the right to basic education is not subject to progressive realisation there is an intense unresolved debate whether education in South Africa should be free to all.¹⁹

South African courts have developed the right to education to require provision of educational resources in basic education. From 2012 to 2015 civil society actors which included schools, SECTION27²⁰ and later Basic Education For All²¹ took the government to court. Their cases were aimed at ensuring that some learners, particularly black, rural, poor learners, are not deprived of the minimum necessities for a basic education, including textbooks and other resources. Three related decisions by the courts that resulted from this action have given cumulatively stronger statements of the state’s requirement to provide educational resources for basic education.²²

In the first decision, made in response to an urgent application, the court pointed out that the government officials responsible had themselves publicly emphasised the importance of educational resources for education. The judge added that “it is difficult to conceive, even with the best of intentions, how the right to basic education can be given

15 Section 29 (1) Constitution of the Republic of South Africa, 1996, Chapter Two. This obligation is discussed in Constitutional Court of South Africa. (2011, 11 April). *Governing Body of the Juma Musjid Primary School & Others v Essay N. O. & Others* (Centre for Child Law & another as Amici Curiae) [2011] ZACC 13; 2011 (8) BCLR 761 (CC), para 37.

16 Woolman, S., & Bishop, M. (2014). *The Right to Education*. In M. Chaskalson et al. (Eds.), *Constitutional Law of South Africa*, 2nd Edition, Vol 4, 57-10. Cape Town: Juta.

17 Ibid. Vol 4, 57-8.

18 Ibid. Vol 4, 57-9.

19 For an extensive review of the debate see Woolman, S., & Bishop, M. (2014). Op. cit. Vol 4, 57-24 and the sources cited for the contours of the debate. Even those, such as Woolman and Bishop, who argue that fees are constitutionally defensible in South Africa concede that “[n]o person should be denied a basic education because his parents cannot afford school fees.” The issues involved such as “fee” and “no fee” schools and the constitutional jurisprudence involved are largely irrelevant to the role of the internet in realising the right to education and thus beyond this report, but it should be noted that the debate overshadows South Africa’s claims of compliance with the ICESCR.

20 SECTION27 is a public interest legal firm that assists poor people in enforcing socioeconomic rights to education, food, housing and health care in South Africa. section27.org.za

21 Basic Education For All (Befa) is a voluntary organisation based in Limpopo. Its some 50 members seek to promote and protect the right to basic education for learners in Limpopo. It has links with another voluntary organisation, SECTION27, some of whose members are practising lawyers and whose aim similarly is to promote education. Befa was formed in 2012 in response to what the main deponent to the applicants’ founding affidavit calls the education crisis in Limpopo. *North Gauteng High Court, Pretoria*. (2014, 5 May). *Basic Education For All and Others v Minister of Basic Education and Others* (23949/14) [2014] ZAGPPHC 251 at §2.

22 An account of the factual circumstances, the specificities of South African school administration, is beyond the scope of this case study

effect to in the absence of textbooks.”²³ As a result, the court ordered the government officials to not only provide the textbooks by specific deadlines but also to ensure that learners were not prejudiced by the failure to provide them with textbooks. Despite this order, two years later government officials again failed to ensure provision of textbooks in a timely manner for a large number of schools and their learners. When the case went to court the government argued that failure to provide textbooks did not constitute a violation of the right.²⁴ The court ruled that “[t]extbooks are essential to all forms of education” and as a result “are therefore a component of basic education.”²⁵ The government appealed the ruling. The appeal court held that it is a duty of the state to provide every learner with every textbook prescribed for a course before the course begins.²⁶

The second court pointed out that paper books require far less in the way of supporting technology than internet communications, and gave its opinion that in South Africa books have not yet been replaced by internet-based resources – instead books and electronic information are complementary.²⁷ The appeal court emphasised that the advent of electronic reading materials has increased the importance of reading, and adopted a definition of textbooks which defines something as a textbook according to the information and activities contained in it.²⁸ For the appeal court, a textbook is not defined by whether it is paper or electronic.

The negative aspect of the right of education against prohibitions on accessing existing resources is particularly important for digital and internet educational resources. If any number of people can use a digital textbook simultaneously there is no need to ration it. If there is no need to ration the textbook, can there be any constitutional justification to restrict use of the textbook? Excluding someone from a digital or internet educational resource cannot be justified by the inherent limits of the resource.

The right to education and the internet

In 2012 the United Nations Human Rights Council affirmed that “the same rights that people have offline must also be protected online.”²⁹ It follows logically that the right to education is entitled to as much protection online as it is offline. Building on its previous statement the Council affirmed in 2014 that “quality education plays a decisive role in development, and therefore calls upon all States to promote digital literacy and facilitate access to information on the Internet, which can be an important tool in facilitating the promotion of the right to education.”³⁰

The right to education has four “interrelated and essential features”: availability, accessibility, acceptability and adaptability.³¹ As elucidated in the General Comment on the right to education, these features have implications for the internet and related technologies.

Availability of education requires “teaching materials” and in at least some cases “computer facilities and information technology”. Accessibility has three dimensions: non-discrimination, physical access and economic access. Physical accessibility can be achieved “by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a ‘distance learning’ programme).” Acceptability means at least that the education should not endanger the health or well-being of the child, for example, through excessive or inappropriate punishment. Adaptability requires education to change to meet the needs of changing societies and students. The General Comment illustrates how the right to education applies: a state is required to “fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world” and fulfil (provide) the availability of education by “providing teaching materials.”³²

Basic education has historically been understood to include at least basic numeracy and literacy. However, in a global economy in which internet access increases economic, cultural and social opportunity, familiarity with and ability to use

23 North Gauteng High Court, Pretoria. (2012, 17 May). Section 27 and Others v Minister of Education and Another (24565/2012) [2012] ZAGPPHC 114 at §25.

24 North Gauteng High Court, Pretoria. (2014, 5 May). Basic Education For All and Others v Minister of Basic Education and Others (23949/14) [2014] ZAGPPHC 251 at §44.

25 *Ibid.*, at §51.

26 Supreme Court of Appeal. (2015, 2 December). Minister of Basic Education v Basic Education for All (20793/2014) [2015] ZASCA 198, order 3 of the court.

27 North Gauteng High Court, Pretoria. (2014, 5 May). *Op. cit.* at §47-51.

28 Supreme Court of Appeal. (2015, 2 December). *Op. cit.*, Judgment, §1 & 2.

29 Human Rights Council. (2012, 5 July). Resolution 20/8. The promotion, protection and enjoyment of human rights on the Internet (A/HRC/20/L.13).

30 Human Rights Council. (2014, 20 June). Resolution 26/13. The promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/26/13).

31 Committee on Economic, Social and Cultural Rights. (1999). General Comment 13, The right to education (article 13 of the Covenant), §6.

32 *Ibid.*, §50

the internet is itself a component of basic education. The internet itself is an unparalleled medium for the communication of information, and thus for the provision of educational resources (referred to as teaching materials in the comments).

Educational resources such as textbooks can be made much more readily available through the internet. A textbook that is made available via the internet is then immediately available to any person with an internet connection. This increases availability dramatically at very small cost to the state. Of course this does not mean that merely by making a textbook available online, a state has discharged its obligation to make it available.³³

Accessibility of educational resources is increased if in addition to any existing channels for distribution they are also made available online. Those who have an internet connection but cannot attend school due to geography, ill health, disability or during periods of natural disaster or violence or political unrest can access educational resources that would otherwise be inaccessible.

The acceptability of educational resources can also be enhanced through making them available online in addition to any existing channels. The use of educational resources can be enhanced through online tools, or through videos, animations, music and games that can enhance text. Translations which can assist parents and others who help learners can also be easily and cheaply made available online.

Adaptability suggests that educational resources should be available online at least in addition to any other means being used. Since the ways in which knowledge is formulated, debated and communicated have changed profoundly as a result of the internet, to deny students an opportunity to work with educational resources online is to refuse them the opportunity to acquire the skills and capabilities they require for acquisition of further knowledge.

Availability, accessibility, acceptability and adaptability could each be increased through making educational resources available online in addition to any other means that are being used. There is however one barrier. It is not technological, pedagogical or financial – instead it is legal.

The current procurement practice in South Africa awards a statutory monopoly to control the use and dissemination of publicly funded educational resources to publishers. The state thus precludes itself from increasing the availability, accessibility, adaptability and acceptability of taxpayer-funded educational resources.

The misallocation of copyright

While South African schools and their learners must be supplied with paper educational resources such as workbooks and textbooks, we argue that the same educational resources must be available as both paper books and on internet-enabled devices. That is not possible under current textbook procurement policies which give control over state-funded textbooks to publishing companies. Despite the power that the state has in the procurement process, the current government permits the publishers the statutory monopoly of copyright by default.

Copyright tends to be vested in the authors and illustrators of textbooks and other educational resources by operation of law. However, publishers use their market power to require that copyright be awarded to them through contract. Although the South African government could specify that copyright is transferred to it as a condition of award of each textbook contract, it currently neglects to do so. One consequence is that government has given up the power to decide by which technological means educational resources will be made available. Another is that publishers retain legal control over re-use of the resources and learners and teachers in state schools can use the resources only with the permission of publishers or within the contested borders of narrow copyright exceptions. This does not seem to be the result of deliberate policy so much as a lack of attention to consequences of procurement policy. It is one example of the way in which policies and practices that developed before the emergence of the internet may limit the exercise of economic, social and cultural rights through the internet.

ISP takedowns are equally part of the legal “knot” limiting access to educational resources online. South African legislation offers a shield from liability to ISPs that host content, but only if the ISP promptly takes down content when it receives a complaint.³⁴ Complaints are not confined to

³³ Even if each student had a suitable internet-enabled device, electrical power and an internet connection, it would not follow that a digital version of a textbook is preferable to a paper copy. That claim relies on unwarranted assumptions about pedagogical methods, learning styles and the skills of students to make use of online resources. It is equally unwarranted to make the opposite claim that a particular teacher's preference for a paper book is more than a preference and instead an unassailable fact of human nature.

³⁴ Rens, A. (2015). South Africa, Censorship on Demand: Failure of Due Process in ISP Liability and Takedown Procedures. In N. Rizk, C.A. de Souza & P. Parakesh (Eds.), *Global Censorship and Access to Knowledge*. International Case Studies, Information Society Project, Yale Law School, 65-83.

copyright; they may have any legal basis or indeed none since they are never adjudicated by an independent authority. There is no explicit exception to the take-down rules for educational resources or educational uses. Thus anyone, including educators employed by the state, who uses copyright material under a lawful exception (such as for educational purposes) might have it summarily removed by an ISP based on a complaint of alleged infringement without having the validity of the use under the exception assessed. This effectively eliminates copyright exceptions on the internet, not as a matter of law but of practice.

Finally, the same legislation that shields ISPs from liability contains provisions which although not enacted to prevent the circumvention of technical protection methods (TPMs), effectively do so. TPMs are technical measures that are used by either the producer of an educational resource or similar product or by an intermediary to control the use of the product. The legislation criminalises disabling such technical measures. For example, a TPM imposed on a digital textbook might technically block copying a few lines from the book although that is permitted by copyright law. There are no explicit exceptions for educational resources or educational uses.³⁵

Conclusion

South African legislation and policy fail to protect the right to educational resources on the internet. At the same time some parts of the state educational system are moving towards mass adoption of digital technology as the primary means for providing educational resources. Therefore the right to education and to educational resources requires government policies and action that are effective both online and offline. This can only happen if the

government does not hand effective control over taxpayer-funded resources to corporations through permitting publishers to license educational resources as “all rights reserved”. Procurement policy should be changed so that all taxpayer-funded educational resources are under open licences such as Creative Commons Attribution.

Government efforts to use the internet for educational resources take place in a global environment which includes many of the most highly capitalised multinational corporations intent on re-inventing educational resources. Civil society organisations concerned with education and thus with the supply of educational resources in South Africa cannot ignore the internet. Failure to develop a vision of education that makes use of the opportunities presented by the internet due to mistaken claims that it is a luxury or unaffordable technology simply cede control of the future of educational resources to private actors in the global North. Nor will delay in developing appropriate policy until South Africa has a 100% internet penetration insulate South Africa from global developments, not least of which is the increasing importance of the internet to national economies.

It is likely that particular technologies appropriately deployed in particular contexts enhance education while other technologies inappropriately deployed will fail to improve, or even hamper, education. While this seems to be so obvious as not to need stating, many contemporary media reports and even some academic analyses or scientific authorities too readily either condemn or praise deployment of any internet-related technologies in all contexts. What is apparent is that a more nuanced approach is necessary, where digital technologies aid, supplement and reinforce appropriate pedagogical methods in specific contexts.

35 Professor Tana Pistorius in an analysis of the relevant provisions of the Electronic Communications and Transactions Act 2002 found that section 86 of the Act is “in essence, an anti-circumvention prohibition.” This is a criminal provision and it may be possible to negate the element of intention by demonstrating that use is putatively lawful. The effect is to prevent the appropriate exercise of educational exceptions. See Pistorius, T. (2006). Developing countries and copyright in the information age – the functional equivalent implementation of the WCT. *Potchefstroom Electronic Law Journal*, 9(2), 1-21.

The digital protection of traditional knowledge: Questions raised by the Traditional Knowledge Digital Library in India¹

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Introduction

The first problem one encounters in studying traditional knowledge (TK) is the extent and meaning of the term itself. No globally accepted definition of TK exists,³ and therefore no clear delineation of its scope. The definition adopted by the World Intellectual Property Organization (WIPO) is that TK is “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.”⁴ While TK embraces traditional cultural expressions within its ambit, and includes distinctive signs and symbols associated with traditional knowledge,⁵ the scope of this report does not extend to traditional cultural expressions as they necessarily would fall under the purview of copyright law.

Before we frame TK in terms of economic, social and cultural rights (ESCRs), let us understand the phenomenon of biopiracy in a bit more detail using two examples, one connected to the right to food, and the other connected to health. Biopiracy is the use of intellectual property (IP) systems to legitimise

control over biological products and processes that were previously used for centuries in non-industrialised cultures.⁶ The case of neem-related patents, through which bio-prospectors attempted to appropriate the royalty arising from a plant whose medicinal value was already in the public domain, is well documented.⁷ Another case worth noting is that of the “Enola bean”, in which Larry Proctor, a United States (US) citizen, purchased a package of Mexican beans of various colours, separated out the yellow ones, and spent three years selectively breeding the plants. He then named his line “Enola” and obtained patent protection for the bean, its plant, its pollen, and the method of producing it.⁸

This case is far more worrying than the neem case for two reasons.⁹ First, it was a case that had an immediate and tangible impact on the producers of the commodity in that yellow Mexican beans were exported into the United States before the patent was granted, and the assertion of the patent led to significant reductions in bean exports, representing a quantifiable economic loss for bean farmers.¹⁰ Second, the patent was allowed to stand for almost a decade, amounting to half the life of a legitimate patent.¹¹ This represents an incredibly unjust outcome – an invention (“specifically selected yellow

1 This is an edited version of part three of a study that considers the International Covenant on Economic, Social and Cultural Rights (ICESCR) through aspects of intellectual property in India, namely, mobile patents, free and open source software, and India's Traditional Knowledge Digital Library. Through these, it demonstrates the potential of the internet in realising ESCRs. Abraham was a researcher on the Association for Progressive Communications (APC) project “Connecting your rights: Economic, social and cultural rights (ESCRs) and the internet”. For the full version of this case study, see: www.apc.org/en/projects/connecting-your-rights-economic-cultural-and-social

2 Vidushi Marda is a programme officer at the Centre for Internet and Society. Special thanks go out to Aditya Singh Chawla, Parvathy Nair, Raji Gururaj and Balaji Subramaniam who provided research assistance for this paper during their internships with the Centre for Internet and Society.

3 Traditional Knowledge, WIPO. www.wipo.int/tk/en/tk

4 Ibid.

5 WIPO. (2010). *List and Brief Technical Explanation of Various Forms in which Traditional Knowledge May be Found*. www.wipo.int/meetings/en/doc_details.jsp?doc_id=147152

6 Shiva, V. (2001). *Protect or Plunder? Understanding Intellectual Property Rights*. London: Zed Books.

7 See, e.g., Horsburgh Porter, A. (2006, 17 April). Neem: India's tree of life. *BBC news*. bbc.co.uk/2/hi/south_asia/4916044.stm; BBC. (2005, 9 March). India wins landmark patent battle. *BBC news*. bbc.co.uk/2/hi/science/nature/4333627.stm; Hoggan, K. (2000, 11 May). Neem tree patent revoked. *BBC news*. bbc.co.uk/2/hi/science/nature/745028.stm

8 In re POD-NERS, L.L.C., Re-examination No. 90/005,892, US Fed. Cir. 2009. law.justia.com/cases/federal/appellate-courts/cafc/08-1492/08-1492-2011-03-27.html

9 It is also noteworthy for another reason: it is illustrative of the time and effort required to contest claims after a patent has been granted. Proponents of the TKDL would argue that what took a decade in the Enola bean case could have been achieved in a matter of weeks at the application stage by a patent office equipped with such a database.

10 Shashikant, S., & Asghedom, A. (2009, 12 August). The ‘Enola Bean’ dispute: patent failure & lessons for developing countries. *Third World Network*. twn.my/title2/wto.info/2009/twninfo20090811.htm

11 Crouch, D. (2009, 10 July). Mexican Yellow Bean Patent Finally Cooked. *Patently-O*. patentlyo.com/patent/2009/07/mexican-yellow-bean-patent-finally-cooked.html

beans”) arising from traditional knowledge in the public domain (since Mexican farmers had been cultivating and exporting these beans) being monopolised by a private entity illegally for almost a decade.

The differences between TK and other forms of IP are the following:

- With other forms of IP, property rights are afforded to the innovator or creator, whereas communities own TK.
- Other forms of IP are designed as incentive mechanisms for the creation of new property; however, there is no such incentive to create new property with TK.
- IP is also time-bound, whereas TK is held in perpetuity from generation to generation.
- The invention under IP must also satisfy the requirement for novelty and industrial application, whereas TK does not have these requirements.

Although patent law is not tailored to protect TK, it has been used to prevent misappropriation of TK.

The Traditional Knowledge Digital Library

At the turn of the millennium, an expert group found that roughly 2,000 patents linked to India’s TK in medicine were being granted annually around the world.¹² This expert group proposed the establishment of the Traditional Knowledge Digital Library (TKDL)¹³ in order to reduce biopiracy. The TKDL was envisaged as “a home-grown effort to ensure patent offices around the world do not grant patents for applications founded on India’s wealth of TK that has existed for millennia.”¹⁴ In 2001 India launched the initiative, which digitised its wide repository of TK, with the hope of enabling the protection of this knowledge and preventing its misuse.

The TKDL is a digital knowledge repository of Indian traditional knowledge about medicinal plants and formulations, and practices used in Indian systems of medicine. Its knowledge base is primarily derived from Ayurveda, Unani, Siddha and Yoga. These areas are being documented by collating the information on TK from literature existing in local languages such as Sanskrit, Urdu, Arabic, Persian and Tamil in digitised format. These have been made available in five international languages: English, German, Spanish, French and Japanese. While it is clear that the first three systems of medicine

(i.e. Ayurveda, Unani and Siddha) are systems that have a corresponding system of traditional medicines, the framing of Yoga as a system of medicine is unclear as there is no medicine administered to the patient. Increasingly, however, medical procedures are being patented, and the Indian government in August 2015 shortlisted 1,500 yoga asanas to be included in the TKDL to prevent foreign parties from patenting them.¹⁵ This was in response to several yoga-related patents being applied for¹⁶ and granted¹⁷ around the world, notably in the United States.

The TKDL’s appeal lies in the manner in which it approaches attempts to patent TK (the “state of the art”) – it serves to pre-empt the granting of a patent, rather than to contest a patent’s validity after it has been granted. This, it is claimed, reduces the time taken to contest claims from a matter of years to a few weeks.¹⁸

Defining the right

The protection of TK can be primarily placed within Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In order to understand the relationship between TK and Article 15, we must first appreciate that TK is also scientific knowledge. There are two ways in which the right of the TK community can be mapped onto Article 15. First, the Article recognises “the right to take part in cultural life”, and second, “to enjoy the benefits from scientific progress and its applications”. This ensures that communities have the right to continue to operationalise and use TK. Further, Article 15 includes the right “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production”. However, while this is a universal right, in practice it will only happen when national law recognises the property rights of the community, facilitates protection of these rights, takes legal action against infringements, and provides mechanisms for the collection and distribution of royalties. What might not strike the reader as obvious is that the benefits

12 Gupta, V. K. (2011). *Protecting Indian Traditional Knowledge from Biopiracy*. WIPO. www.wipo.int/export/sites/www/meetings/en/2011/wipo_tkdl_de_11/pdf/tkdl_gupta.pdf

13 www.tkdl.res.in/tkdl/langdefault/common/Home.asp?GL=Eng

14 Gupta, V. K. (2011). Op. cit.

15 PTI. (2015, 9 August). Over 1500 yoga asanas shortlisted to thwart patenting by foreign parties. *Indian Express*. indianexpress.com/article/india/india-others/over-1500-yoga-asanas-shortlisted-to-thwart-patenting-by-foreign-parties

16 TNN. (2007, 18 May). US patent on yoga? Indian gurus fume. *Indian Express*. timesofindia.indiatimes.com/india/US-patent-on-yoga-Indian-gurus-fume/articleshow/2058285.cms

17 Lee, T. B. (2013, 13 December). A yoga patent? Here’s why the USPTO approves so many dubious applications. *Washington Post*. <https://www.washingtonpost.com/news/the-switch/wp/2013/12/13/a-yoga-patent-heres-why-the-uspto-approves-so-many-dubious-applications>

18 Press Information Bureau. (2010, 28 April). India Partners with US and UK to Protect Its Traditional Knowledge and Prevent Bio-Piracy. pib.nic.in/newsite/erelease.aspx?relid=61122

of protecting the moral and material interests in the world of TK accrue to the community, while in other forms of IP the rights holder is either an individual or corporation.

Article 11 of the ICESCR is also relevant to TK. It recognises the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Article 11 (2) (a) mandates that states parties to the Covenant take measures to “improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.”¹⁹ TK is connected to food in multiple ways, such as ecosystem and landscape management, water management, soil conservation, biological control of pests and diseases, ecological agriculture and livestock practices, and plant and animal breeding – and most importantly, with regard to the latter, breeding and preserving varieties of plant and animal species. Suman Sahai, founder of the Gene Campaign,²⁰ helps us understand the connection between food security and traditional knowledge. She argues that farmers are a community of women and men who have not only created several thousand breeds of food and cash crops, but also “identified valuable genes and traits in these crops and maintained them over generations through a highly sophisticated system of crossing and selection.”²¹

There exist a host of international and national norms, both of a general and a specific nature, enunciating the right of indigenous communities to their traditional knowledge. One specific example is the World Health Organization’s approach to Traditional and Complementary Medicine (T&CM). In this, it urges states to “prevent the misappropriation of T&CM by implementing the relevant international instruments in line with the WHO global strategy and plan of action on public health, innovation and intellectual property, adopting or amending national intellectual property legislation, and enacting other defensive protection strategies.”²²

India has signed the Convention on Biological Diversity (CBD), a treaty with 194 parties in total.²³ The CBD provides for the respect, preservation and maintenance of “knowledge, innovation and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”, and also for encouraging the wider application of such practices while ensuring that the benefits arising from such utilisation are shared equitably with the communities in question.²⁴ Having signed this convention, India has the duty to protect this knowledge without appropriating it, and the TKDL is a means to protect this right.

Such provisions have been included in India’s Biological Diversity Act,²⁵ which was enacted in pursuance of India’s duties under the CBD. Restrictions on the granting of patents for inventions arising from research on biological resources,²⁶ the transfer of biological resources or knowledge,²⁷ and the enforcement of equitable benefit sharing²⁸ aim to serve as effective legal bars to biopiracy and unauthorised use of traditional knowledge.

Successes of the TKDL

Since the inception of the TKDL, in just under two years, and in Europe alone, India has succeeded in using this resource to bring about the cancellation or withdrawal of 36 applications to patents traditionally known as medicinal formulations.

Between 2001 and 2015, out of a total of 189 pharmaceutical applications which include medicines, therapeutics, etc., 21 were granted while 17 were rejected. An additional 30 were deemed withdrawn and another 31 were abandoned. At the time of writing, 90 have their examination still in progress. Out of the 10 applications under cosmetics, seven are under progress while one each has been accepted, rejected and deemed to be withdrawn. There was only one application under agriculture which was rejected. The domain of food had three applications out of which one was rejected, one deemed to be withdrawn and the last one in progress.²⁹

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

20 genecampaign.org

21 Sahai, S. (1996). Importance of Indigenous Knowledge in IPR. *Economic and Political Weekly*, 31(47).

22 World Health Organization. (2013). WHO Traditional Medicine Strategy 2014-2023. apps.who.int/iris/bitstream/10665/92455/1/9789241506090_eng.pdf?ua=1

23 List of Parties, Convention on Biological Diversity. <https://www.cbd.int/information/parties.shtml>

24 Article 8(j) of the Convention on Biological Diversity. <https://www.cbd.int/convention/text>

25 nbaindia.org/content/25/19/1/act.html

26 Section 6 of the Biological Diversity Act, 2002.

27 Section 20 of the Biological Diversity Act, 2002.

28 Section 21 of the Biological Diversity Act, 2002.

29 www.tkdil.res.in/tkdil/langdefault/Common/ExaminerReport.asp?homepage=sub

India and the US had the maximum number of applications at 75 and 43 respectively. Japan and Korea were third and fourth at 16 and 11 respectively. Most of these applications were in progress, with 12 applications from India being rejected and 17 being abandoned. Only five had been granted to India while three were deemed to be withdrawn; 38 of India's applications and 12 of those from the US are pending. Taiwan and Jordan's only applications were granted while Spain's only application was rejected.³⁰

But do digital databases work as a form of IP protection?

While proponents of the database have been vocal in their vision for its application, it has received criticism on several grounds.

First of all, there is a fair amount of disagreement regarding the best possible means through which TK can be protected.³¹ Indeed, existing literature already features catalogues of international law (both "hard" and "soft"), regional norms and domestic legislation that accord protection to TK within the framework of culture.³² While some believe that data aggregation and record creation is the best means to tackle biopiracy, others propose different approaches,³³ such as negotiating access agreements between indigenous communities and bio-prospectors.³⁴

Secondly, the TKDL has also attracted criticism because of its high level of confidentiality. In response to a right to information application, the Council for Scientific and Industrial Research (CSIR) clarified that the TKDL can only be accessed by foreign patent offices.³⁵ It is not made available to the Indian Patent Office or to CSIR scientists. As per the same response, the decision to make the TKDL confidential was taken during a cabinet meeting in 2006, but there exists no legal instrument that mandates such confidentiality. TK databases in other

countries do not impose access restrictions. The Korean Traditional Knowledge Portal, for example, explicitly states the motivation behind making itself publicly available:

The database is presented on-line through the Korean Traditional Knowledge Portal (KTKP). The reasons for making the database publicly accessible through the KTKP are as follows:

1. To lay the foundation for international protection of Korean traditional knowledge, thereby preventing unauthorized use of patents inside and outside the country.
2. To provide an abundance of information on traditional knowledge and related research, thereby expediting the development of related studies and industries.
3. To provide essential information for patent examinations, thereby enhancing the quality of intellectual property applications for traditional knowledge.³⁶

Similarly, the contents of the China Traditional Medicine Patent Database are also publicly available on the internet.³⁷

Finally, the TKDL has also raised questions of copyright, with claims that it falls foul of the Indian Copyright Act, 1957, since it has digitised works (such as translations or compilations of ancient texts) that are still under copyright without the consent of their authors.³⁸ Responding to the same right to information application discussed above, the CSIR claimed that no consent was required since the traditional knowledge in question was authored many years ago. This is a perplexing position to take, as there is significant skill and labour involved in translating and compiling these ancient texts and putting this knowledge together, which merits copyright protection.³⁹

The need for open knowledge systems

There seems to be no reason to keep a valuable resource such as the TKDL away from the public's reach, especially considering the fact that the entire project was bankrolled by the Indian taxpayer. Restricting access to the TKDL severely limits the benefit that the general public could derive from

30 Ibid.

31 WIPO. (2010). Op. cit., Annex 2.

32 See, e.g., Coombe, R. J. (2005). Protecting Traditional Environmental Knowledge and New Social Movements in the Americas: Intellectual Property, Human Right, or Claims to an Alternative Form of Sustainable Development? *Florida Journal of International Law*, 17(1), 115-136.

33 Swiderska, K. (2006). *Banishing the Biopirates: A New Approach to Protecting Traditional Knowledge*. International Institute for Environment and Development. pubs.iied.org/pdfs/14537IIED.pdf

34 Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. (2002). *Review of Existing Intellectual Property Protection of Traditional Knowledge*. WIPO. www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_3/wipo_grtkf_ic_3_17-main1.html

35 Reddy, P. (2012, 29 March). Is the TKDL a 'confidential database' and is it compliant with Indian copyright law? *SpicyIP*. spicyip.com/2012/03/is-tkdl-confidential-database-and-is-it.html

36 *KTKP Introduction*, Korean Traditional Knowledge Portal. www.koreantk.com/en/m_about/about_01.jsp?about=1

37 Brief introduction of China Traditional Medicine (TCM) Patent Database, China TCM Patent Database. 221.122.40.157/tcm_patent/englishversion/help/help.html

38 Op. cit.

39 Reddy, P. (2012, 21 April). The need for an 'independent' review of the TKDL project. *SpicyIP*. spicyip.com/2012/04/need-for-an-independent-review-of-tkdl.html

this knowledge. Even if one were to accept that there exist compelling reasons to keep the data confidential, it is clear that the TKDL, by its very nature, cannot possibly be invulnerable to breach. Problems of access control are endemic to large databases – it has been postulated that large aggregations of secret data are fundamentally impossible because security must be traded off for ease of access in such situations. Thus, “you cannot construct a database with scale, functionality and security because if you design a large system for ease of access it becomes insecure, while if you make it watertight it becomes impossible to use.”⁴⁰ For this reason, governments have been urged to make use of centralised databases only when absolutely necessary.⁴¹ If we accept the premise that centralised databases cannot possibly be both accessible and secure, then we must examine whether the TKDL represents a balanced trade-off between accessibility and confidentiality.

There are three changes that are necessary in this regard:

The need to push for open knowledge

A system like the TKDL constitutes a mechanism for *defensive protection* of TK – it seeks to keep TK in the public domain rather than to exclusively put it in the hands of the community that evolved it. This is similar to the Peer-to-Patent⁴² initiative, which ensures that more eyes are involved in following the process: a crowd-sourced approach to preventing inappropriate appropriation.

The need to address legal barriers

Primarily, the TKDL’s data seems to be far from infallible, with several reports of mistranslations⁴³ and exaggerated claims⁴⁴ made by the CSIR. Apart from this, the most important requirement that the TKDL must fulfil is for its data to meet the legal criteria established for prior art in various jurisdictions. This would entail ensuring that the knowledge is made available with clear evidence of the date of its publication, and the presentation of the knowledge

in a manner that clearly establishes that a patent claim is anticipated by the data contained in the library.⁴⁵ Further, the fundamental challenge faced by any defensive protection mechanism is its vulnerability to differing definitions of prior art in various jurisdictions:

- **European Patent Convention (EPC):** The most TKDL-friendly jurisdictions are those such as the EU. The EPC defines prior art as “everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application”.⁴⁶ Thus, innovations detailed in the works indexed by the TKDL would fall within the definition of prior art, and therefore be unpatentable – assuming, of course, that all the works digitised and translated by the database were publicly available. An overwhelming majority of the TKDL’s self-proclaimed “successes” have been achieved in the EU – around 120 of the 180 “successful outcomes” are against European patent applications.⁴⁷
- **United States:** On the other end of the spectrum is the US definition of prior art. The United States Patent Act provides that a person “shall be entitled to a patent unless (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.”⁴⁸ This effectively excludes protection for any non-published knowledge outside the US. Further, given the restrictive access to the TKDL, it appears that the database would not fall within the definition of a “printed publication”, since it has never been “published” – merely circulated among patent examiners on conditions of non-disclosure. Thus, it appears that there is no legal basis for the TKDL to be cited as evidence of prior art in the US, or other jurisdictions that have similar definitions of prior art.⁴⁹

40 Proposed by Ross J. Anderson, this thumb-rule has come to be known as Anderson’s Rule. See: Porter, H. (2009, 10 August). Nine sacked for breaching core ID card database. *The Guardian*. www.theguardian.com/commentisfree/henryporter/2009/aug/10/id-card-database-breach

41 See, e.g., Anderson, R. et al. (2009). *Database State*. Joseph Rowntree Reform Trust. www.jrrt.org.uk/sites/jrrt.org.uk/files/documents/database-state.pdf

42 www.peertopatent.org

43 Rathi, M. (2012, 20 April). Guest Post – TKDL: A success – Really? *SpicyIP*. spicyip.com/2012/04/guest-post-tkdl-success-really.html

44 Reddy, P. (2012, 19 March). Guest Post: The Traditional Knowledge Digital Library and the EPO. *SpicyIP*. spicyip.com/2012/03/guest-post-traditional-knowledge.html

45 Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. (2003). *Practical Mechanisms for the Defensive Protection of Traditional Knowledge and Genetic Resources within the Patent System*. WIPO. www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_5/wipo_grtkf_ic_5_6.pdf

46 Article 54(2) of the Convention on the Grant of European Patents. <https://www.epo.org/law-practice/legal-texts/epc.html>

47 *Outcomes against bio-piracy*, Traditional Knowledge Digital Library. www.tkdl.res.in/tkdl/langdefault/common/Outcome.asp

48 35 U.S.C. § 102(a).

49 Quinn, G. (2009, 30 November). US Patent Office to Reject Based on Traditional Knowledge. *IPWatchdog*. www.ipwatchdog.com/2009/11/30/us-patent-office-to-reject-based-on-traditional-knowledge/id=7502

The need to address structural barriers

In choosing to characterise itself as an archive of prior art, the TKDL has placed the burden of enforcing TK assertions upon patent examiners around the world. In doing so, it has pigeonholed itself into a doctrine (namely prior art) that has a tendency to go largely unheard in patent examinations. With studies showing that more experienced patent examiners, typically occupying higher positions in the patent office, are less likely to cite examples of prior art in their examinations,⁵⁰ and still other evaluations showing that applicants for patents are extremely unlikely to provide and identify prior art surrounding their claims,⁵¹ it is evident that there are structural imbalances working against the efficacy of the prior art doctrine in preventing illegitimate patent claims. Thus, efforts must be made to counter this imbalance at two levels: first, access to the TKDL must be made as easy as possible; second, the TKDL has to undertake proactive patent monitoring efforts.

Patent monitoring, while an onerous and expensive task, is nevertheless necessary for the success of a defensive system such as the TKDL, especially in those jurisdictions which do not have the legislative framework to enable provisions of the CBD that mandate disclosure of genetic material sources.

Conclusion

For the reasons stated above, the access policy of the TKDL requires significant modification if the database is to reach its true potential for providing accurate, efficient and time-bound protection to TK-based innovations through the use of a centralised database that is wired into a network of interested parties.

TK systems require all the external support they can get in order to protect their mandate. Civil society must engage effectively with the TKDL initiative, encourage the accuracy of its records through research, and stimulate dialogue regarding the key issues discussed in this report. As pointed out by the UN Special Rapporteur on the rights of indigenous people: “Much more needs to be done to understand fully how ... treaties and agreements can undermine or reinforce indigenous peoples’ rights and how they shape the trajectories of national economic development plans.”⁵²

50 Lemley, M. A., & Sampat, B. (2012). Examiner Characteristics and Patent Office Outcomes. *The Review of Economics and Statistics*, 94(3), 817-827. www.mitpressjournals.org/doi/abs/10.1162/REST_a_00194?journalCode=rest

51 Sampat, B. (2010). When do Applicants Search for Prior Art? *The Journal of Law and Economics*, 53(2), 399-416. www.journals.uchicago.edu/doi/abs/10.1086/651959?journalCode=jle

52 Human Rights Council. (2014). Report of the Special Rapporteur on the Rights of Indigenous People. unsr.vtaulicorpuz.org/site/index.php/documents/annual-reports/26-annual-report-hrc-2014

Preserving our digital culture for the future: Overcoming obstacles through collaboration

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Introduction: Cultural heritage on the international agenda

Access to cultural heritage is essential for the development of societies and helps to build resilient communities. It allows for identity building, reconciliation, creativity, innovation, and many other activities that make societies stronger, richer and more peaceful. The need to connect with the past is deeply rooted within people, and it is therefore essential that memory institutions and governments have policies in place to ensure the long-term survival and accessibility of cultural heritage.

In recent years, the importance of cultural heritage has been addressed through several high-level policy documents. For example, the United Nations 2030 Agenda for Sustainable Development² underlines the importance of safeguarding cultural heritage. Under Goal 11 (“Make cities and human settlements inclusive, safe, resilient and sustainable”), Target 11.4 reads: “Strengthen efforts to protect and safeguard the world’s cultural and natural heritage.”

This ties in closely with Target 16.10 of Goal 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for

all and build effective, accountable and inclusive institutions at all levels”), which states: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”

Further to this, the Sendai Framework for Disaster Risk Reduction 2015-2030³ also stresses the importance of culture and states that:

It is urgent and critical to anticipate, plan for and reduce disaster risk in order to more effectively protect persons, communities and countries, their livelihoods, health, cultural heritage, socioeconomic assets and ecosystems, and thus strengthen their resilience.

Lastly, the Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the World Summit on the Information Society⁴ stresses in paragraph 19:

We recognize that information and communications technologies are also increasingly a means to support the diversity of cultural expression and the fast growing cultural and creative industries, and we affirm that comprehensive, practical digital strategies are needed for the preservation of cultural heritage and access to recorded information in the digital environment in all its forms.

The digital heritage challenge

In order to enable people to preserve and access their cultural heritage, we need to work together to overcome obstacles, such as an antiquated copyright system, ever-changing digital technology, and the sheer mass of digital content available, among others.

Today, large amounts of the world’s newly created cultural heritage are only available digitally, and never “fixed” in a physical form. While digital

¹ The International Federation of Library Associations and Institutions (IFLA) is the leading international body representing the interests of library and information services and their users. IFLA is an independent, non-governmental, not-for-profit organisation with over 1300 members in nearly 140 countries. We work to improve access to information and cultural heritage resources for the global community in this rapidly changing digital and print environment. Our key initiatives include access to digital content, international leadership, outreach, cultural heritage, and multilingualism. In our professional programmes we build the capacity of our members, and set the professional agenda through development of guidelines, standards, publications and events around the world. IFLA’s status as the global organisation for library and information services ensures that our voice is represented through formal relations with the United Nations and other organisations.

² <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

³ www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf

⁴ workspace.unpan.org/sites/Internet/Documents/UNPAN96078.pdf

technologies offer a means of giving unlimited access to culture today, access tomorrow is far from guaranteed.

With the move from an analogue object-based memory (documents, museum objects, film rolls, photographs, etc.) to a digital-based memory, librarians, archivists, governments and, increasingly, individuals are facing new challenges in ensuring that our collective cultural heritage will not be lost.

There are some clear technological and practical challenges to this work. First is the rapid acceleration in the creation of information. Various studies have pointed to the growing volume of information on the internet,⁵ including scholarly articles⁶ and user-generated content.⁷ For some, this poses a technical challenge in terms of ensuring that there is enough storage space, but also a more philosophical one in terms of what should be preserved.

A second challenge comes with the rapid evolution of digital technologies. For example, much attention was paid to the question of how to preserve Germaine Greer's personal archives, given that much of this was saved on floppy disks.⁸ As old software (including operating systems) and codes become obsolete, it may become impossible to access information. If these are not preserved, simply holding the materials on whichever storage device or technology they were saved on will not be enough.

In addition to the practical and technological challenges of preserving and making such "born-digital" heritage accessible to the public, there are also legal problems. Activities that are uncontroversial when it comes to physical cultural heritage, thanks to copyright exceptions that recognise the public interest of archiving and preservation, can be a source of uncertainty when it comes to digital heritage.

Digital legal deposit of e-books and similar materials is in its infancy, meaning that a lot of material risks never being preserved for the future.⁹ As for other resources, legislation has too often failed to

keep up or offer the necessary clarity. Where there is no exception to copyright, there is an obligation to seek and obtain the permission of the rights holder. The sheer volume of digital information being created risks making this an impossible task. Even where an exception allowing for preservation exists, this can still be rendered ineffective if circumventing technological protection measures is not allowed.

Extended collective licensing is promoted by some. This offers an apparent solution to the question of clearing the rights to use works where it is difficult or impossible to find the rights holder (including for mass-digitisation projects).¹⁰ However, there is not always a collecting society which is sufficiently representative of creators in the cultural sectors in question. Moreover, a large share of the materials held in library and archive collections were never intended to be commercialised. As such, while licensing, and extended collective licensing in particular, have a place, they cannot be a cure-all for those involved in preservation activities.¹¹

There can also be questions around the creation of digital copies of analogue works. There are instances of digitised versions of public domain works being treated as new works, triggering the creation of new rights. This represents a lost opportunity to make use of the potential of digital technologies to give access, with digitised work then either hidden or behind a paywall.¹²

Some countries do have laws that allow for digital preservation, either due to timely reforms or flexible application of existing principles. However, a lack of harmonisation between countries – on copyright duration, the extent of exceptions or the use of licensing – makes it difficult to carry out transnational preservation projects. In a sector where effective cooperation can ensure better use of resources (both technical and financial), barriers to this can lead to waste.

5 Cisco. (2016). *The Zetabyte Era – Trends and Analyses*. www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni-hyperconnectivity-wp.html

6 Van Noorden, R. (2014, 7 May). Global Scientific Output Doubles Every Nine Years. *Nature.com*. blogs.nature.com/news/2014/05/global-scientific-output-doubles-every-nine-years.html

7 Gunelius, S. (2014, 12 July). The Data Explosion in 2014 Minute by Minute. *ACI*. <https://aci.info/2014/07/12/the-data-explosion-in-2014-minute-by-minute-infographic>

8 Stanton, K. (2016, 5 August). Germaine Greer's archive: digging up digital treasure from the floppy disks. *The Guardian*. <https://www.theguardian.com/books/2016/aug/05/germaine-greer-archive-digital-treasure-floppy-disks>

9 See examples from the British Library (www.bl.uk/aboutus/legaldeposit/websites) and ongoing consultations in the United States (www.copyright.gov/mandatory).

10 At least in the absence of an unremunerated exception, that is, one where a library or user can carry out preservation or other projects without having to pay compensation to the rights holder.

11 Keller, P. (2016, 26 September). A better solution to making out-of-commerce works available online. *Europeana Pro*. pro.europeana.eu/blogpost/a-better-solution-to-making-out-of-commerce-works-available-online

12 For a recent example, see the experience of the Milwaukee Sentinel: Takach, M. (2016, 19 August). Journal Sentinel Archive Disappears. *Urban Milwaukee*. urbanmilwaukee.com/2016/08/19/journal-sentinel-archive-disappears; Grabar, H. (2016, 24 August). Why Milwaukee's Online Newspaper Archive Vanished Overnight. *Slate*. www.slate.com/blogs/future_tense/2016/08/24/milwaukee_journal_sentinel_archive_vanishes_from_google_s_news_archive.html; Masnick, M. (2016, 26 August). Newspaper Archive Disappears From Google, Because Company Wants To Cash In. *Techdirt*. www.techdirt.com/articles/20160825/10114535344/newspaper-archive-disappears-google-because-company-wants-to-cash.shtml

Combating digital amnesia and remembering our digital heritage: A multistakeholder responsibility

Despite the uncertain terrain, many initiatives have started in recent years to address the need to combat digital amnesia and to preserve our digital cultural heritage for the future. Yet this is a task that cultural heritage institutions cannot address alone. Industry and governments will also need to be actively involved in ensuring that our digital cultural memory will be accessible for future generations.

One example of a cooperative approach is the UNESCO PERSIST project¹³ founded in 2013 by UNESCO, the International Federation of Library Associations and Institutions (IFLA) and the International Council on Archives (ICA). The project bases its mandate on the UNESCO/UBC Vancouver Declaration of 2012,¹⁴ which states:

Taking current and emerging challenges into consideration, the participants urge the UNESCO secretariat to: (...)

f. support the belief that good management of trustworthy digital information is fundamental to sustainable development by developing and implementing a global digital roadmap under the auspices of the Memory of the World Programme to encourage all relevant stakeholders, in particular governments and the industry, to invest in trustworthy digital infrastructure and digital preservation.

Over the last three years the UNESCO PERSIST project has started to address many of the challenges encountered by institutions when dealing with the long-term preservation of digital heritage. In order to approach these challenges, three working groups were formed to look at content and best practice, policy, and technology. The working groups aim to include members from all three main stakeholder groups of PERSIST: heritage institutions, the industry and governments.

The first major outcome of the project was the publication of the UNESCO PERSIST Guidelines for the selection of digital heritage for long-term preservation¹⁵ written by the content and best-practice

working group. The guidelines provide a starting point for libraries, archives and museums when developing digital heritage selection policies and give guidance on aspects which should be considered. IFLA saw the importance and need for these general guidelines to help the profession in addressing the problem of selecting relevant materials from the vast amount of digital data available and chaired the process of creating the Guidelines. Ultimately, they were written by experts from the library, archive and museum field, and are now under the ownership of the UNESCO Memory of the World Programme.¹⁶ The Guidelines also support the implementation of the new Recommendations concerning the preservation of, and access to, documentary heritage including in digital form (approved by the UNESCO General Conference in November 2015).¹⁷ These new recommendations support the mandate of the UNESCO Memory of the World Programme and stress throughout the importance of digital heritage and its preservation:

Preamble: Taking into account the rapid evolution of technology, and the challenge of establishing models and processes for preserving digital heritage objects including complex ones, such as multi-media works, interactive hypermedia, online dialogues and dynamic data objects from complex systems, mobile content and future emerging formats,

4.1 Member States are urged to consider their documentary heritage as an invaluable asset and to apply this perspective in national legislation, development policies and agendas. They are further encouraged to recognize the long-term need for new investment in the preservation of different types of originals in analogue format, in digital infrastructure and skills, and to adequately endow memory institutions.

The Guidelines are a first and significant policy step towards addressing issues, such as the value of digital content, and digital heritage and its long-term preservation.

The policy working group looks at further policy needs in order to communicate to governments the importance of national digital preservation strategies to support their heritage institutions. If we do not act now to preserve our digital heritage

¹³ UNESCO PERSIST website: <https://unescopersist.com> and for a general introduction: Buckley, R. (2016, 20 May). UNESCO PERSIST: A Global Exchange on Digital Preservation. *The Signal*. blogs.loc.gov/thesignal/2016/05/unesco-persist-a-global-exchange-on-digital-preservation/?locl=blogsig

¹⁴ UNESCO/UBC Vancouver Declaration. www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/mow/unesco_abc_vancouver_declaration_en.pdf

¹⁵ www.ifla.org/node/10315?og=7607

¹⁶ www.unesco.org/new/en/communication-and-information/flagship-project-activities/memory-of-the-world/homepage

¹⁷ Resolutions from the UNESCO General Conference, November 2015 (Annex V includes the Recommendations): unesdoc.unesco.org/images/0024/002433/243325e.pdf

and communicate the urgency of this to policy makers, we leave behind us a digital black hole.¹⁸ To combat this, the policy working group is currently investigating existing national digital preservation strategies and will analyse these to identify common aspects. The engagement of governments in the process of digital preservation is crucial in order to secure official support and understanding for the importance of the activity. UNESCO PERSIST aims to create further policies which will help UNESCO and cultural heritage institutions to communicate the urgency of digital preservation to governments and member states.

The software industry is closely involved in the project's technology working group.¹⁹ The major aim of the group is to create a platform²⁰ which makes outdated software accessible to institutions in order for them to preserve their content for the future.

IFLA works closely with UNESCO and other digital preservation initiatives such as the International Council of Museums (ICOM),²¹ International Council on Monuments and Sites (ICOMOS)²² and International Council on Archives (ICA)²³ in order to ensure that the library voice is heard and recognised as an important partner in the preservation of digital cultural heritage. To support this work further, IFLA has created an IFLA Preservation and Conservation (PAC) Centre²⁴ for digital preservation and digital sustainability at the National Library of Poland which will become operational in late 2016.

High-level initiatives, as outlined above, and exceptional work done at institutional levels²⁵ are a starting point for raising more awareness of the urgency of digital preservation. This is a matter which concerns everyone and we are at the beginning of a long journey to ensure that our digital cultural

heritage will be accessible in the future. If cultural heritage institutions, governments, the technology industry, individuals and all related stakeholders do not act now, we will lose our digital cultural heritage and our times will be a new dark age in history.

Am I allowed to preserve this? Responding to the challenges posed by copyright

Libraries, archives and museums have sought, in discussions at the national, regional and global level, to make the case for a copyright system that favours the digitisation of analogue works, and the preservation of “born-digital”²⁶ ones. With resources often scarce, it is important for these institutions to be able to dedicate as much of their effort as possible to preserving digital works, without causing prejudice to rights holders.

As highlighted above, in some countries copyright laws are already well suited to the digital preservation of non-digital works. The “fair use” doctrine²⁷ in the United States arguably offers enough flexibility to allow libraries, archives and other cultural heritage institutions to use digital techniques to preserve “traditional” works. Europe is currently discussing laws that should make it clear that people involved in preservation activities should be able to use any appropriate tools.

With regard to born-digital works, there are still many questions. While national archives have started to take tentative steps to record certain websites in some countries, independent (US) projects such as the Internet Archive Wayback Machine²⁸ have taken it upon themselves to record a much larger share of the internet. Their activities imply a certain risk – at first they faced legal challenges for infringing copyright. Now, however, their value is recognised, not least as a source of evidence in court.²⁹ They have certainly benefitted from the flexibility offered by the US fair use doctrine to engage in public interest preservation of digital works.

At the global level, IFLA, as part of a coalition of actors in the cultural heritage sector, has been

18 See the IFLA Trend Report: trends.ifla.org/insights-document (August 2013) and Ras, M., & de Niet, M. (2013). *A Global Digital Roadmap*. https://www.unesco.nl/sites/default/files/uploads/Comm_Info/position_paper_-_digital_roadmap_meeting_the_hague.pdf

19 van Gorsel, M., Leenaars, M., Milic-Frayling, N., & Palm, J. (2014). *Evaluation and Strategies of Digital Preservation & UNESCO's Role in Facing the Technical Challenges*. https://www.unesco.nl/sites/default/files/uploads/Comm_Info/20141011_evaluation_and_strategies_of_digital_preservation_unescos_role_in_facing_the_challenges.pdf

20 PERSIST Technology Working Group. (2015). UNESCO PERSIST Heritage Software Platform. <https://unescopersist.files.wordpress.com/2016/05/unesco-persist-heritage-software-platform.pdf>

21 icom.museum

22 www.icomos.org

23 www.ica.org

24 www.ifla.org/node/1244

25 For example, by the British Library. See: Meikle, J. (2013, 5 April). British Library adds billions of webpages and tweets to archive. *The Guardian*. <https://www.theguardian.com/technology/2013/apr/05/british-library-archive-webpages-tweets>

26 Works which were first produced in digital format.

27 The fair use doctrine entered legislation through the 1976 US Copyright Act, and in the words of the US Copyright Office, “promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.” By taking a more flexible, principles-based approach to what is “fair”, rather than by setting down rules for specific activities, it arguably offers greater possibilities for responding to technological change. For more information, see: www.copyright.gov/fair-use/more-info.html

28 <https://archive.org/web>

29 Cushing, T. (2016, 18 May). Federal Judge Says Internet Archive's Wayback Machine A Perfectly Legitimate Source Of Evidence. *Techdirt*. <https://www.techdirt.com/articles/20160518/08175934474/federal-judge-says-internet-archives-wayback-machine-perfectly-legitimate-source-evidence.shtml>

working to achieve progress at the World Intellectual Property Organization (WIPO).³⁰ This should both accelerate national reforms within member states, and set out minimum standards for each country which then permit and facilitate cross-border collaboration. Within a complete set of exceptions designed to cover all significant library activities,³¹ IFLA has called for a clear preservation exception and steps to facilitate working with out-of-commerce works (those which are no longer for sale through normal channels) and, as a subset of these, orphan works (those where the rights holder is either unknown or uncontactable).

Ensuring engagement: Access to digital culture

Even when the path to preserving digital heritage is clear, there remains the question of access. The high-level UN documents cited in the introduction stress the importance of ensuring that communities and individuals have access to cultural heritage in order to build strong knowledge societies.

IFLA works closely with UN institutions such as UNESCO and our other international, national, regional and local partners to guarantee that the objectives outlined in the high-level documentation are addressed in national-level implementation plans. For this we created a toolkit³² to help libraries advocate to their local governments on the importance of libraries in building informed and resilient societies and realising the UN 2030 Agenda. We also provided a booklet³³ which highlights the many ways libraries are already contributing to the many actions outlined in the UN 2030 Agenda.

Libraries, crucially, provide public access³⁴ to information and communications technologies (ICTs) which enable people to access the vast amount of information found online. IFLA supports libraries

so that they can offer these services and educate people on how to use ICTs and information found online. For this, people need multiple literacy skills (including media and information literacy)³⁵ which enable not only personal development but also access to and understanding of digital and analogue cultural heritage. Literacy is an essential catalyst for development and participation of everyone in society. The UN 2030 Agenda mentions the need for universal literacy in its preamble, which underlines clearly the need to not only preserve and give access to cultural heritage but also to ensure that people have the skills to use this preserved heritage.

Conclusion

In order to preserve our digital heritage for current and future generations, action is needed now from all actors – from policy makers, to practitioners, to content and technology creators.

On the copyright front, lawmakers must provide the space necessary for effective digital preservation. Given the spread of analogue heritage across borders and the merits of collaborative projects, as well as the global nature of the internet, action at an international level is an indispensable complement to work in national capitals.

Librarians and policy makers need to actively engage with each other on national levels to ensure that libraries and the crucial role they play in preserving our future are reflected in national development plans, in digital strategies and in the long-term outlook of a nation.

The UN 2030 Agenda gives us all a perfect framework to overcome these obstacles and work together for our future and for the future of the next generations. Digital preservation and taking care of our digital heritage is a matter which concerns everyone.

30 IFLA work on copyright exceptions and limitations for libraries at WIPO: www.ifla.org/copyright-tlib

31 Ibid.

32 www.ifla.org/publications/node/10156

33 www.ifla.org/node/10545?og=7409

34 Dynamic Coalition on Public Access in Libraries. (2015). Principles on Public Access in Libraries. www.ifla.org/publications/node/10328

35 IFLA. (2011). Media and Information Literacy Recommendations. www.ifla.org/publications/ifla-media-and-information-literacy-recommendations?og=81

Labour, migrant communities and the internet

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Introduction

The early vision of the internet as a medium that could be used to develop new economic models and realise freedoms, including overthrowing dictatorships, was perhaps most influentially expounded in John Perry Barlow's Declaration of the Independence of Cyberspace.¹ However, the bursting of the dot-com bubble in the late 1990s and the increasing corporate colonisation of what had been labelled an anarchic space led to pessimism by the early 2000s.

Currently, in the post-Arab Spring years, we appear to be in a hiatus, aware that the internet, mirroring offline politics and life, offers both opportunities for creative dissent and even revolution – but, post-Snowden, we are also aware of just how far the tentacles of both the state and big business are intruding into the daily lives of people across the globe.

However, any look at the discussions on human rights and the internet will show a gaping silence on the impact of the internet on labour rights. With one or two exceptions, discussions on how the internet has impacted labour tend to focus on the issues faced by middle-class or white-collar workers. Workers in factories and peasants workers on the farm tend not to be impacted in the same way. This report, therefore, contributes to opening up the debate on how the internet is impacting on labour rights, with a focus on the rights of migrant workers.

In a recent book, Paul Mason argues that the internet and collaborative commons are paving the way for a post-capitalist society,² arguments echoed by commentators such as Jeremy Rifkin.³

While these analyses may be overly utopian, they do point to a split in the ways in which the internet is used. However, big business sometimes appears omnipresent across the internet. Well-resourced, often driven by advertising revenue, and answerable primarily to shareholders are the large corporations, the Googles and Microsofts of the world. They stake out their territory using copyright, closed systems, and other ways to ensure their market dominance. On the other hand are the members of the open-source communities, the supporters of Pirate Parties throughout the world, those who flout copyright through peer-to-peer networks, or those who sometimes subversively use commercial platforms. For example, digital studies professor Lisa Nakamura shows how young feminists are using commercial platforms, such as Instagram, to (illegally) share the feminist, anti-capitalist text *This Bridge Called My Back*.⁴

Whether the internet is used primarily for sharing and openness or for entrepreneurship and the creation of stars (whether of the dot-com, human or cat variety) is going to have major repercussions on how it shapes the discourse on human rights, and whether it is used to further exploit vulnerable communities, or to help them live lives with safety, dignity and family and community connection. The ability to subvert or use commercial platforms for organising and building alternatives will also be examined in this report.

The internet: How the infrastructure influences labour rights

"The standard employment relationship is best characterised as a continuous, full-time employment relationship where the worker has one employer and normally works on the employer's premises or under the employer's supervision."

Judy Fudge and Rosemary Owens⁵

In theory, nobody owns the internet. In practice, the ownership of the infrastructure lies in the

1 Barlow, J. P. (1996). A Declaration of the Independence of Cyberspace. <https://www.eff.org/cyberspace-independence>

2 Mason, P. (2016). *Postcapitalism: A guide to our future*. Macmillan.

3 Rifkin, J. (2014, 31 March). Capitalism is making way for the age of free. *The Guardian*. <https://www.theguardian.com/commentisfree/2014/mar/31/capitalism-age-of-free-internet-of-things-economic-shift>

4 <https://vimeo.com/145196536>

5 Fudge, J., & Owens, R. (2006). *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*. Hart Publishing Ltd.

hands of powerful corporations, primarily based in the United States.⁶ As professor of new media Robin Mansell says:

Capitalism is oriented towards increasing profits for the owners of capital. The internet's infrastructure is mainly owned by private companies and it is private companies that are active in developing applications and services. They operate under capitalism and therefore their choices reflect their interests in profits.⁷

There are various ways in which the internet has shaped and is shaping work: through how work is found (or how workers are found); how work is carried out; and how workers and employers are defined, or not defined. While most countries have legislation that defines "a worker" and employer rights, new ways of working are challenging these definitions, as the case of Uber (see below) shows. Further, behind this, we can see that these are also changing what it means to be an employer and what it means to be a worker, and that these changes have implications for the precariousness of work, and that this precariousness is gendered.

To illustrate this, it is worth looking at the various court cases that have been fought in both the United States (US) and Australia on defining the relationship between Uber drivers and the corporation. The main question at stake in the US cases has been about defining whether the freelance workers in a "gig economy"⁸ are employees, and whether they are entitled to employee benefits, such as health insurance, social security and minimum wage requirements. As this is written, Uber faces a barrage of litigation across the US on this issue, but there has not yet been a ruling. Rather, Uber has been settling on a case-by-case basis, a strategy which seems untenable in the long run.⁹

Similar questions are being raised in Australia, on whether drivers should be classed as independent contractors or as employees. Analysis by a

private law company argues that this could draw on similar cases in the past, which would indicate that they would be classed as employees, but that the precedents are unclear.¹⁰ As in the US, the company has started facing litigation by drivers who argue that they are entitled to more protection.¹¹

However, these cases, and their relevance to the "gig economy", are part of wider debates on the meaning of employment, and how it has been historically constructed. Jenny Julen Voltinus has pointed out how the "standard employee" is conceived of as being in full-time, permanent employment.¹² Yet, the majority of those employed in "non-standard" employment internationally have been female workers.¹³ This could be those who are working part-time, on fixed-term contracts, people who have breaks in their careers (such as to care for young or elderly family members), or those who do piece-work or similar. Social security and retirement provisions, in those countries that have them, are also often structured around the idea of standard, full-time permanent employment. Further, career pathways are limited for non-standard employees; studies indicate that they face greater stress and more health risks than standard employees.¹⁴

While these dichotomies are useful descriptions of the current way work is framed, both standard and non-standard employment are facing challenges, and viewing them as a dichotomy can be misleading in terms of advocating for a more just and equitable future. Rather, work should be viewed as a field, and should include both productive and reproductive work¹⁵ when examining

6 Ruiz, J. B., & Barnett, G. A. (2015). Who owns the international Internet networks? *The Journal of International Communication*, 21(1), 38-57.

7 Written responses to author, 27 August 2016.

8 Friedman, G. (2014). The Rise of the Gig Economy. *Dollars & Sense*, Issue 311. www.dollarsandsense.org/archives/2014/0314friedman.html

9 Farivar, C. (2016, 2 June). Judge expresses notable concerns over proposed \$100M settlement in Uber case. *Ars Technica*. arstechnica.com/tech-policy/2016/06/most-drivers-in-uber-labor-case-would-get-under-25-so-some-protest-settlement; Farivar, C. (2016, 21 April). Uber settles class-action labor lawsuits in Massachusetts, California. *Ars Technica*. arstechnica.com/tech-policy/2016/04/uber-settles-class-action-labor-lawsuits-in-massachusetts-california; see also: uberlawsuit.com/Uber%20Case%20No.%205371509.pdf

10 Carswell-Doherty, J. (n/d). Are Uber Drivers Independent Contractors Or Employees? *Foulsham & Geddes*. www.fglaw.com.au/are-uber-drivers-employees

11 Wilkins, G. (2016, 5 July). Uber forced to spell out reasons for dumping drivers. *Sydney Morning Herald*. www.smh.com.au/business/innovation/uber-forced-to-spell-out-reasons-for-dumping-drivers-20160703-gpxthf.html

12 Voltinus focuses on Swedish labour law, but the analysis has far-reaching implications for gendered work and labour protections internationally. Voltinus, J. J. (2006). On the gendered norm of standard employment in a changing labour market. In Fudge, J., & Owens, R. (Eds.), *Precarious Work, Women, and the New Economy: The Challenge to Legal Norms*. Hart Publishing Ltd.

13 Standard employment has been defined by the male experience of ongoing, full-time employment over a lifetime. See further Siegmann, K. A., & Schiphorst, F. (2016). Understanding the globalizing precariat: From informal sector to precarious work. *Progress In Development Studies*, 16(2), 111-123; Rahman, M. A. (2015). Relative deprivation and the working poor: An empirical analysis. *Journal of Developing Areas*. 49(4), 379-389.

14 Fudge, J., & Owens, R. (2006). Op. cit.

15 Productive work is work for a wage or produce; reproductive work primarily refers to work done in the rearing and caring for children. For a more detailed analysis see particularly Section 4 of *Feminist Perspectives on Class and Work*, Stanford Encyclopedia of Philosophy: plato.stanford.edu/entries/feminism-class

legislative protections and labour rights and whether these are adequate to ensure minimal standards of welfare.¹⁶

Complementary to these debates around who is an employee and the rights that they are afforded, is the confusion that arises around jurisdiction, or whose responsibility it is to ensure that workers' rights are protected. Mark Graham from the Oxford Internet Institute, discussing the ways in which the internet is transforming the ways that work can be moved and performed over the internet, says:

If a Kenyan worker is doing work for a German client, it is hard to know where one jurisdiction begins and another ends. Clients of digital workers are usually quite unfamiliar with the labour laws in countries where their workers reside. And states seem very reluctant to get involved in regulating this nascent field. This presents a host of worries for digital workers – who become governed by market mechanisms with very little state or union intervention.¹⁷

Lastly, these issues are part of wider debates on the impact of neoliberalism in terms of what is perceived as “vigilant and responsible self-management”, through the construction of individuals as entrepreneurs of themselves.¹⁸ These changes, prefigured by Michel Foucault, are not just a result of technological changes. Instead, these are underpinned by neoliberalism, emphasising the importance of worker flexibility, and the undermining of unions and safety standards. Because of this, there is a mutually reinforcing dynamic between technology and the prevailing neoliberal ideology. As Robin Mansell says: “It is not the internet *per se* which is forcing the individuation of workers such that they are increasingly responsible for their own lives, choices and consequences – off line or on line. Rights of workers need constantly to be struggled for, just as they have historically.”¹⁹

How these changes have material impacts upon the lived experiences of precarious workers will be examined in the next section.

Labour rights, the internet and the work of the domestic migrant worker

In this section of the report, I will examine how these technological changes affect the rights of (predominantly female) domestic migrant workers. The workers discussed here are primarily those working in the Middle East, coming from a wide range of sender nations across Africa and Asia (Table 1).

The internet has affected almost every facet of the employment experience of migrant domestic workers, from how they carry out job searches, to their connection to family and friends, the surveillance under which they work, and the advocacy that they and others can do to improve the conditions they work under. These effects should be seen in the context of a highly gendered workplace, where women's movement, bodies and sexual and reproductive health are often controlled by employers (as discussed below). Further, in terms of the proportion of women's employment, figures from the International Labour Organization (ILO) show that 3.5% of working women are domestic workers, while 0.5% of working men do this work (see Table 1), leading the ILO to argue, “Improving conditions for domestic workers will therefore make a considerable contribution to gender equality in the labour market.”²⁰

Many Gulf states have legal restrictions on the recruitment of foreign domestic workers, including limiting the number of migrants from particular countries. Further, some countries, such as the Philippines, have placed a ban on their citizens working in some countries.²¹ They also negotiate the terms and conditions under which workers can be recruited. For Filipino domestic workers, the Philippines government has been active in ensuring rest days off, minimum wage levels, and in some countries, a limit to the number of hours in a working week. However, through social media, both employers and (potential) employees can work around these restrictions. This can offer increased opportunity to the domestic workers, but it comes at a cost. Vani Saraswathi, associate editor and strategic advisor at Migrant-Rights.org, says:

There is an entire layer of social media recruitment of domestic workers happening to bypass legislation to recruit through Facebook. Some

16 See Judy Fudge and Rosemary Owens' Introduction to Fudge, J., & Owens, R. (2006). Op. cit.

17 Written reply to questions by author, September 2016.

18 Thus, individuals are perceived as promoting themselves, engaging in improving their own worth through further qualifications and skills building, all seen as part of improving their ability to “market themselves” to existing or potential employers. See McNay, L. (2009). Self as Enterprise: Dilemmas of Control and Resistance in Foucault's The Birth of Biopolitics. *Theory, Culture & Society*, 26(6), 55-77.

19 Written response to author, September 2016.

20 Ibid.

21 Hilotin, J. B. (2015, 22 January). 'Black market' profits from Filipina maids in UAE. *Gulf News*. gulfnews.com/business/sectors/employment/black-market-profits-from-filipina-maids-in-uae-1.1445143

TABLE 1.

Global and regional estimates on the number of domestic workers in 2010, by sex

Panel A. Both sexes			
	Domestic workers	Domestic workers as percentage of total employment	Domestic workers as percentage of paid employees
Developed countries	3 555 000	0.8	0.9
Eastern Europe and CIS	595 000	0.3	0.4
Asia and the Pacific	21 467 000	1.2	3.5
excluding China	12 077 000	1.2	4.7
Latin America and Caribbean	19 593 000	7.6	11.9
Africa	5 236 000	1.4	4.9
Middle East	2 107 000	5.6	8.0
Total	52 553 000	1.7	3.6
Panel B. Females			
	Female domestic workers	Female domestic workers as percentage of female employment	Female domestic workers as percentage of female paid employees
Developed countries	2 597 000	1.3	1.4
Eastern Europe and CIS	396 000	0.4	0.5
Asia and the Pacific	17 464 000	2.5	7.8
excluding China	9 013 000	2.6	11.8
Latin America and Caribbean	18 005 000	17.4	26.6
Africa	3 835 000	2.5	13.6
Middle East	1 329 000	20.5	31.8
Total	43 628 000	3.5	7.5
Panel C. Males			
	Male domestic workers	Male domestic workers as percentage of male employment	Male domestic workers as percentage of male paid employees
Developed countries	958 000	0.4	0.5
Eastern Europe and CIS	199 000	0.2	0.2
Asia and the Pacific	4 003 000	0.4	1.0
excluding China	3 064 000	0.5	1.7
Latin America and Caribbean	1 588 000	1.0	1.6
Africa	1 400 000	0.6	1.8
Middle East	778 000	2.5	3.5
Total	8 925 000	0.5	1.0

Source: International Labour Organization (ILO).²³

countries, such as Indonesia, do not allow workers to travel to some states in the Gulf, so when a worker travels despite that, the country of origin doesn't know that they are there, and they don't need to protect them. [This also allows workers to] bypass the minimum wage... [If] going through official channels, you have to abide

by [their terms], if you don't go through those channels, you can state your own terms.²²

²² Interview with the author, 23 August 2016.

²³ International Labour Organization. (2013). *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. www.ilo.org/travail/Whatsnew/WCMS_173363/lang-en/index.htm

As this suggests, the situation that arises is perhaps due to the gap between the needs of both employers and workers and how states understand these needs – with a more human-rights based regulatory regime guaranteeing the conditions of workers, there might be less incentive to circumvent the regime in place.

The spread of information and communications technologies (ICTs) has also led to increased possibilities for surveillance of workers, such as through employers sharing information on domestic workers and the use of “nanny cams”. For example, an anonymous social media account was set up in Kuwait to “eliminate” the “problem” of domestic workers who leave their employment illegally.²⁴ This is an example of information tools being used to amplify existing xenophobia, and the employer’s perceived need to monitor and control migrant workers. Both in legislation and in practice, employers in countries from the Arabian Gulf states to the Southeast Asian nation of Malaysia are expected to regulate the social and sexual lives of their employees – such as through legislation on pregnancy, sexually transmitted diseases and bans on female foreign workers marrying local men (present in Singapore and Saudi Arabia among others). The legislation is complemented by the widespread perception that domestic workers are not entitled to boyfriends.²⁵ As Saraswathi notes: “They are monitored, there is a wide surveillance system, everything is monitored. Employers don’t want to give domestic workers access to phones or mobile devices of their own for fears that they will invade their (the employers’) privacy or that they might meet a boy and have sex.”

While states can lead the way in helping to challenge the xenophobia that underlies this surveillance and the reasoning behind it, organisations such as Migrant-Rights.org also work with the employers of domestic workers. In Qatar, those who want to employ a domestic worker have to get clearance from their own employers. Migrant-Rights.org conducted focus group sessions with receptive employers (of those wishing to employ a domestic worker) and used this as a pressure point to help accelerate cultural change on accepting the rights of migrant workers, often

using both religious and social justice arguments to make their point. Social media can also be used in a positive way to counteract the example given above – for example, memes on the cultural shifts that need to happen can be created and shared widely online.

ICTs are also vital to the organisation and administrative work of organisations working with migrant workers. They allow both freedom and security for organisers who might otherwise be targeted for their work. Saraswathi noted that among her colleagues, one is currently seeking asylum, and that in such situations, anonymity is vital to the safety of migrant rights activists. She also said that generally, her activist colleagues do not attach their own names to their articles because of potential consequences.

It is important not to underestimate the ways in which ICTs, and mobile technologies in particular, are also empowering foreign domestic workers. This begins with access to a mobile device. Academic Earvin Cabalquinto has looked at how mobile devices allow workers in Melbourne, Australia, to remain intimately connected with their families in the Philippines.²⁶ Migrant-Rights.org has been working with groups in Indonesia to lobby the Indonesian government to insist on the right of all workers to have a mobile phone, as an inalienable right, part of the right to communicate. The phone does not only allow them to contact their families and friends, but also allows them to access information on their rights, network with other workers in similar situations, and seek help if they need it.

Conclusion

The Feminist Principles of the Internet²⁷ clearly enunciate the basic rights that need to be respected to ensure equitable access to the advantages of being online. These include the rights to access to the internet (principle 1); access to information (principle 2); the internet as a space of resistance (principle 4); movement building (principle 5); amplifying feminist discourse (principle 9); and privacy and data (principle 13). When looking at labour rights and ICTs, these principles should underpin reform, allowing migrant domestic workers, among others, full access to their rights.

24 Migrant-Rights.org. (2014, 19 June). Instagram account publishes pictures of runaway domestic workers in Kuwait. <https://www.migrant-rights.org/2014/06/instagram-account-publishes-pictures-of-runaway-domestic-workers-in-kuwait>

25 See, for example: www.wao.org.my/Migrant+Domestic+Workers_54_5_1.htm; www.maidagencymalaysia.com/maid/tips-on-recruiting-domestic-helper-by-maid-agency-malaysia

26 Cabalquinto, E. (2016). Tracing (dis)comfort: Caring at a distance through mobile device use among the transnational Filipino family. Paper presented at the Asian Studies Association of Australia Biennial Conference, 5-7 July.

27 <https://www.apc.org/en/pubs/feminist-principles-internet-version-20>

As former domestic worker Eni Lestari, chairperson of the International Migrants' Alliance, addressed the United Nations General Assembly on the rights of migrants on 19 September 2016, it appears that the rights of migrant workers are being thrust into the global spotlight.²⁸ But the silence on labour rights in the discussions on internet rights shows that there is a need to look at the various ways in which the internet is affecting the relationship between employers and employees,

especially when this relationship involves these cross-national boundaries. The importance of the internet to migrants ranges from its ability to help forge or maintain relationships over long distances to the ability to seek information anonymously. Establishing and enforcing the rights of migrant workers to have access to communications would help them not only to access these benefits, but also to counter the impact of the darker side of ICTs.

²⁸ International Migrants Alliance. (2016, 12 September). HK FDW to address UN assembly for first time on rights of migrants vs exclusion, commodification and slavery. <https://wearmigrants.net/2016/09/12/hk-fdw-to-address-un-assembly-for-first-time-on-rights-of-migrants-vs-exclusion-commodification-and-slavery>

The impact of free trade agreements for ESCRs on the internet

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International agreements: From human rights to corporate rights

Much of the strength of the international human rights system as a political tool derives from its acceptance as a standard for all humanity. Although there is disagreement about the specifics of its implementation, especially regarding the duties of states under the economic, social and cultural rights (ESCR) international instruments, there is still consensus on the high-level standards represented by the Universal Declaration of Human Rights and other documents.

One of the key elements in the notion of the universality of human rights is the underlying idea of the system as an agreement between nations, as a consensus which governments are obliged to uphold, regardless of the kinds of enforcement mechanisms they impose. This consensus on fundamental rights has dwindled in past decades in favour of a different form of accord between nations on fundamental rights, one that is premised on the interests of governments and heads of state, rather than the global rights system. The result of this new form of consensus is not only a different way to address concerns regarding the development of the internet, but the way internet policy itself is developed. We argue that this new framework for policy making gives low priority to human rights, and high priority to incumbent corporate interests that may prevent the realisation of such rights.

The growing scope of international trade agreements

International trade agreements, both bilateral and multilateral, have greatly expanded their scope and detail in recent decades. Now they are not just focused on traditional issues related to trade such as customs or duty, but include a vast array of issues. The economic prevalence of the internet and intellectual property industry during the last decades means that these deals also include regulation

related to electronic commerce, content control and others as a new priority for those instruments.

The fact that the internet has over the years not only resulted in new and creative forms of entrepreneurship, but also in new ways to exercise freedom of expression and other fundamental rights, has created regulatory tension between the need to protect private interests and the realisation of fundamental rights online. Assuming that the internet is a means to progressively realise ESCRs, policies regarding the internet, from access and deployment to content regulation, will necessarily impact on the realisation of rights. Accordingly, rules that affect issues like work, basic services (pursuant to an adequate standard of living) or education may also impact on the use of the internet.

However, one of the areas in which the relationship between policies that affect the internet and simultaneously impact on several ESCRs is most evident is content regulation – especially where these regulations imply restrictions on the dissemination of content in fields such as culture and education. Regulations on intellectual property usually work against the best interest of the public, as well as against the potential of the internet to enable the rights to education, culture and economic participation.

Intellectual property (IP) has been the subject of treaties since the 19th century; however, provisions on IP have moved into bilateral and multilateral trade agreements only in recent decades,¹ and, in doing so, away from parliamentary discussion and meaningful civil society participation. Along with this shift, the ways for the private sector to participate in trade negotiations has increased – the closed processes that result in the agreements are only closed to public oversight, not to the involvement of private companies. Therefore, the interests of copyright holders have become the starting point of any trade negotiation, to the general exclusion of

1 Rossini, C. (2012, 21 December). The Unsettling Trend of Forum Shifting in International Intellectual Property. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2012/12/iip-forum-shifting-trend>

meaningful and substantive provisions respecting the public interest.²

Free trade agreements are increasingly seen as examples of negotiations that include internet policy directives, without public deliberation. The implications are worsened when one considers that the new phase of trade agreements that we are currently witnessing are not just bilateral agreements, but multilateral agreements including both developed and developing countries, and in some cases even countries from different geographic and political contexts. The Trans-Pacific Partnership (TPP) agreement is a good example of this. The TPP is an agreement driven mostly (though not initially) by the United States (US) and signed by 12 countries: the US, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. According to *The New York Times*,³ this diverse group collectively has an annual gross domestic product of nearly USD 28 trillion, representing roughly 40% of the global GDP, which arguably makes the TPP the largest trade agreement in modern history.

The finalised text was signed on 4 February 2016, after seven years of secret negotiations. With the alleged purpose of “protecting sensitive trade talks”, citizens were banned from knowing and debating the content of the negotiations, which was released for public scrutiny by WikiLeaks. According to the Office of the United States Trade Representative (USTR), the TPP includes 30 chapters “covering trade and trade-related issues”, including trade in goods, customs, technical barriers to trade, remedies, investment, electronic commerce, intellectual property, labour and environment.⁴ Although many of these subjects were covered in trade agreements prior to the TPP, its scope in terms of the global landscape shows the ambition of treaties of this scale when it comes to the future of international trade.⁵ The ongoing talks on a similar agreement between the US and the European Union (EU), the Transatlantic Trade and Investment Partnership (TTIP), and the sweeping scope of the Trade in Services Agreement (TiSA, much closer to conclusion),

show the unwavering ambition of large-scale trade agreements to set future standards for trade and related policies – including, in special provisions, strong rules concerning IP rights on the internet.

Human rights concerns

This sweeping scope is precisely one source of pre-occupation for human rights and consumer rights organisations regarding trade agreements. The TPP is a fine example of the tension between human rights implementation and the international trade agenda as a norm-setting forum above national policy-making processes: out of 30 chapters, only six deal with standard trade issues, and the rest go from government procurement to environmental protection, with many interests beyond trade represented in the text.⁶

A recent World Bank study seems to support the idea that the TPP is only partly about trade, as it suggests that the agreement might not entail big economic advantages for its signatories. The study analysed the potential macroeconomic implications of the agreement in model simulations, and suggested that by 2030 the TPP would raise member countries’ GDP on average 1.1%.⁷ This impact would be less for North American Free Trade Agreement (NAFTA) members (such as Mexico, Canada or the US) – about a 0.6% increase. In the face of such a marginal effect on economic growth, the question can be asked: why is the scope of the agreement so broad, and impacting on areas not directly related to trade?

This concern is amplified when considering the impact on human rights in policies determined through these agreements. In June 2015, a group of 10 United Nations Special Rapporteurs and Independent Experts released a statement expressing their concern over how the TPP would impact human rights:

While trade and investment agreements can create new economic opportunities, we draw attention to the potential detrimental impact these treaties and agreements may have on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social. Our concerns relate to the rights to life, food, water and sanitation, health, housing, education, science and

2 Menezes, H.Z. (2015). A Estratégia Norte-Americana de Forum Shifting para Negociação de Acordos TRIPS-Plus com Países da América Latina. *Contexto Internacional*, 37(2), 435-468. <https://dx.doi.org/10.1590/S0102-85292015000200004>

3 Granville, K. (2016, 20 August). The Trans-Pacific Partnership, Explained. *The New York Times*. www.nytimes.com/interactive/2016/business/tpp-explained-what-is-trans-pacific-partnership.html

4 <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

5 Organisations opposed to the treaty, such as Public Citizen, have said that even though it is called a “trade” agreement, the TPP is not mainly about trade. See: <https://www.citizen.org/TPP>

6 For Public Citizen, the TPP “comes from 500 official U.S. trade advisors representing corporate interests involved in years of closed-door negotiations.” <https://www.citizen.org/TPP>

7 World Bank. (2016). *Potential Macroeconomic Implications of the Trans-Pacific Partnership*. www.worldbank.org/content/dam/Worldbank/GEP/GE2016a/Global-Economic-Prospect-2016-Implications-Trans-Pacific-Partnership-Agreement.pdf

culture, improved labour standards, an independent judiciary, a clean environment and the right not to be subjected to forced resettlement.⁸

On the eve of the signing of the agreement, Alfred de Zayas, the United Nations Independent Expert on the promotion of a democratic and equitable international order, called on governments not to sign the treaty: “The TPP is fundamentally flawed and should not be signed or ratified unless provision is made to guarantee the regulatory space of States.” He called for a new generation of trade agreements for the 21st century, which would incorporate human rights issues, and stressed that “the TPP is based on an old model of trade agreements that is out of step with today’s international human rights regime.”⁹

Human rights concerns extend to ESCRs in a special way. Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have a legal obligation to respect, protect and fulfil economic, social and cultural rights and are expected to take “progressive action” towards their fulfilment. In the language of the Covenant, each state party must “take steps, individually and through international assistance and co-operation, (...) to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised (...)”¹⁰

First, related to the “availability of resources”, it is recognised that a lack of resources (financial or otherwise) can be an obstacle to the realisation of these rights, and that this could be achieved only over a period of time.¹¹ Still, states are obliged to “take steps” and make constant efforts to improve their enjoyment.¹² While the full realisation of these rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time.

Secondly, if progress must be made within the limitation of resources, the obligation also implies

the prohibition of “retrogressive measures”.¹³ According to the High Commissioner for Human Rights, a retrogressive measure is one that “directly or indirectly, leads to backward steps being taken with respect to the rights recognised in the Covenant.”¹⁴ In other words, once a certain set of protections have been achieved, states should not allow them to deteriorate. The prohibition applies to any measure taken consciously that reduces the enjoyment of ESCRs, whether or not the regression was an intended and wanted consequence of the measure.¹⁵ States are expected to act with care and deliberation in taking action that might violate human rights, directly or indirectly.

Regarding the TPP, the idea of “progressive realisation” is especially important, as some of the provisions in the IP and e-commerce chapters will not only affect the right to participate in cultural life, but also free speech and privacy, and the way that states approach these concerns when faced with conflict. The trade agreement itself represents a set of norms that can imply the *retrogressive measures* prohibited by Articles 2 and 15 of the ICESCR. But it also presents challenges for the way in which national policies concerning ESCRs are created and enforced, challenging the way in which states are able to fulfil their duties in the progressive realisation of these rights online.

Impacts on human rights online

One of the key elements of the IP system, copyright, famously dates back to the Statute of Anne in 1710, the first law to provide “the right to make copies” to authors that were limited in doing so by the Stationers’ Company, a guild of printers given the exclusive power to print – and the responsibility to censor – all kinds of literary works.¹⁶ The logic of the Statute responded to a particular historical and technological context after the invention of the printing press and the development of a printing industry.

The evolution of that industry pushed forward most of the development of the copyright system after the Statute of Anne. Although commitments in line with the interest of creators were explicit in later instruments, including the Berne Convention in the late 19th century, pressures for the expansion of

8 OHCHR. (2015, 2 June). UN experts voice concern over adverse impact of free trade and investment agreements on human rights. www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031

9 UNOG. (2016, 2 February). UN expert urges Pacific Rim countries not to sign the TPP without committing to human rights and development. www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/CB37BD3625EFC1DBC1257F4D003ACBBE?OpenDocument

10 Article 2.1, ICESCR. www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

11 CESCR. (1990). General Comment 3: The nature of States parties obligations (Art. 2, para. 1). <https://www.escr-net.org/resources/general-comment-3>

12 www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx

13 CESCR. (1990). Op. cit.

14 OHCHR. (2005). *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*. www.ohchr.org/Documents/Publications/training12en.pdf

15 OHCHR. (n/d). *Frequently Asked Questions on Economic, Social and Cultural Rights*. www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf

16 Deazley, R., Kretschmer, M., & Bently, L. (2010). *Privilege and Property: Essays on the History of Copyright*. klangable.com/uploads/books/Privilege&Property-Deazley.pdf

the system came mostly from copyright holders different from authors, such as publishers and estates. Naturally, the interests represented in each push for reform were those that allowed for an increasingly complex and strict system where permission to reuse a copyrighted work would become the norm, regardless of the purpose, if the use fell outside a limited set of “exceptions” and “limitations” to copyright. In other words, copyright reforms increased restriction on access to knowledge and cultural goods, even when technology moved in the opposite direction. As James Boyle states, “We have locked up most of twentieth-century culture and done it in a particularly inefficient and senseless way, creating vast costs in order to convey proportionally tiny benefits. Worst of all, we have turned the system on its head. Copyright, intended to be the servant of creativity, a means of promoting access to information, is becoming an obstacle to both.”¹⁷ The old logic underlying the protection of intellectual property rights does not respond to technological development, and the social advances that have been enabled by the internet.

Although this appears as a tension that has permeated public debates on intellectual property on the eve of the 21st century, we face an evolution of the threat of unlimited restrictions on intellectual goods: the privatisation of knowledge pushed by international trade agreements. That has been the case with the recent Anti-Counterfeiting Trade Agreement (ACTA) and the failed Stop Online Piracy Act (SOPA) in the US, and now the TPP.

The IP provisions have been among the most debated and controversial within the TPP example. This also has to do with the fact that it was one of the only chapters that was leaked by WikiLeaks before the signing of the treaty, which gave scholars and citizens enough time to discuss it before it was finalised.

By establishing a detailed regulation for pharmaceutical products, the TPP has the effect of restricting the production of generic medicines and biological drugs to treat certain illnesses. The TPP blocks the availability of trial data for biological drugs for up to eight years (articles 18.50 and 18.52).¹⁸ This pushes for long-term monopolies on life-saving biological medicines, which could be a death sentence for people around the globe that

cannot afford the pricey patent drugs.¹⁹ First of all, the right to health, enshrined in Article 12 of the ICESCR, is affected: the TPP not only fails at avoiding retrogressive measures, but blatantly encourages them. But beyond that, the lack of access to this crucial information goes against the right to “enjoy the benefits of scientific progress and its applications” (Article 15.1.b of the ICESCR), as well as the requirement for states to take the steps “necessary for the conservation, the development and the diffusion of science and culture” (Article 15.2). It is a restriction that may benefit some industries, but hardly expresses a path towards the realisation of the rights of all people.

Second, the IP provisions of the TPP (and many of the bilateral agreements that preceded it) severely restrict the dissemination of knowledge, limiting the right to participate in cultural life. The provisions do not comply with the human rights standard that seeks balance between the protection of authors and the collective interest of society. It is very common for international trade treaties promoted or signed by the US to echo the interests of the content-producing industry in that country. In other words, the protection of copyright goes well beyond what has been established in international forums like the World Intellectual Property Organization (WIPO). It is not only the level of detail that is striking in the TPP, but also the evident lack of balance between protected interests and human rights.²⁰

A human rights approach sets specific standards to be applied to IP law. The type and level of protection offered by any IP regime must “directly facilitate and promote scientific progress and its applications and do so in a manner that will broadly benefit members of society on an individual, as well as collective level.”²¹

The traditional rationale that drove IP regimes in terms of providing incentives to researchers and authors to create has been replaced by a new emphasis on the protection of investment.²² This implies consequences not only in the content of fundamental rights affected by the rules set in the agreements, but also in how such rights are recognised and configured by democratic states.

¹⁷ Boyle, J. (2008). *The Public Domain: Enclosing the Commons of the Mind*. www.thepublicdomain.org/wp-content/uploads/2009/02/thepublicdomain.html

¹⁸ Public Citizen. (n/d). *The Trans-Pacific Partnership: Restricting Access to Affordable Medicines*. <https://www.citizen.org/ppp-public-health>

¹⁹ www.tppkills.org

²⁰ As a side note, the lack of ratification of the ICESCR by the United States may thus impact internal policies in countries where it is valid.

²¹ Chapman, A. (1998). *A Human Rights Perspective on Intellectual Property, Scientific Progress, and Access to the Benefits of Science*. www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_5.pdf

²² Ibid.

If the human rights framework “imposes conditions on the recognition of intellectual property rights,” these must go well beyond a simple economic calculus to be compliant with Article 27 of the UDHR. The TPP, however, rather than promoting public interest and access to knowledge and culture, frames IP rights with a strong vision of a way to protect private commodities.

In essence, a human rights approach to IP implies a balance between the rights of inventors and creators and the interests of society at large,²³ including individual and collective rights, and including different ways of exercising these rights (such as the internet). This balance between the protection of authors and the interest of society to access knowledge is explicit in international law but not necessarily in national regulation that, at least in the developing world, is heavily driven by the trade agenda.

For Farida Shaheed, Special Rapporteur in the field of cultural rights at the UN: “The right to protection of moral and material interests cannot be used to defend patent laws that inadequately respect the rights to participate in cultural life, to enjoy the benefits of scientific progress and its applications, to scientific freedoms, to food and health and the rights of indigenous peoples and local communities.”²⁴

One example of an imbalance in regulation that affects rights such as cultural participation and benefiting from scientific progress is the extension of copyright protection to up to 70 years after the death of authors. This has been a part of bilateral trade agreements with the US, and is included in the TPP. This term exceeds what was established by the Berne Convention and practically means that most of the signatories to the TPP should increase their protection terms. The extension, which entails that explicit permission is required for certain uses of a copyrighted work, means that monopolies on access to these works can exist well beyond the death of their creators. It exclusively benefits the copyright holder. There is no other evidence of the need of such an extension, neither as an incentive for creativity, nor as a system requirement for international trade, and certainly not in terms of social benefits.

Trade agreements like the TPP also include – in line with US law – obligations for states to protect digital rights management (DRM) tools. These tools are “digital locks” that are used to control access to, the use of, and the modification and distribution of

copyrighted works.²⁵ In other words, they are used to deter access or prevent copies not authorised by the copyright holder. Far from constituting a balance in terms of IP, the DRM requirements in agreements such as the TPP are excessive and hamper the rights that we have as users regarding our technology: unblocking our devices, copying or sharing music, books or movies, even if we bought them legitimately and are doing so for personal use, or even if the work itself may have become part of the public domain.

The TPP, along with several bilateral agreements with the US, impacts directly on national internet policy by requiring the establishment of a system for intermediary liability similar to the Digital Millennium Copyright Act (DMCA) in the US. Such a regime compels companies like YouTube and Facebook to remove content that infringes copyright as soon as they have knowledge of it.²⁶ If they do not do so, they could face punitive legal action along with the infringer. With no judicial safeguards, the automatic removal of content in line with the DMCA system has opened the door for censorship against legitimate expressions. Politicians in places like Mexico and Ecuador have used these mechanisms to silence dissidents, infringing on freedom of expression.²⁷ Countless forms of legitimate artistic and cultural expression – key manifestations of the right to participate in cultural life – are taken down each day from internet platforms based on copyright claims or as the result of automated content restriction systems. Trade agreements promote this form of content restriction regardless of its value to society, and regardless of the implications for cultural life on the internet.

As a consequence, smaller negotiating parties in sweeping trade agreements must comply with their provisions, even those concerning internal policies, and regardless of national interests, in order to be a part of international trade in the age of globalisation. Otherwise, a big partner the size of the United States may refuse to provide new trade conditions; or big corporations may bring a government before an international panel if national policies, even those in favour of the population,

25 CBC News. (2009, 7 August). The pros, cons and future of DRM. *CBC*. www.cbc.ca/news/technology/the-pros-cons-and-future-of-drm-1.785237

26 This knowledge is obtained through a notice that in the US is sent by the copyright holder and does not require the intervention of any official body before producing its effects.

27 Sin Embargo. (2015, 29 April). Presidencia baja de Youtube el video donde EPN confunde León y Lagos de Moreno con estados. www.sinembargo.mx/29-04-2015/1329513 and Ellerbeck, A. (2016, 21 January). How U.S. copyright law is being used to take down Correa's critics in Ecuador. *Committee to Protect Journalists*. <https://cpj.org/blog/2016/01/how-us-copyright-law-is-being-used-to-take-down-co.php>

23 Ibid.

24 Shaheed, F. (2015, 26 October). Statement by Ms. Farida Shaheed, Special Rapporteur in the field of cultural rights at the 70th session of the General Assembly. www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16788&LangID=E

have an impact on their investments. This has, even just theoretically, a great impact on the scope of action of a state, even when fulfilling a mandate, and even when its action is framed within its duties for the realisation of ESCRs.

Conclusions and the way forward

The international trade agenda should be seen as one of the most important forums establishing new regulatory standards in all aspects related directly or indirectly to international trade. This includes not just the traditional elements of commerce, but also more sophisticated regulatory pieces often related to the internet and new technologies, such as IP, privacy and others that affect ESCRs.

Over the last few decades, the trade negotiations framework has not included substantial elements or provisions towards the full realisation of human rights, especially when applied online. Negotiations are often closed, with limited access for actors that are not the actual negotiators, even within the government, and of course with limited or no access for the general public. That means the trade agenda is – especially for developing countries where their power of negotiation with larger economies is yet to be seen – a vicarious way to set regulatory standards at a national level, without any of the public oversight or checks and balances corresponding to a constitutional democracy.

This scenario, both at an international and a national level, is unfriendly to the exercise of ESCRs, and to the action of states and governments

in allowing their progressive realisation. We have (briefly, superficially) examined the example of IP rights as an instance where it is possible to see that human rights considerations are totally off the negotiation table. Issues such as education, participation in culture and access to knowledge, or even development, are only included in these agreements – in the few cases where they are considered – as non-binding general considerations. They are not considered the starting point for an international agreement which will necessarily affect human rights just by the sheer scope of its ambition.

At the national level, in most developing countries, trade agreements with developed nations are still seen as normal trade negotiations that need no special public input. This means the only group allowed to participate and remain informed is the group of official negotiators, drawn from trade departments of the ministries of commerce or foreign affairs (and not parliament, the judiciary, or the general public). This is generally the case until the moment the agreement has been sealed.

However, treaties such as the TPP are in fact wide-ranging international instruments guiding future public policies beyond traditional economic and trade considerations. In such an environment, it is highly unlikely that development goals can be separated from economic indicators and focused instead on the realisation of ESCRs. When those economic goals see the digital economy as an opportunity for financial gain, social empowerment seems more like a side effect than an objective.

Towards an international advocacy strategy for economic, social and cultural rights and the internet

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www.apc.org

Introduction

The purpose of this report is to provide an overview of international human rights instruments relevant to advocacy efforts around economic, social and cultural rights (ESCRs) and the internet. While this topic is still relatively new, advocacy at international bodies can be valuable to help develop norms about the promotion and protection of ESCRs in online contexts, and to develop internet policy that advances ESCRs. In addition, international advocacy can be utilised to improve national human rights situations and complement in-country work.

This report will map out the relevant bodies for advancing ESCRs and the internet, explain briefly how they work, why they are relevant to ESCRs and the internet, and how civil society can engage. It will also identify some opportunities for engagement looking towards an advocacy strategy to promote and protect ESCRs in the context of the internet. This report does not aim to provide a comprehensive overview of all international institutions relevant to ESCRs and the internet,¹ but identifies the most relevant in the human rights ecosystem, and those in which there are clear avenues for civil society engagement.

Treaty bodies

As international human rights treaties are the source of international standards on ESCRs, human rights treaty bodies are important institutions both for the development of norms with respect to the internet and for improving national policies that impact on human rights online. Treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. There are 10 human rights treaty bodies, each of which receives and considers

reports submitted by state parties, issues concluding observations/recommendations to assist states in implementing their obligations, and develops general comments/recommendations interpreting provisions of their respective treaties both substantively and procedurally. Some treaty bodies have additional functions, such as to receive individual complaints and conduct inquiries.

The most relevant treaty body for ESCRs and the internet is the Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).² This body, made up of 18 independent experts, meets twice a year for three weeks at a time to review the compliance of the 164 states that have ratified the treaty.³ States party to the ICESCR are required to submit an initial report two years after ratifying the treaty and submit periodic reports every five years. The Committee may consider individual communications alleging violations of the ICESCR by states party to the Optional Protocol to the ICESCR. In addition, upon receipt of reliable information on serious, grave or systematic violations of the convention by a state party, the Committee may initiate inquiries. The Committee also issues public statements or letters from time to time to address developments that threaten to undermine the enjoyment of rights set out in the ICESCR.

Why are they relevant for the internet and ESCRs?

Treaty bodies are relevant to the internet and ESCRs because when they review state parties' compliance with the relevant treaty, they may consider how the state's policies with respect to the internet relate to its protection of the rights enshrined

¹ For a comprehensive overview on international mechanisms relating to ESCRs, see: www.cesr.org/article.php?id=274

² Other relevant treaties include the International Covenant on Civil and Political Rights (Articles 8 and 27), the Convention on the Rights of the Child (Articles 13: 1, 24 and 27), the Convention on the Rights of Persons with Disabilities (Articles 25, 27, 28 and 30, among others), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 25, 28, 30, 31 and 43).

³ indicators.ohchr.org

in the treaty and make recommendations in their concluding observations. For example, in its concluding observations for its 2006 review of Libya, the CESCR urged the Libyan government “to respect and protect freedom of information and expression in the State party, including on the Internet, to enable all persons under its jurisdiction to take part in cultural life and enjoy the benefits of scientific progress and its applications.”⁴

As noted above, general comments are another way in which the Committee can weigh in on the relevance of the internet to ESCRs. In General Comment 21 on the “[r]ight of everyone to take part in cultural life”, the Committee elaborates on the definition of “cultural life” in the ICESCR to include methods of production or technology and non-verbal communication. In addition, it clarifies that “[e]veryone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication” and notes that the internet is a form of communication media that minorities have the right to in order to exercise their right to cultural diversity and manifest their cultural identity and membership.⁵

How can civil society engage?

Civil society can engage in treaty bodies in a number of ways, in particular in countries where the government has ratified the treaty. For example, some governments invite NGOs to participate in national consultations preceding the drafting of the state report. Even if the government does not hold consultations, NGOs and other stakeholders can submit their own reports to treaty bodies, with their own views and assessments on the implementation of the relevant treaty. These reports are important tools to inform the work of the Committee, and help Committee members to achieve a more comprehensive picture of the human rights situation in the country. NGOs can also submit written information to assist the Committee in drawing up the list of issues for each state, which together with the state report, forms the basis for the dialogue between the experts of the treaty body. For the CESCR, the deadline for submitting

information is 1.5 months before the Committee’s session when the state is under review, or two months before the pre-sessional working group for the list of issues.⁶

Civil society can in some cases contribute to the development of a general comment. Some treaty bodies convene “days of general discussion” to examine a particular theme or issue of concern. Such days of general discussion are usually open to the public as well as external participants such as UN organisations, state delegations, NGOs, and experts. The CESCR has held a series of days of general discussion since 1992, many of which have resulted in general comments. For example, in 2010 it held a day of general discussion on the right to sexual and reproductive health, which led to the issuing of a General Comment on the right to sexual and reproductive health in March 2016.

Opportunities for engagement

The most straightforward way for civil society to get treaty bodies to take on the internet dimensions of their mandates is to engage in reviews of their government before the Committee.⁷ Specifically, it is important to raise ways that internet policy or regulation is threatening the enjoyment of ESCRs, or is limiting the state’s responsibility to progressively realise ESCRs, in shadow reports – for example, through lack of regulation of the private sector. This is an opportunity for civil society to provide information on specific laws and policies at the national level, and importantly to pose questions for the Committee members to include on their list of issues for the state to respond to when it is reviewed before the Committee. Engagement at this early stage sets the stage for the Committee to make concluding observations on internet policy.

Additionally, as the Committee develops new general comments to elaborate on and update its interpretation of various articles of the treaty, there may be opportunities for input to consider the impact of the internet on the issue at hand. For example, there is currently a draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights

4 Committee on Economic, Social and Cultural Rights. (2006). Concluding observations of the Committee on Economic, Social and Cultural Rights – Libyan Arab Jamahiriya (E/C.12/LYB/CO/2). tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLYB%2fCO%2f2&Lang=en

5 Committee on Economic, Social and Cultural Rights. (2009). General comment No. 21 Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/21). tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en

6 For more information on how to participate in sessions of the treaty bodies, and in-depth information on how the different treaty bodies work, see Collister, H., Helm, T., Patel, P., & Starrenburg, O. (2015). A Simple Guide to the UN Treaty Bodies. International Service for Human Rights. www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf

7 For a list of upcoming sessions, see: tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR

in the Context of Business Activities,⁸ which is open for written input.⁹ While the draft does not address specific industries or sectors, it is important that as the draft evolves it takes into account particular jurisdictional challenges, for example, those that can be raised in the context of the operations of ICT companies. As further analysis is needed into how the enjoyment of several of the articles of the ICESCR are impacted by the internet – for example, 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), among others – should the Committee take up new general comments on these issues, it would be a good opportunity to incorporate the impact of the internet on how these rights are enjoyed in the digital age, and how they contribute to the progressive realisation of ESCRs. A longer-term goal could be for the Committee to develop a general comment examining how the internet impacts on the enjoyment of various articles in the Covenant, and what new challenges it brings.

Human Rights Council

Unlike the treaty bodies, which are made up of independent experts, the Human Rights Council (HRC) is a political body made up of UN Member states (47), which are elected by the UN General Assembly. The Council is the primary UN body responsible for strengthening the promotion and protection of human rights and for addressing situations of human rights violations and making recommendations on them. The body meets three times each year in Geneva for regular sessions and, from time to time, it convenes for special sessions when one third of its members request to hold a special session to address human rights violations and emergencies.

The Council has a number of tools to advance its mandate, including passing resolutions on thematic and country-specific situations; through the work of its Special Procedures, independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective;¹⁰ and its Universal

Periodic Review (UPR) mechanism,¹¹ which uses peer review to assess the human rights situations in all UN member states.¹²

Why is it relevant for the internet and ESCRs?

The HRC has taken great strides towards advancing the principle that human rights apply online. In 2012, the HRC passed its first resolution on “the promotion, protection and enjoyment of human rights on the Internet”, which affirmed the fundamental principle that “the same rights people have offline must also be protected online.”¹³ Since this landmark resolution, the HRC has been passing resolutions on the internet and human rights on a bi-annual basis, which have addressed a broad range of issues which are relevant for ESCRs, including the importance of internet access for the right to education, 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.

Aside from the internet resolution, the HRC has passed a number of thematic resolutions, some of which have begun to address the internet dimensions of the issues. For example, a resolution on the right to education which is run on an annual basis, in 2016 addressed “the contribution that access to new information and communications technology, including the Internet, plays in facilitating the realization of the right to education and in promoting inclusive quality education.” The resolution¹⁴ urged all states to:

[G]ive full effect to the right to education by, inter alia, complying with their obligations to respect, protect and fulfill the right to education by all appropriate means, including by taking measures, such as:

- (a) Addressing issues of access, quality and equity in the use of information and communications technology in education, including in order to bridge the digital divide;

8 De Schutter, O., & Kedzia, Z. (2016). General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (E/C.12/60/R.1). Committee on Economic, Social and Cultural Rights. ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/E-C-12-60-R-1.docx

9 ohchr.org/EN/HRBodies/CESCR/Pages/Discussion2017.aspx

10 ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx

11 Brown, D., & Kumar, S. (2016). Using the Universal Periodic Review for Human Rights Online. London: Global Partners Digital. <https://www.apc.org/en/system/files/Using%20the%20universal%20periodic%20brief%20for%20human%20rights%20online.pdf>

12 ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

13 Human Rights Council. (2012). The promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/20/8). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8

14 Human Rights Council. (2016). The right to education (A/HRC/RES/32/22). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/22

- (b) Creating an enabling policy environment for drawing on digital technologies that can serve as valuable tools in the delivery of education;
- (c) Building the capacity of teachers to use digital technologies while retaining their freedom concerning pedagogical approaches;
- (d) Assessing the quality of education, including online or Internet education and certification, including massive open online courses, and taking appropriate remedial or other action to address policies or practices that prevent the enjoyment of the right to education by, inter alia, engaging with existing national human rights mechanisms, parliamentarians and civil society;
- (f) Encouraging the availability of educational resources in various languages, including in the implementation of information and communications technology in education.

The Special Procedures have done extensive work on internet rights, beginning with the former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, who dedicated his 2011 report to the internet's impact on freedom of expression.¹⁵ David Kaye, La Rue's successor, has built on his work by examining the importance of encryption and anonymity tools for freedom of expression¹⁶ and the role of ICT sector.¹⁷ While La Rue and Kaye approach their reports from the angle of freedom of expression, they are relevant for ESCRs as well. For example, for human rights defenders working in the field of ESCRs, encryption and anonymity tools are critical for those organising online, or just to secure their communications and devices from actors who want to prevent them from engaging in activism, imprison them, or worse.

A number of other Special Procedures who work on ESCRs have begun addressing issues relating to the internet. The Special Rapporteur on

the right to education, Kishore Singh, has done so most comprehensively, focusing his final report to the HRC on education in the digital age. Singh took a balanced approach to the issue, recognising both the opportunities and challenges posed by the "Digital Revolution in Education", and emphasised the digital divide both within and between societies in terms of quality, speed, infrastructure and resources such as reliable access to electricity, and device type.¹⁸ The resolution referenced above draws heavily on Singh's report. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, also examined internet dimensions of his mandate in a recent report¹⁹ in the context of cyberbullying. Pūras noted that cyberbullying "is associated with a wide range of mental, psychosocial, cognitive, educational and health problems." While the Special Rapporteur emphasised that the right to protection "extends to violence in the digital environment," he did not resort to protectionist or pro-censorship measures. Instead, he warned that "it is neither appropriate nor possible to seek to restrict adolescents' access to the digital environment" as a counter-measure. He recommends "the adoption of holistic strategies aimed at enhancing adolescents' capacities to protect themselves from online harm."

Regarding the UPR process, over 200 recommendations have been accepted by governments regarding their respect for human rights online. While a number of the recommendations relate to expanding access to the internet, which can be an enabler of human rights, most of the recommendations in the more specifically internet-related resolutions focus on civil and political rights.²⁰ It is worth noting that this follows a broader trend of ESCRs being under-represented in the UPR process.²¹

15 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

16 Kaye, D. (2015). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/29/32). www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A.HRC.29.32_AEV.doc

17 Kaye, D. (2016). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/32/38). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/38

18 Singh, K. (2016). Report of the Special Rapporteur on the right to education (A/HRC/32/37). ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/37

19 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>

20 A notable exception is perhaps a recommendation that Libya received from Bahrain to "Enhance and improve education, in particular by continuing to work towards the improvement of education through information technology." Human Rights Council. (2011). Report of the Working Group on the Universal Periodic Review - Libyan Arab Jamahiriya (A/HRC/16/15). daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/16/15&Lang=E

21 McKernan, L. (2015). Economic, social and cultural rights: Exploding myths and building consensus. Geneva: Universal Rights Group. www.universal-rights.org/blog/economic-social-and-cultural-rights-exploding-myths-and-building-consensus

How can civil society engage?

In order to participate in regular HRC sessions, civil society must either be part of an NGO with ECOSOC consultative status,²² or have an NGO with consultative status sponsor its accreditation for the session. At regular sessions, accredited NGOs can make oral interventions, organise side events, attend informal negotiations on resolution text, and meet with delegates, UN officials, and others. Aside from the sessions, there are a number of ways to contribute to the HRC's work (whether an NGO is ECOSOC-accredited or not). A number of the Special Procedures have open calls for input for their reports, or do consultations and seminars. Civil society can also submit information to the Special Procedures, which can be used for the basis of a communication from the Special Procedures to governments.²³ Likewise, any civil society organisation can participate in the UPR by submitting a stakeholder report and engaging in national-level coalition building and advocacy. For advocacy in Geneva, however, ECOSOC accreditation is required.

Opportunities for engagement

There is quite a lot of interplay between resolutions and Special Procedures that can be leveraged for advocacy at the HRC. For example, a Special Rapporteur might take a particular interest in an internet-related ESCR issue and develop a report focused on the issue which leads to a resolution including some elements of the report. The example on the right to education mentioned above demonstrates this well. The reverse can happen as well. A state or group of states can include in a resolution, or even a joint statement, a request for the relevant Special Procedure to focus on a specific aspect of their mandate. For example, a group of states, led by Cyprus, made a joint statement supporting the Special Rapporteur in the field of cultural rights Karima Bennoune's indication that she would examine the detrimental impact of the destruction of cultural heritage on the enjoyment of cultural rights. In doing so they lent their support to that initiative and elaborated on some areas the report could cover. As a follow-up, they

led a resolution on cultural rights and the protection of cultural heritage, which recognised digital preservation as an effective strategy for the prevention of cultural heritage destruction.

This GISWatch edition – both in its thematic and country reports – identifies a number of topics that could benefit from greater elaboration at the normative level, which is something that both the Special Procedures and resolutions of the HRC could certainly contribute to. An upcoming opportunity for engagement is a report from the High Commissioner on Human Rights on “ways to bridge the gender digital divide from a human rights perspective”.²⁴ Early next year, there will be an open call for input from civil society and others, and thus an opportunity to highlight the intersections between the challenges women face in accessing and utilising the internet and the barriers they face in exercising ESCRs. The gender digital gap is not simply a result of a lack of infrastructure, but relates to lack of education, lack of financial means to pay for access, lack of free time to spend time online, and societal stigma relating to women's use of technology, among others. Taking a slightly longer view, it is worth considering focusing the 2018 HRC resolution on ESCRs.

With respect to the UPR, there is plenty of scope for bringing in ESCR-related internet issues in the upcoming cycle reviews. In fact, the country-focused reports in this GISWatch edition can form the basis for a stakeholder submission.²⁵

Other relevant institutions

While this report focuses on the relevant international human rights mechanisms, it is worth noting that there are regional human rights mechanisms that can be engaged around ESCRs and the internet, as well as other international agencies that are relevant in this area. For example, the African Commission on Human and Peoples' Rights, which, like treaty bodies, is composed of independent experts, has a Working Group on Economic, Social and Cultural Rights,²⁶ which could certainly explore the impact of the internet on ESCRs in Africa. In the Americas, the Inter-American Commission on Human Rights operates as the regional human rights

22 ECOSOC consultative status indicates that the UN's Economic and Social Council (ECOSOC) has granted an NGO certain status, rights and obligations to engage with the UN. [csonet.org/index.php?menu=30](https://www.un.org/Depts/undersec/undersec/undersec.htm)

23 There are different types of communications. For example, letters of allegation for past human rights violations; urgent appeals for ongoing or potential human rights violations; and concerns relating to bills, legislation, policies or practices that do not comply with international human rights law and standards. For more information see: <https://spsubmission.ohchr.org>

24 Human Rights Council. (2016). The promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/32/13). [ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13](https://www.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13)

25 For information on how the UPR can be used to advance internet rights, see: Brown, D., & Kumar, S. (2016). Op. cit. For the calendar of upcoming reviews, see: www.ohchr.org/Documents/HRBodies/UPR/Calendar3rdCycle.doc

26 www.achpr.org/mechanisms/escr

body, also composed of independent experts. In 2014, the Commission established a Special Rapporteur on Economic, Social and Cultural Rights; however, to date this position remains unfilled. In the meantime, the Unit on Economic, Social and Cultural Rights is responsible for strengthening the IACHR's work on ESCRs.

Though beyond the scope of this report, there are a number of international organisations and specialised agencies of the UN that are doing work around trade, labour, culture, telecommunications and intellectual property, which can impact on how ESCRs are enjoyed online, such as the World Intellectual Property Organization, United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization, the International Telecommunication Union, and the World Trade Organization, among others. As Avri Doria's report in this edition of GISWatch shows, internet technical bodies also impact the exercise of human rights online.

Conclusion

As a relatively new field, engaging in advocacy at international human rights spaces can be valuable for advancing norms and awareness around ESCRs and the internet. Engaging at treaty bodies requires a long view, as just a few states are under review at each session, and not all states are party to all the human rights treaties. Likewise, general comments take multiple years to develop. Advocacy opportunities at the HRC tend to be more fluid; however, as an intergovernmental body it is a highly politicised space whose outcomes hold less legal weight with governments than treaty bodies. International advocacy has the greatest impact when it complements domestic efforts, so engaging bodies like the HRC can be a useful strategy for civil society to leverage their governments' positions at the international level to improve internet policy and regulation at home.

Economic, social and cultural rights and the Internet technical community: A snapshot

Avri Doria

Background

This report looks at Internet technical community (or I-star)¹ organisations and the extent to which they consider the human rights framework in their work. It builds on the Association for Progressive Communications (APC) issue paper *How the technical community frames the Internet and economic, social and cultural rights*.² The I-star organisations are the main entities concerned with Internet³ architecture, protocols, names and numbers, and each has operational policies and guidelines to manage these resources. These resources form the basis of the Internet: the numbers, along with the protocols that use them, make up the critical infrastructure resources without which the Internet could not function.

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that:

Each State Party to the present Covenant undertakes to take steps, [...] 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 [...].

Of course the I-star organisations are not governments. Neither are they international governmental organisations nor are they regulators, though some of them are sometimes confused for such.

When trying to define the responsibilities of the non-state actors, the UN Guiding Principles on Business and Human Rights is the next touchstone:

These Guiding Principles are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.⁴

From an overview perspective, (b) and (c) above are applicable to the I-star organisations. Yet these organisations, essentially NGOs, are not governed in the same way as businesses nor by the profit-making incentives that motivate business. While work is ongoing in organisations like Internet Corporation for Assigned Names and Numbers (ICANN) to see if, and how well, these principles can be applied within Internet management and governance, they are not an easy fit.

While not duty bearers in a classical sense, the centrality of Internet technology in much of the work being done to enable ESCRs gives I-star organisations a responsibility that goes beyond the responsibilities borne by companies and individuals. An argument that originated with Broeders states that “we must find ways to continue guaranteeing the overall integrity and functionality of the public core of the Internet.” He argues that the best way to do this is by declaring the technical infrastructure of the Internet – which includes the Internet, or TCP/IP protocol suite,⁵ numerous standards, the domain name system (DNS), and routing protocols – a common public good.⁶

1 The technical organisations, including the Internet Society, the Internet Engineering Task Force (IETF), the Internet Corporation for Assigned Names and Numbers (ICANN) and the Regional Internet Registries (RIRs), are often referred to as I-star, sometimes written I*.

2 Doria, A. (2015). *How the technical community frames the Internet and economic, social and cultural rights*. APC. <https://www.apc.org/en/pubs/how-technical-community-frames-Internet-and-econom>

3 While it is the policy of the Association for Progressive Communications (APC) not to capitalise “Internet” as a step towards demystifying the term, the author argues that it is a proper name and needs to be capitalised. This report thus follows the author’s preference.

4 Office of the High Commissioner for Human Rights. (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (HR/PUB/11/04). www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

5 For a description of the Internet protocol suite see: https://en.wikipedia.org/wiki/Internet_protocol_suite

6 <https://www.ietf.org/id/draft-irtf-hrhc-research-oo.txt> (work in progress)

As a global multistakeholder entity, the Internet and those who serve as its stewards have their responsibilities; responsibilities that are not yet understood explicitly, but which are expressed in various ways. An avenue of research that has opened up recently involves looking at the work done by John Ruggie on the international football association FIFA and human rights for applicability to ICANN. Ruggie's work builds on the Guiding Principles on Business and Human Rights and answers "what it means for FIFA to embed respect for human rights across its global operations."⁷ The work of applying this to Internet organisations has yet to be done, but one can assume that there will be parallel and relevant considerations, given some of the similarities between organisations that are not businesses, but are responsible for a major human activity. Of course FIFA is not a multistakeholder organisation, so the organisational elements are quite different. It is possible that it would take similar work, done expressly on guidelines for NGOs that manage common public goods, to define a usable set of guidelines. This work is needed to make the Guiding Principles less about commerce and product chains and more about the work that NGOs do when working with people-centred issues.

The Internet, and access to the Internet, is a major component of any project focusing on ESCRs these days. So any work done with regard to the architecture or protocols of the Internet needs to be seen in the light of its contribution to or impediment of ESCRs. This is also the subject of research being done in the Internet Research Task Force (IRTF),⁸ though that work is still focused on civil and political rights (CPRs) such as expression and assembly, and has not yet moved on to work on ESCRs.

In 2015 the paper *How the technical community frames the Internet and economic, social and cultural rights*⁹ discussed I-star organisations and the fact that their missions rarely include human rights, whether CPRs or ESCRs. As the paper suggested, however, the lack of explicit mention did not mean that the concerns were absent or ignored; it just meant that it was rarely an explicit goal of the technical organisations, though it could be understood as tacit in the mission of the various organisations.

This report is based on personal observations, often as a participant, in the organisations described. Professionally I split my time between

being involved in research in the technical community and participation in APC and other advocacy efforts.

Organisations

The I-star organisations function using a variety of multistakeholder models, each organisation having its own variation of the model, usually developed through the bottom-up activities of its participants.

Internet Corporation for Assigned Names and Numbers (ICANN)

ICANN's bylaws state the following:

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets.¹⁰

ICANN is skittish when it comes to human rights. Not only the corporation itself, but many of those who participate in its policy making. Some are afraid that it will interfere with their business plans, others are afraid that it may make their companies liable for their behaviour. For example, ICANN is concerned about the effects on sovereign considerations when assigning country code top-level domains, which are organised along national lines. During the recent work done on the transition of stewardship of the Internet Assigned Numbers Authority (IANA), the technical organisation that maintains the databases of critical Internet resources, there was an attempt to include the simple respect for human rights as one of the organisation's core values. After extensive discussion, this was not fully possible. Instead they put in the shell of a bylaw, one that only gets activated after a framework of interpretation is created to explain what is meant by respect for human rights at ICANN. The Universal Declaration of Human Rights (UDHR) is not good enough, neither are the International Covenants on CPRs and ESCRs good enough, and the Ruggie UN Guiding Principles are anathema. None were good enough because of fears, uncertainty and doubt that they might be used inappropriately to bring suit against the organisation or be used to cut into profits or to disturb intellectual property "rights". Often these arguments are cast as a necessity to prevent ICANN

7 Ruggie, J. (2016). "For the Game. For the World." *FIFA and Human Rights*. https://www.hks.harvard.edu/content/download/79736/1789834/version/1/file/Ruggie_humanrightsFIFA_reportApril2016.pdf

8 <https://irtf.org>

9 Doria, A. (2015). Op. cit.

10 Bylaws for Internet Corporation for Assigned Names and Numbers. <https://www.icann.org/resources/pages/governance/bylaws-en>

mission creep, and though there are some genuine concerns about expanding the scope of ICANN's mission, this was not always the case.

The new bylaw recently adopted by ICANN requires that there be respect for human rights in the actions it takes:

1.2 (b) viii within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

Some wanted a bylaw that just dealt with freedom of speech – but there was serious concern that rights not be cherry picked and that all rights be included, which would include ESCRs. On the other hand the concern about ICANN mission creep, and any application of human rights that would be content-related (e.g. restrictions of freedom of expression),¹¹ was strong. Any rules concerning content are specifically defined as outside the mission of ICANN:

1.1 (c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

ICANN conversations have never gotten so far as to discuss ESCRs specifically. One can assume that any commitment to respect human rights would need to include respect for ESCRs. And it might, as long as it does not call for actions that go beyond the scope of ICANN, i.e. that there should not be any mission creep in support of human rights.

The question then becomes, what aspects of ESCRs are within ICANN's remit? This is a discussion that is ongoing at ICANN. In a sense, ICANN may never do anything direct to support ESCRs, yet can still support ESCRs through its operational activities.

Regardless, the Internet is important to ESCRs and ICANN plays a key role in the Internet and in making it possible for people around the world to gain access. And there are areas where it is fitting

that ICANN play a role in helping to secure ESCRs. For example, one of the major efforts that ICANN has engaged in is the deployment of Internet naming that uses international domain names (IDNs) that are expressed in scripts other than ASCII, and languages other than English. Giving people access to the Internet in their own languages is one of the major underlying requirements for ESCRs on the Internet. ICANN has a peculiarly named programme, Universal Acceptance, dedicated to working with developers, vendors, Internet service providers (ISPs) and all other intermediaries to make sure that the Internet not only works in ASCII/English, but works in the diversity of scripts and languages. If people cannot use the Internet in languages and metaphors that they understand, it cannot be fully supportive of any of the ESCRs. Access includes the ability to understand the content.

Internet Society (ISOC)

The vision of the Internet Society is that “the Internet is for everyone.” Its mission is “to promote the open development, evolution, and use of the Internet for the benefit of all people throughout the world.”¹²

Unlike ICANN, ISOC considers human rights relevant to its mission. ISOC projects centre around the promotion of technology, access, the creation of Internet exchanges (IXPs) for the localisation of data, and training for network operations. Its governance work tackles many issues, including access, children and Internet, online identity, Internet addressing including IPv6, and net neutrality.¹³ It works within all the major Internet governance bodies, not only providing excellent analysis to the community, but by providing funding and co-operation on projects that increase access to the Internet.¹⁴ It is also a significant contributor to global Internet education and policy development:

We focus on local actions and global diversity, bringing together Members, Chapters and partners to enable open and widespread access to one of the greatest avenues for human innovation, creativity, and expression in recent history: the Internet. Our Regional Bureaus lead the Internet Society's mission. They undertake and support initiatives in each of the regions and advise Internet Society departments on policy, politics, technology and culture-related issues which impact our work.¹⁵

11 Or First Amendment rights as it is often termed in US-based discussions.

12 www.Internetsociety.org/who-we-are/mission

13 www.Internetsociety.org/what-we-do/Internet-issues

14 www.Internetsociety.org/what-we-do

15 www.Internetsociety.org/what-we-do/where-we-work

While ISOC does not specifically focus on ESCRs, it focuses on the enabling technologies that help to realise ESCRs. There is, however, a direct connection to ESCRs in the number of educational programmes ISOC provides on best practices and technical aspects on the creation of exchange points. ISOC efforts have been critical in establishing IXPs throughout the developing world, increasing local access within these regions of the world.

Internet Engineering Task Force (IETF)

As an engineering group the IETF is an independent standards development organisation. Its procedures are, however, accountable to the ISOC Board of Trustees.

The mission of the IETF, though protocols and architecture improvement, is “to make the Internet work better. And when the Internet works better, everyone benefits.”¹⁶ The idea that everyone benefits, including with respect to ESCRs, is a fundamental belief of those who work on Internet protocols and architecture. In a sense, the IETF provides the blueprint for the Internet infrastructure that allows for all the benefits of Internet communication. In so far as ESCRs rely on Internet technology for implementation, the IETF has a role in defining the technical capabilities that enable those technologies and applications. Without the continual development of new capabilities through new and improved interoperable protocols, the Internet could not progress in its outreach to the world in the service of ESCRs.

Internet Research Task Force (IRTF)

The IRTF’s role is defined as follows:

The Internet Research Task Force (IRTF) promotes research of importance to the evolution of the Internet by creating focused, long-term Research Groups working on topics related to Internet protocols, applications, architecture and technology.¹⁷

Two groups are specifically working on human-rights related issues: the Global Access to the Internet for All Research Group (GAIA) and the Human Rights Protocol Considerations Research Group (HRPC).

GAIA’s aims include:

- To create increased visibility and interest among the wider community on the challenges and opportunities in enabling global Internet access,

in terms of technology as well as the social and economic drivers for its adoption.

- To create a shared vision among practitioners, researchers, corporations, non-governmental and governmental organisations on the challenges and opportunities.
- To articulate and foster collaboration among them to address the diverse Internet access and architectural challenges (including security, privacy, censorship and energy efficiency).¹⁸

GAIA’s work grows out of surveys done by ISOC in 2012 that showed that many consider Internet access a human right. Given the persistence of the digital divide, however, Internet access remains unavailable to approximately half of the world’s population. In this regard, the work in GAIA contributes directly to the realisation of ESCRs using the Internet.

The HRPC research group focuses on the study of “whether standards and protocols can enable, strengthen or threaten human rights.” The three main aims of the research are:

- To expose the relation between protocols and human rights, with a focus on the rights to freedom of expression and freedom of assembly.
- To propose guidelines to protect the Internet as a human-rights-enabling environment in future protocol development (...).
- To increase the awareness in both the human rights community and the technical community on the importance of the technical workings of the Internet and its impact on human rights.¹⁹

The HRPC is currently working on the release of its first research document explaining linkages between protocols and human rights.²⁰

The Regional Internet Registries (RIR)

There are five Regional Internet Registries (RIRs) that manage the distribution of Internet number resources including IP addresses and autonomous system numbers. Each RIR consists of the Internet community in its region.²¹ The registries per region are AFRINIC in Africa, APNIC in the Asia Pacific region, ARIN in North America, LACNIC in Latin American and the Caribbean, and RIPE NCC in Europe and the Middle East.

Each RIR is an independent organisation with direct accountability to the Internet community

¹⁶ Alissa Cooper, a member of the Internet Engineering Task Force, celebrating and reflecting on the IANA stewardship transition, 1 October 2016. <https://www.facebook.com/alissacooper/posts/10102572226539193>

¹⁷ <https://irtf.org>

¹⁸ <https://irtf.org/gaia>

¹⁹ <https://irtf.org/hrpc>

²⁰ <https://datatracker.ietf.org/rg/hrpc/documents>

²¹ <https://www.nro.net/about-the-nro/regional-Internet-registries>

in its region. While they self-coordinate with an organisation called the Numbers Resource Organization (NRO),²² they are not governed by that body. Likewise, while the number resources they receive are assigned by IANA, there is no oversight in this respect.

The RIRs are tasked with making sure that IP addresses are available, as needed, in their regions. Every device, subnet and network needs at least one IP address, and often times many more. Autonomous system (AS) numbers are used in Internet routing and define routers along the forwarding path. All traffic in the Internet follows a forwarding path. They are a basic component of the routing of data that makes the Internet possible.

In fulfilling their task, the RIRs are responsible to ensure the possibility of spreading Internet technology to all of the world's people. There is no Internet access without IP addresses. There is no new Internet service provider without an AS number. If the digital divide of developing regions of the world is to be removed, the RIRs need to provide this basic addressability, the ability of each person, machine, object or service accessed on the Internet to be directly addressed in a unique manner.

The least well known of the I-star organisations, the RIRs are in many ways the most critical to Internet growth. In recent years, one of the major goals of the RIRs has been the global deployment of IPv6. The current Internet architecture requires that each endpoint, that is each computer or service, have its own address. The original addresses of the Internet, IPv4, have become more difficult to obtain since so few free ones remain for RIR distribution. The RIRs, therefore, have been leading the effort to see that IPv6, with its much, much bigger address space, is deployed globally. While they do a lot of capacity building and engage in many activities, this deployment of IPv6 is quite possibly the most critical thing they do for ensuring that the Internet is accessible, and as a result can be used in the fulfilment of ESCRs.

Other entities

In addition to the organisations listed above, there are other organisations that have not been included in this report. Specifically these are the Institute of Electrical and Electronics Engineers (IEEE),²³ a membership organisation responsible for many of the protocols that are used in the infrastructure

sitting under the Internet protocols, and the World Wide Web Consortium (W3C),²⁴ a membership organisation responsible for many of the protocols and guidelines that run over the Internet architecture and make the web possible. As part of the Internet infrastructure, they too are key to providing an Internet that can be used in the service of ESCRs.

Conclusion

When looking at the ESCRs and looking at global development goals such as the Sustainable Development Goals (SDGs), it becomes clear that access is still the entry point for the realisation of ESCRs online. While the SDGs have largely ignored information and communications technologies (ICTs), analysis done by the International Telecommunication Union (ITU)²⁵ shows how each of these goals can be enabled by some aspect of ICT and the Internet. Digital Watch puts it this way: "Access to ICTs is part of the Sustainable Development Agenda, which commits to 'significantly increase access to ICTs and strive to provide universal and affordable access to the Internet in least developed countries by 2020' (Goal 9.c)."²⁶

Access in this context needs to be defined beyond just the wires and the bits to the house or mobile devices. People need addresses and the RIRs are working to make sure they have them. People need communication in scripts and languages they can understand, and the IETF as well as ICANN are working on this: ICANN's Universal Acceptance programme is an effort make sure that the Internet works not only in ASCII/English, but in the diversity of scripts and languages. People need local information and need to be able to get that information without the need to access their local information through routers in countries on the other side of the world: ISOC is working hard on IXPs to make this local access possible.

The people who work in the Internet technical community organisations genuinely believe in their goal of a single global Internet that reaches all people, making its service accessible to all people, always. This is a first and most crucial step in resolving the digital divide, which in turn leads to enabling ESCRs with the assistance of the Internet.

22 <https://www.nro.net>

23 <https://www.ieee.org>

24 <https://www.w3.org>

25 WSIS-SDG Matrix: Linking WSIS Action Lines with Sustainable Development Goals. www.itu.int/net4/wsis/sdg

26 digitalwatch.giplatform.org/issues/access

Visualising human rights at ICANN

Niels ten Oever

ARTICLE 19, Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights (CCWP-HR)

The Internet Corporation for Assigned Names and Numbers (ICANN) is a non-profit organisation incorporated in California, established in 1998. It is responsible for the stable and secure operation of the Internet. Its work revolves around the management, operation and technical maintenance of the databases concerning both Internet “names” and “numbers”.

In non-Internet speak, ICANN functions as the telephone book of the Internet by connecting domain names to their respective Internet protocol (IP) addresses. For example, when you type a URL into your browser, like <https://www.article19.org>, that is not actually the address of the web server. The domain name system (DNS) allows the translation between the URL and the actual IP address. This is done because people are much better at remembering words than numbers like IP addresses, which look like this: 85.118.235.222.

ICANN's work coordinating the policy making and distribution of domain names and IP numbers has a direct impact on human rights. There are many examples of ICANN's work impacting on human rights. Think, for instance, about the allocation of generic top level domains (gTLD). Who gets to have the gTLD .amazon? Is it the Brazilian government, through whose territory streams the Amazon River, or is it the Seattle-based company? Or the .gay gTLD? And what about the privacy issues related to the WHOIS database, the ICANN database that keeps records of who registers which domain name and can be queried by anyone?

It is clear that ICANN has an impact on human rights through many of its processes and policies. But considering the complicated nature of ICANN, it is often difficult to see where and how these impacts play out. Because of this, the Cross Community Working Party on Human Rights (CCWP-HR) – founded and chaired by ARTICLE 19 – decided to map ICANN and present its findings in this data visualisation.

The initial scoping led to the identification of various ICANN policies or processes that might have a human rights impact. These were further analysed to identify various overarching themes, and from these themes seven rights directly involved in the ICANN work were distilled.

The purpose of the infographic is to make visible how ICANN impacts human rights, both for the ICANN community and the broader public.

One of the main issues hindering new voices – especially civil society voices – from being heard at technical bodies like ICANN is the amount of jargon, technical know-how and understanding needed to participate in the different procedures. With this visualisation we hoped to make ICANN more accessible and understandable for all those interested in the relation between its work and human rights.

ICANN POLICIES AND HUMAN RIGHTS

ICANN
The internet Corporation for Assigned Names and Numbers (ICANN) is a not-for-profit organization that is responsible for coordinating the global DNS system of domain names and IP numbers. It therefore is often dubbed as the "Yellowbook of the Internet".

- ICANN GLOSSARY**
- DANE**: DNS-based Authentication of Named Entities
 - DNDW**: Defined conditions of non-disclosure
 - DIP**: Documentary Information Disclosure Policy
 - DNSSEC**: Domain Name System Security Extensions
 - GAC**: Governmental Advisory Committee
 - GNIS**: Generic Names Supporting Organization
 - gTLD**: Generic top-level domains
 - ICNL**: Internationalized Domain Names
 - ICANN**: Internet Corporation for Assigned Names and Numbers
 - INDO**: Internationalized New gTLDs
 - IPAP**: Intellectual Property Rights
 - IPAP**: Intellectual Property Rights
 - IPAP**: Policy Development Process
 - RDPAP**: Regional data access protocol
 - RPMH**: Rights Protection Mechanisms (as related to Intellectual Property Rights)
 - WHOIS**: An internet service that provides information about a domain and its IP address

Scoping the relation between ICANN and Human Rights

This illustration has been produced by the CIVICUS Community Watch Party on ICANN's Corporate and Social Responsibility Strategy (October 2014).

HUMAN RIGHTS PRINCIPLES
Inherent human rights derive from the humanity of each person.

UNIVERSAL: All human beings have the same rights.

INDIVISIBLE: Human rights extend to groups and individuals. There are no conflicts between rights and no priorities among rights. There will be no progress in one area of rights unless there is progress in other areas. The balance and protect decisions taken about how all rights can best be protected and promoted.

INTERDEPENDENT AND INTERRELATED: All individuals are equal in human beings and by nature have equal rights and responsibilities.

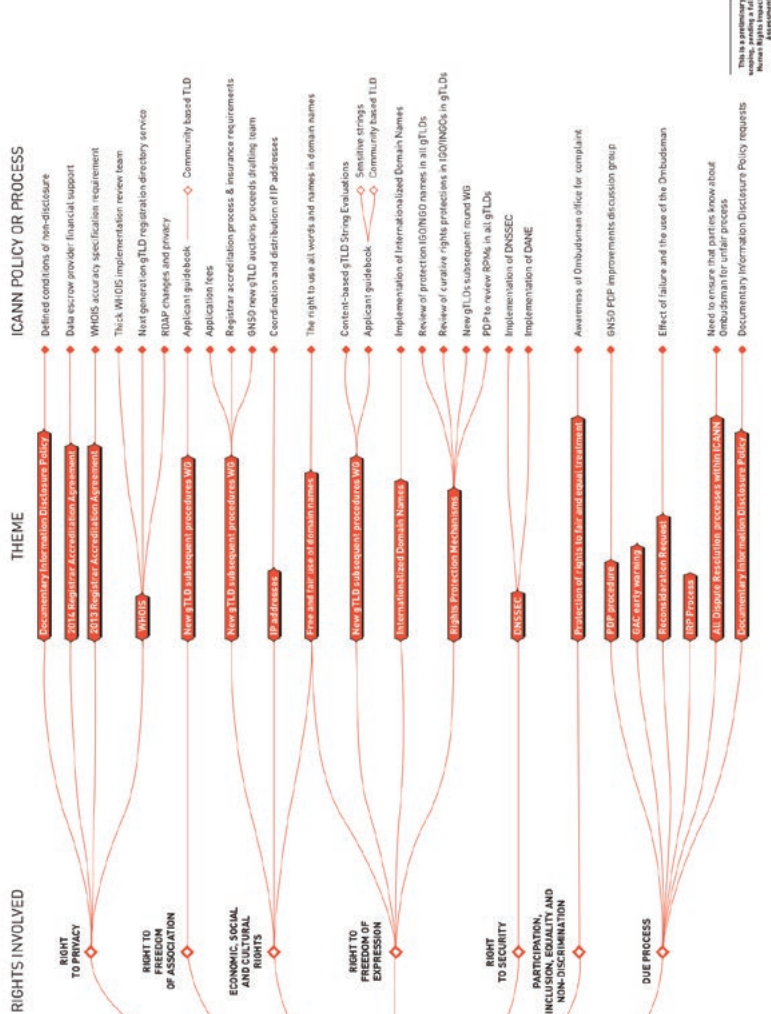
EQUALITY AND NON-DISCRIMINATION: All individuals are equal in human beings and by nature have equal rights and responsibilities.

PARTICIPATION AND INCLUSION: All individuals have the right to participate in one or more processes that affect their lives and well-being.

ACCOUNTABILITY AND RULE OF LAW: States and other duty-bearers are accountable for the

observance of human rights. In this regard, they have a responsibility to ensure that their actions are not in violation of international human rights instruments.

Universal Declaration of Human Rights



Source: ICANN
This graph can be downloaded from https://community.icann.org/download/attachments/53772653/article19_ICANN_1706_reviewed.png?version=1&modificationDate=1466841961000&api=1v2

Country reports



Introduction

Alan Finlay

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). As in previous years, authors were asked to select what they considered an important issue to discuss in their reports – and, as a result, the topics covered here can be thought of as indicative of at least some of the key possibilities and challenges facing countries when it comes to using the internet as an enabler of ESCRs. Some of these 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 using ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as participatory community mapping of services, institutions and landmarks in Spain, the negative impact of algorithms on calculating social benefits in Poland, crowdfunding, or the use of 3D printing technology to preserve cultural heritage. Workers' rights receive some attention, as does the use of the internet during natural disasters. The reports also suggest that in many instances – whether in mapping their immediate surroundings, starting an online TV station, or resuscitating a national museum – individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or even censure by the state.

An anxiety around the fate of local and indigenous languages – an issue that is both political and practical – can be felt in countries such as Nigeria, Peru and Argentina. In Nigeria, where “[u]p to 400 minority Nigerian languages are considered endangered, with 152 of them at risk of extinction,” the official language is English – both the language of colonisation and, in that country, predominantly of the internet. As Fantsuam Foundation writes: “The level of internet access available to communities who speak marginalised languages is not reported on in Nigeria’s access statistics. However, if we consider the sizes of the population groups that speak

endangered languages, and that many of these groups live in rural areas and cannot speak English, we can guess that internet access is low.”

The Pontificia Universidad Católica del Perú describes the structural exclusion of indigenous groups as “linguistic discrimination” – a discrimination that Peru’s online phonetics project Mapa Sonoro, literally a “Sound Map”, tries to challenge. The project is an attempt to give visibility (or “audiobility”) to marginalised languages for educational purposes – there are 47 indigenous languages spoken by as little as 14% of the population today. However, as the authors suggest, it is one thing providing access to a knowledge base of languages online, but another if people actually end up using the resources – only some 5,000 visitors have used the site in over a year (go there now, it is excellent: www.mapasonoro.cultura.pe).

In a useful first-hand analysis of the Qom indigenous people living in Los Pumitas outside Rosario in Argentina, Nodo TAU finds that 8.5% of this urbanised community cannot read or write in Spanish. This requires sensitive facilitation in community e-literacy workshops: “Those who do not use the computer as a tool, who can’t recognise letters or form words, can easily be ashamed by those who do, and who work faster.” As the authors also found, visibility is one thing, but sustained visibility that results in ongoing socioeconomic agency for indigenous communities is another. “Everything always costs us more and more,” says Oscar Talero, a Qom living in Los Pumitas. “The culture is here, in the territory, the language, our customs; we have shamans, healers, midwives in the community. We have all that. We want to work with the state and they have to give us sustainability. If they do not, what we propose cannot be done and cannot be seen.”

The issue of local languages is picked up in Macedonia’s country report, which points to the absence of a local-language curriculum in the state’s e-education programme. Country assessments of state programmes in schools are largely critical, and in some respects despairing. They are described as “slow” (Kenya) or in the case of Kosovo, a “story of lost opportunities”. While KICTANet

suggests a more upbeat perspective is necessary – “the country’s youth are not sitting around waiting for laptops to arrive in the classrooms... they have [already] colonised devices” – in Macedonia, the Computer for Every Child programme is a “prime example that shows that simply adding computers and internet to an outdated curriculum does not result in a modern teaching practice and curriculum – it just results in an outdated curriculum with computers and internet.”

One exception is Uruguay’s Ceibal programme which, despite the obstacles it faces, has managed to connect over 50% of the country’s poorest households to the internet. The programme offers an interesting example of how an e-education initiative can be used to enable the socioeconomic rights of communities generally, and how education policies can speak more broadly to social inclusion.

Several country reports focus on the right to health. In the Philippines, although the Aquino government “recognised public health as a key measure of good governance,” challenges in its e-health interventions persist, including “data manipulation by healthcare workers, system compatibility between agencies, and data portability.” It is unclear if these will be remedied under the country’s new regime, preoccupied with its war on illegal drugs and encouraging vigilantism against addicts rather than building rehabilitation centres. “Public health,” writes the Foundation for Media Alternatives, “does not appear to be a major concern.”

In Venezuela, a country wracked by food and medicine shortages, stories have emerged of citizens forced to barter medicines using social media in a desperate attempt to secure critical drugs (as one commentator put it, “social networks are the new pharmacy in Venezuela”). EsLaRed reports that shortages in medicines are as high as 85%, and costs for some drugs have risen 75%. In its response, the government – which has largely denied that a crisis exists – has set up centralised database systems linking supermarkets and pharmacies in order to monitor and control the supply and purchase of medicines and to limit hoarding.

An interesting programme has been launched in Uganda with the aim of providing rural communities a voice when it comes to their sexual and reproductive health rights. So-called community health advocates are recruited, equipped with smartphones, and trained in the country’s legal and policy health rights framework, as well as in the effective use of social media. According to the Initiative for Social and Economic Rights, government community forums (Barazas) are ineffective in providing a

platform for health concerns. The community health advocates offer some measure of accountability in a context where “Ugandans, especially those in rural communities, rarely challenge the status quo.”

Gender rights are reflected in a number of country reports. In South Africa, a capabilities survey by Research ICT Africa suggests that “women are showing more inclination towards becoming economically empowered and seem to identify the internet as a medium that can allow them to achieve this.” Cooperativa Sulá Batsú usefully identifies key success factors in establishing a rural tech hub in the northeast of Costa Rica. While benefiting the community as a whole, the author suggests it has specific value in empowering rural women socioeconomically. In Yemen, two women – Safa’a and Afnan – have managed to keep their online cake business going despite the war in that country which forced many others to shut down their businesses: “The war has impacted on our business severely. Exported material we used for our products has doubled in price... [L]eaving the house to get decoration items... has become difficult given the state of insecurity.” As a counterpoint, the authors of the report from Turkey ask whether the oft-cited idea that the internet empowers women through the employment and entrepreneurial opportunities it offers is in fact an “illusion”, and the new ways of working opened up by the internet serve to “trivialise significant principles such as ‘affirmative action’.”

The rights of workers and rights in the workplace also receive some attention. In Cambodia, the plight of women garment factory workers has received international recognition because of the internet campaigning by human rights organisations: “More and more consumers are critically rethinking the consequences of fast and cheap fashion.” This has placed significant pressure on the government and the industry in the country – the minimum wage for garment factory workers has more than doubled over the past five years, and, the author argues, social media has played an important part in that.

While Panama suggests how a lack of regulation of the telework sector allows for the exploitation of teleworkers, in the Democratic Republic of Congo outsourcing in the telecommunications sector has had a negative effect on workers’ rights, allowing service providers to exploit the labour force. In the words of one telecoms employee, who was given the ultimatum of being re-employed by an outsourcing company or losing his job, “There was no choice. I needed a salary to sustain my family. So I continue doing the same job, with the same uniform, but receiving less money overnight.”

The Seychelles offers an example of how many unions are underutilising the internet to secure workers' rights and boost their own visibility. The Seychelles Federation of Workers' Unions is "thinking about starting a Facebook page," but this is tentative – social media, as one unionist suggested, is "3.5 million HR accidents waiting to happen."

Some country reports explore relatively new areas of technology and its application. In Syria, large-scale 3D printing and digital imaging are being used to document and replicate cultural heritage destroyed in the war. An open content approach underpins several of the heritage projects in the country: "By releasing these artefacts under permissive licences... the space for innovation is significantly widened. This openness will also assist the efforts to restore and reconstruct the actual [heritage] sites in Syria when the war ends." In an interesting report, Panoptikon Foundation discusses how algorithms used to calculate social benefits in Poland – in a system ironically named Emp@thy – disempower the beneficiaries. Exactly how the benefits are calculated remains opaque, even to civil servants, and beneficiaries are strictly limited in their opportunities to ask for a recalculation or to challenge the results:

The criteria according to which a certain profile of assistance is attributed to a person remains unknown to the unemployed throughout the whole process of profiling. They remain unclear even to the staff involved in this process. The unemployed are also deprived of the right to obtain information about the logic behind profiling; in particular, they cannot verify how certain features affected the profile of assistance that was attributed to them.

A striking thread runs through many of the reports: how the internet enables citizen-led initiatives that claim socioeconomic and cultural rights in the face of state disinterest, inactivity or even repression. Community networks set up as part of the CitizenSqKm project in Spain, for example, allow citizens to map an "inventory of the 'things' in their neighbourhood, including institutions, services, historical landmarks and natural surroundings." It is a political-participatory process of reclaiming public data, information, and knowledge and increasing civic engagement in a context of growing austerity and state control. In Ukraine, crowdfunding ensures the sustainability of Hromadske.TV, an independent internet TV station started by "15 young Ukrainian journalists", while in Lebanon, the

crowdfunding of social projects by the Lebanese diaspora "can give Lebanese a way around official government dysfunction and corruption":

It also shifts the power dynamics – not just to wealthy Lebanese abroad, but to ordinary Lebanese citizens who can put their own hard-earned money towards causes they believe in rather than through government channels or those offered by big financial institutions. Crowdfunding can instill important liberal values like individual initiative, transparency, accountability and entrepreneurship.

The internet is a rich enabler of these forms of non-institutional processes, interventions and action – whether by consumers appalled by the working conditions of women in factories in Asia, or indigenous people opening a telecentre in their community. Even the cultural heritage reclamation in Palmyra was the result of the frustration of "archaeological experts, volunteers and activists" who saw the heritage being destroyed.

The internet, as the country reports show, has the potential to turn the latent need for participation and social inclusion into a kinetic enactment of rights.

In Bosnia and Herzegovina – a "society in perennial conflict over the recent past, and feverishly busy re-writing history to better serve ethnic divisions" – citizen volunteers re-opened the National Museum following state disinterest in allocating resources for its ongoing operation, a result of the "divisive framing of what 'national' means, and reflecting the tensions between the dominant ethnic groups." One World Platform argues this experience gave citizens a tangible sense of what it means to have rights:

In terms of the definition of state as "duty bearer" we can say that the revitalisation of the museum exposed the state for its incapacity and unwillingness to mobilise resources to protect the cultural rights of people in Bosnia and Herzegovina. The people working on the project experienced what it meant to be "rights holders" and were empowered to engage as individuals with rights in order to protect and promote their access to culture. The internet enabled their empowerment, and helped to expose the state's lack of political will.

It is with this in mind that we hope you find the following country reports – whether they offer cause for optimism or sound a cautionary note – thought provoking, challenging and a catalyst to action.

ALBANIA

USING THE INTERNET TO SECURE THE RIGHTS OF ROMA AND EGYPTIAN COMMUNITIES IN ALBANIA



KEYWORDS: **vulnerable groups, socioeconomic rights**

Civil Rights Defenders

Vasilika Laçi
www.crd.org

Introduction

The treatment of vulnerable groups is problematic in Albania. Discriminatory attitudes and practices prevail against the Roma and Egyptians, the lesbian, gay, bisexual and transgender (LGBT) community, and women. A UNDP study described Roma and Egyptian communities as caught in extreme intergenerational poverty caused by interconnected difficulties in accessing healthcare, education and the formal employment market. They face considerable barriers from state institutions that systematically discriminate against them. The study found many suffer mental health issues due to instability in their lives, caused for example by forced evictions, and despair at a future without hope.¹

Efforts have been made by the government in Albania to improve policies to achieve what the government calls the “first step toward a digital revolution”.² But have all these efforts bridged the gap between governance and participatory decision making?

In this report we briefly consider the legal and policy framework regarding the involvement of citizens and vulnerable groups in decision making. We particularly look at the inclusion of the Roma and Egyptian communities in Albania and the efforts of an activist group to make use of the internet for creating visibility, for holding politicians accountable and for setting the agenda on issues of key concern, including their socioeconomic rights.

Policy and political background

Albania has made progress in improving internet infrastructure and accessibility.³ The government digital agenda works in three main ways: firstly, to enhance digital services for citizens and businesses; secondly, the widespread introduction of services in education to overcome the digital divide and to empower the youth; and thirdly, the consolidation of digital infrastructure in the entire territory of Albania.⁴ The most visible outcome is the citizen-centric service delivery model established in 2014 that aims to digitalise and consolidate various services.⁵ Internet policies include detailed provisions for open standards, but in reality very few of the platforms use anything other than proprietary software. According to an internet expert, the government is more concerned with making deals with private business than investing in making the internet a tool for participation and engagement.⁶

Two important laws that are meant to increase citizen participation and transparency in Albania are the Law on Public Notification and Consultation⁷ and the Law on Access to Information,⁸ which in theory provide a sound basis for increasing the involvement of citizens in policy formulation. Both laws foresee the use of the internet by the public to register complaints, send requests or get access to draft laws. However, while the website that will allow this online consultation is being developed, it had not yet been launched by September 2016. The new laws come with old actors. Many of the persons responsible for implementing the access

1 Dauti, M. (2015). *The Social Exclusion Profile of Roma and Egyptians*. UN Support to Social Inclusion in Albania Programme, UNDP. www.al.undp.org/content/albania/en/home/library/poverty/the-social-exclusion-profile-of-roma-and-egyptians.html

2 Ministry of Innovation and Public Administration. (2015). *Cross-cutting Strategy for a Digital Agenda in Albania 2015-2020*. www.inovacioni.gov.al/files/pages_files/Digital_Agenda_Strategy_2015_-_2020.pdf

3 Internet users comprise 62.7% of the population, and of these, 71.3% or 1.3 million people use Facebook. Unfortunately, there is no data available disaggregated by gender or age. In 2016, Albania was ranked in 82nd place out of 193 countries worldwide on the E-Government Development Index, up from 86th place in 2014. See: United Nations. (2016). *E-Government Survey 2016*. workspace.unpan.org/sites/Internet/Documents/UNPAN96407.pdf

4 Ministry of Innovation and Public Administration. (2015). Op. cit.

5 Through the establishment of the open data portal as part of the one-stop service portal: www.e-albania.al

6 The deal made by the government with Microsoft put the corporation in a very favourable and near monopolistic position with regards to the technical backbone for government service delivery. Interview with Redon Skikuli, 25 August 2016.

7 www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/178-2014.pdf

8 www.qbz.gov.al/botime/fletore_zyrtare/2014/PDF-2014/160-2014.pdf

to information law or the law on public consultation have a Stalinist mindset – they think information is power that should be kept by them.

Albania ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1991. The first report was planned for 1999 and presented in 2005, the second and third were presented together in 2010 with a one-year delay, and the fourth report is planned for November 2018.

In one final recommendation, the Committee on Economic, Social and Cultural Rights (CESCR) expressly refers to Roma and Egyptian social and economic rights in the following way:

The Committee recommends that the State party guarantee access of Egyptians and Roma to procedures for birth registration and personal identity documents through steps such as exempting families who are marginalized and living in poverty from payment of fees for birth registration and identity documents. In this regard, the Committee also draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.⁹

And also:

The State party is encouraged to recognize communities with specific identities, especially Bosnians and Egyptians as national minorities, in accordance with applicable international standards, so that their members can benefit from the enjoyment and protection of minority rights.¹⁰

Roma and Egyptian activists in Albania: Speaking together in a louder voice

The situation for Roma and Egyptians has seen little improvement, apart from the fact that Roma and Egyptian human rights defenders are becoming more vocal and visible.

One of the most vibrant groups is the Roma and Egyptian Activism group. In 2013, the group, composed of Roma and Egyptian activists from different cities, created a Facebook group called Aktivizmi Rom dhe Egjiptian.¹¹ The group is a platform for sharing issues and concerns and for mobilising communities with the aim of increasing respect for

the human rights of Roma and Egyptian people. It works in various cities in Albania to mitigate the problems faced by these communities in the areas of access to justice, housing, education, civil registration, employment and social protection, among others. Because the activists come from the Roma and Egyptian communities, they have first-hand insight into the problems faced.

The Facebook group was important for various reasons. Getting the Roma and the Egyptians to speak in their own voices has been crucial for their empowerment, as these communities are generally left out of public conversations. The problem with the recurrent public discourse is that it sees the Roma and Egyptians as mainly victims rather than agents of change. Their involvement in public conversations is tokenistic, in the sense that the mere presence of a single Roma who speaks up at conferences is used to claim that consultation with this group has been done. Often, consciously, officials put on this “consultation show” to fulfil a legal obligation, but also to meet the expectations of donors because it is one of the conditions of international projects.

Transparency in key decision-making processes in the public sector remains a challenge in Albania. Despite the two laws mentioned above, problems persist – especially given that the authorities are slow in putting in place mechanisms to implement the laws. Many state bodies, including the Prime Minister's Office, have failed to designate freedom of information coordinators, an obligation according to the Law on Access to Information. Their purpose is to facilitate public contact with institutions and manage freedom of information requests. Fotjon Kosta, an information and communications technology (ICT) expert interviewed for this report, revealed that the new law on public consultation and its website (not launched yet) will be difficult to be implement. He says, “They [the authorities] want to create a virtual infrastructure of something that does not exist in reality”¹² – that is, a culture of consultation that includes all interest groups.

Quite revealing is the following case that took place in October 2015. The Tirana Municipality ordered the relocation of Roma living in a settlement around the Tirana Artificial Lake. The Ombudsman, civil society organisations and many other institutions sought to suspend the relocation on grounds that the municipality had not communicated or

9 Committee on Economic, Social and Cultural Rights. (2013). Concluding observations on the combined second and third periodic reports of Albania (E/C.12/ALB/CO/2-3). tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fALB%2fCO%2f2-3&Lang=en

10 Ibid.

11 <https://www.facebook.com/Aktivizmi/?fref=ts>

12 Interview with Fotjon Kosta, ICT Department, Ministry of Energy and Industry, 21 August 2016.

consulted with the affected communities. The police threatened the Roma and Egyptians with violence if they failed to move from the site. The municipality's action could not be prevented, but, under pressure, the authorities promised one year's rent support to some of the evicted families. In the end, the promise was partly kept as the support payments ceased after five months. Many other similar situations, however, have gone undocumented – including examples of evictions in Tirana that have occurred since 2011.

On paper, the authorities pretend to be open towards engaging civil society, yet in practice there is disregard and disrespect towards civil society's role in the media, and among the broader public. In public statements, politicians have directly attacked civil society, aiming to discredit the causes and issues raised by the non-governmental sector. For example, the Tirana deputy mayor suggested that civil society criticism has been motivated by funding cuts to organisations.¹³

With a partly free media, social media offers a counterbalance to the lack of coverage of key concerns of minority groups and the lack of real debate happening in the media. Reporters Without Borders have noticed no improvement in the media environment in Albania these past years.¹⁴ Apart from BIRN¹⁵ and a few other broadcast media, there are few independent media outlets in the country. Journalists declare they do not feel free to write and investigate news stories and they largely practise self-censorship. In this context the use of the internet to share information with like-minded thinkers and mobilise citizens into action has become crucial. Social media is not just used to talk about the news but to share news that otherwise will never make it on TV.

With their work, the activists of the Roma and Egyptian Activist Group have increased information and knowledge on rights and services available to the Roma and Egyptian communities. They have also improved the interaction between the communities and the local and central offices responsible for housing, education, civil registration and social assistance. They have worked to reduce discriminatory attitudes from local and central government offices towards the communities. The internet has been an important tool to their work. For example,

all the documents regarding the cases of eviction and action plans were shared online. Letters of complaint sent to the Commissioner for Protection from Discrimination and the responses from the Commissioner were also posted online. This has been useful, as it attracted wider attention to the cases, and as activists shared this information online, others were encouraged to seek help with their particular cases.

Advocacy efforts of the Roma and Egyptian activists have also focused on government ICT roll-out plans. For instance, one of the objectives of the Albanian government was to review the largest programme that targets poor families – the cash benefit programme – with the purpose of better targeting the poor and increasing the programme's efficiency. The new scheme included the creation of a database that would be used to help social services staff to decide who would benefit from the aid. The database relied on a complicated formula that assessed families, but the pilot roll-out was highly criticised by Roma and Egyptian activist groups and the Ombudsman because hundreds of low-income families were left out of the programme.¹⁶ For the activists, the pilot project was a way to disguise a large number of cuts in the number of persons who received the cash benefits, without offering reasons for their exclusion. The explanations given to the people who were left out of the programme were nonsensical – for example, “You are not eligible for cash benefits because you do not own a TV set at home.”¹⁷ Furthermore, the new system is not publicly available online and therefore lacks transparency and accountability.¹⁸

Conclusions

Many efforts have been undertaken by the government to improve internet infrastructure and to roll out digitisation programmes. However, little has been done to ensure the participation of citizens and groups in decision making, a point that has been made by the CESCR.

Some positive outcomes have resulted from the work done by the Roma and Egyptian activists. Social media has drawn attention to stories not covered by the mainstream media. Currently, there is a draft law on social housing that, thanks

13 www.reporter.al/romet-te-liqeni-akuzojne-policine-per-kercenime/historia-ime.com/2015/10/10/ceshtja-e-familjeve-rome-perplashkine-me-avokatin-e-popullit-e-shoqerine-civile

14 Reporters Without Borders, World Press Freedom Index 2016: Albania. <https://rsf.org/en/albania>

15 www.reporter.al

16 www.oranews.tv/vendi/ndihma-ekonomike-avokati-i-popullit-te-rishikohet-formula-ka-padrejteti

17 Interview with Gentian Sejrani, director of the organisation Roma and Egyptian Youth Movement, 10 August 2016.

18 Vurmo, G (2016). *Independent Reporting Mechanism (IRM) Progress Report 2014-15: Albania*. www.opengovpartnership.org/country/albania/irm

to the advocacy work done by the Roma and Egyptian organisations, has ensured that the Roma and Egyptians are considered a priority.¹⁹

But not all attention is good. There is a general perception that Roma and Egyptians are receiving undeserved attention. This is mostly explained by the belief that Roma and Egyptians are lazy and therefore should be blamed for their situation.

Vulnerable groups should not act alone. The problems that they face are collectively experienced. What is true for Roma and Egyptian communities can be relevant for students, LGBT people, women in rural areas, and so on.

Finally, even though access to the internet has increased for the majority of the population in Albania, it still remains a tool for the most educated and the elite. There is a need to narrow the gap of access between poorer communities and low-income families and the better off. This is exacerbated by the increasing reliance of many actors on the internet (it is a new form of public consultation), to the detriment of more traditional forms of communication.

Action steps

The following advocacy steps can be suggested for Albania:

- The Roma and Egyptian activists need to be supported to develop their internet skills for promoting rights, keeping their community members informed and encouraging them to take action. There is a need for basic education, for training, and for developing technical expertise in the Roma and Egyptian communities.
- There is a need for training in new media, such as the use of podcasts, working with online videos, and various other useful apps. This will provide activists with the proper tools to reach out to communities effectively with information they need.
- In the presence of negative attitudes and discriminatory practices, activists can be more strategic in taking on the problems facing the Roma and Egyptian communities by framing the discussion on issues of poverty, unemployment and corruption that concern everyone, not just Roma and Egyptians. Connecting Roma groups with other solidarity platforms is key to success.

¹⁹ A letter sent from representatives of the Ministry of Urban Development to the Roma and Egyptian Youth Movements asking for specific feedback on the draft law on social housing programmes. <https://www.facebook.com/1468693893397918/photos/pcb.1748658535401451/1748658475401457/?type=3&theater>

ARGENTINA

THE RIGHTS OF INDIGENOUS CULTURES AND THE INTERNET



KEYWORDS: culture, minorities, social security

Nodo TAU

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Introduction

According to a national census in 2010, there are 955,032 descendants of indigenous people in Argentina, comprising 368,893 of the total number of households. Indigenous people comprise 2.38% of the total population (or 3.03% of the total number of households).¹ Two things are apparent from the census:

- Although the census included questions relating to the integration of indigenous communities – a recent step forward in making indigenous communities more visible – the possibility exists that many people in these communities did not answer the questions due to social prejudices that make them feel ashamed about belonging to those communities. Nevertheless, self-identification among indigenous people as belonging to the indigenous population group is growing from the 650,000 people recorded in 2004.
- The census shows that 63.34% of indigenous people live in houses they own, a percentage similar to the national average. However, the report warned that “the conceptual categories used by the census do not reflect the indigenous worldview in their relationship to the land,” which prioritises community property.

In Argentina, as well as in all Latin America, indigenous people suffer exclusion on several levels. A key issue in their struggle to advance their rights is the concept of “historical reparations”, which, together with a recognition of the fundamental rights of these communities, is part of public policy and legislation. The internet is a key way in which indigenous communities can access the fruits of these policies, including accessing social security benefits, empowering the youth, and sharing and discovering stories about their communities. The extent to which these

communities have access to the internet is therefore an important part of the analysis of the extent to which their rights are being fulfilled.

The economic, social and cultural rights (ESCRs) specifically relevant to this report are the right to social security, the right to cultural expression and the preservation of culture. A right such as the right to social security impacts on others such as the right to work and the standard of living conditions, and is dependent on the right to access information as well as freedom of expression (civil and political rights). The same applies to cultural participation. Both social security and cultural participation rely on the ability of communities to express themselves, make their needs known, and to secure resources to respond to these needs concretely.

Policy and political background

Key civil and political rights in Argentina are enshrined in Article 14 of the constitution: all inhabitants of the national territory have the right to work, to petition the authorities, to publish their ideas through the press, to use and dispose of their property, to associate, to freely practise their religion, and to teach and learn, among others. A reform of the constitution in 1957² added Article 14 *bis* which details rights related to work (decent and equitable working conditions, equal pay for equal work, protection against arbitrary dismissal, and the right to form democratic unions, among others). It also defined state obligations such as social security benefit grants, retirement and pensions, the protection of the family and family property, allowances for families with children, and access to decent housing.

Argentina signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1968, and the covenant was fully ratified in 1986. Argentina also signed the Convention on the Elimination of all Forms of Racial Discrimination (1965), the Convention on Elimination of all forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), and the Convention on Biological Diversity (1992).

1 National Institute of Statistics and Census. (2010). Pueblos Originarios. www.indec.gov.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99

2 Ministerio de Justicia y Derechos Humanos de la Nación. (2015). Derechos de los Pueblos Indígenas en la Argentina. www.jus.gob.ar/media/3114381/derechos-de-los-pueblos-indigenas-121115.pdf

As regards the rights of indigenous communities, Article 75 of the constitution, amended during the latest constitutional reform in 1994, requires congress to recognise the ethnic and cultural existence of indigenous peoples prior to European colonisation; to respect their identity and their right to bilingual and intercultural education; to recognise the legal status of the communities and their community ownership of lands; and to ensure their participation in the management of natural resources and other interests affecting them.

In 1995 the National Institute of Indigenous Affairs (*INAI - Instituto Nacional de Asuntos Indígenas*) began to recognise the legal status of indigenous communities through encouraging indigenous groups to register in a National Register of Indigenous Communities. In 2004, communities were invited by government to create the Council of Indigenous Participation (*CPI - Consejo de Participación Indígena*), which was made up of the 31 indigenous groups that registered, each one represented by an elected member of that community.

Since then, several initiatives have institutionalised the rights of indigenous communities. In 2006, the National Law of Education³ recognised bilingual and intercultural education for the first time. In 2007, the Emergency Law⁴ regulated the ownership of lands traditionally occupied by indigenous communities. In 2009, the Law of Audiovisual Communication Services⁵ included the preservation of the identity and cultural values of indigenous peoples and promoted their access to media, while also considering strategies for developing media content relevant to them. There are more than 30 radio stations and one TV station where this content can be broadcast. However, the implementation of the policy is poor.

In December 2015 a new, conservative government, led by businessman Mauricio Macri, replaced the socially oriented Kirchner government, ushering in a change in the political approach to indigenous issues. Some of them were positive: responding to a demand by indigenous communities, the INAI was placed under the Ministry of Justice and Human Rights. However, the government also created a new body for participation by decree⁶ which does not recognise the CPI, generating political conflict

amongst communities.⁷ Local communities have also said that government support has ended. “We used to have projects that were financed by the government each year giving us a framework of sustainability and allowing us to develop other projects in the communities,” said Oscar Talero, a member of the Qom community.

Los Pumitas community

Los Pumitas is a community of Qoms – also known as Tobas, an indigenous ethnic group originally from the province of Chaco, in the northeast of the country – who nowadays live on the outskirts of the city of Rosario, in the province of Santa Fe. They used to live in the forest, but due to discrimination, poverty and the deforestation of their lands they began to move to the big cities.

The 2010 census shows that there are 126,967 people who self-identify as Qoms across the country, of which 4,717 live in Rosario. Qoms make up 72% of the 6,521 indigenous inhabitants of the city living in 18 different communities. Los Pumitas is a community of 867 people.

A recent local government report shows that:

- Only 18% of the indigenous people in Rosario speak, read and write in their indigenous language, while 60% understand it.
- 8.5% do not read and write Spanish (9.2% of women and 7.7% of men). So, literacy in native communities has more than tripled over the past four years. (According to the 2010 census the overall average of illiteracy in Rosario is 2.4%.)
- As regards employment rates, 42% of the population over 18 do not work – 22.4% of males compared to 68.7% of women.⁸

The Los Pumitas community built a cultural centre, naming it Qadhuoté, in 2004. They have formally registered their community in the national register of indigenous communities, and have also helped other communities in Rosario to do the same. “We help our brothers to register. The state will never finance us if we have no organisation,” said Oscar Talero, president of Qadhuoté through a community vote, and also a representative of the Qom community in the CPI at the national level.

Qadhuoté is a small building where the community participates in meetings, holds various activities such as literacy activities for children and

3 Law Nº 26.206. servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/123542/norma.htm

4 Law Nº 26.160. servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/122499/norma.htm

5 Law Nº 26.522. servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/norma.htm

6 Equipo Nacional de Pastoral Aborigen. (2016, 21 February). Se creó la Mesa de Trabajo y Diálogo Político de los Pueblos Indígenas de Argentina con el Estado Nacional. *ENDEPA*. endepa.org.ar/?p=1505

7 Grupo de Apoyo Jurídico por el Acceso a la Tierra. (2016, 24 February). Atentos al nuevo panorama del INAI: más preguntas que respuestas. *GAJAT*. www.gajat.org.ar/2016/02/atentos-al-nuevo-panorama-del-inai-mas-preguntas-que-respuestas

8 Censo 2014. Pueblos originarios en la ciudad de Rosario. www.rosario.gob.ar/ArchivosWeb/censo.pdf

adults, and provides children with dietary supplements such as milk. They also set up a telecentre with the technical assistance of Nodo TAU, an Association for Progressive Communications (APC) member and an organisation that works towards digital inclusion.⁹

After trying to set up a community wireless network that was not stable due to problems with the electricity in the centre and the range of the antenna, they paid a private company to install Wi-Fi. However, the company did not comply with the service agreement offered. Nowadays they are connected to a Wi-Fi connection provided by the local government. “They were asking for the street to be paved, but the government provided them with the Wi-Fi connection,” said Emma Fernández Peña, a Nodo TAU coordinator, ironically.

Fernández Peña worked in Qadhuoté from 2010 to 2014. The centre has eight computers used for capacity building for children, youth and adults. Capacity building includes the use of a word processor, spreadsheets, email and the internet, as well as the design of blogs and creating social network profiles. The workshops, run by Fernández Peña, use the popular education methodology of Paulo Freire, a Brazilian pedagogist, that has been used in grassroots organisations extensively. “We worked hard on our own projects. We always posed a final goal that goes beyond the workshop itself. We ask ourselves what we do, why we do what we do in the way we do it, what our individual goals and our community goals are, because we are in a community,” she said.

The workshops do not mix people who do not read or write with those who can. “Those who do not use the computer as a tool, who can’t recognise letters or form words, can easily be ashamed by those who do, and who work faster,” Fernández Peña explained. For her, the main achievement of the workshops is related to identity. “Much of what we achieved related to knowledge about ourselves, as a community. I say ‘we’ because I worked so long in the community that I feel part of the community and their political project. Building web pages gave us visibility. The internet allowed us to show ourselves to the rest of the community, not only in Rosario but also in Chaco. The leadership of Talero was also strengthened by this visibility.”

Students from different universities studying communications, history, arts and architecture and activists from political organisations started approaching Los Pumitas to develop project ideas in collaboration with the community. The community

defined a methodology to include the volunteers: the groups should work on projects already defined by the community; they should contribute their skills and specialisations, but their work should be organised in line with the needs and requirements of the community to guarantee continuity. Communications students, for example, helped develop the magazine *Miradas abiertas* (Open Glances),¹⁰ written in Spanish and in Qom, which is now published three times a year.

Fernández Peña said the community has been strengthened through these interventions: “We are in a time where belonging to an indigenous community is synonymous with being bad, dirty, lazy, drunk. There are things you can do and things that you cannot do. And every statement about indigenous people is made by outsiders. These ideas entered the community and defined their identity and aboriginal status for them – and they are culturally transmitted. People say Qoms are quiet, shy and slow-speaking. We do not want them saying that it is difficult for us to communicate. What happens is that we are ashamed because we do not understand the [Spanish] language. We are not ashamed to say what we think, but we are not understood because we speak another language. We can now say these things, after being able to use the internet, after making the magazine, among other things.”

Getting the community online

During the workshops run by Nodo TAU, people approached the telecentre to ask for help to complete procedures related to social security. “Today the government is a closed system. If we are outside that system, we are out of the information loop and can’t access the rights we have. We see it. So we struggle all the time for internet access,” Talero said. To access social security benefits, several procedures must be followed on a government website, where people are informed about whether or not their application has been accepted, and how to receive the payment (for example, by providing bank information). “There were people who waited more than a year after knowing their application was approved. They keep the paper in their pockets, hoping that someday someone will send them a letter or call them on the phone,” he said.

In 2013 Nodo TAU, together with the community, organised a workshop on the procedures necessary to request social security. “We asked people from the National Administration of Social Security to

¹⁰ Giménez, E. (2012, 3 August). Historias en lengua originaria. *enREDando*. www.enredando.org.ar/2012/08/03/revista-miradas-abiertas-de-los-pumitas

⁹ www.cunadelanoticia.com/wp-content/uploads/talero.mp3

teach us how to ask for an appointment, how to fill in forms both online and offline, how to submit the documentation. We started working with the leaders of the communities and other institutions,” explained Fernández Peña. Nodo TAU also did training in the community showing them how to access information from the different ministries through their websites: where they can find grants for indigenous people, calls for project proposals, information on the requirements for accessing benefits, as well as platforms where they can present their own projects. “For example, we looked at what the Ministry of Culture offered, what programmes it has, how to register the community, what documentation is required, what information we can download that will serve my community,” she said.

Nowadays the telecentre is open three days a week, but does not have proper coordination. The community is developing a project aimed at the capacity building of young people to help them work on the relationship between the community and the state. But there are no resources for that. They are trying to include this request in a national government project financed by the World Bank that is offering assistance to local social programmes aimed at children.¹¹

Political process and projects

On several occasions Talero mentioned the “process” they are following: “We want to offer a process of knowledge in which we simplify the issues for our brothers, because we are talking about rights that we deserve as indigenous people.” When asked about historical reparations, he said that this could concretely be achieved through the respect of rights such as bilingual and intercultural education, community health, and the respect of community ownership of the land. All of these, he says, still have some way to go: “Intercultural education, for example, is only a decree, not even a law. We have only two schools in Rosario for all the communities.” Talero highlighted the difficulties in obtaining resources to support the community. At times they are able to access resources at national level, but find it difficult to do the same with local authorities or other actors.

*Conectar Igualdad*¹² (Connect Equality) is a national programme that distributes computers to all secondary students, who are allowed to take them home. Fernández Peña said this created new challenges: “The computers became in a moment a source of power in the community. Who is going to control them? Would it be the school, the cultural

centre, the community? Due to social prejudices, even our intercultural schools said the computers should remain at school because in the homes [of the Qom community], where they are supposed to go, there is a risk they will be sold by the students’ families. Finally, and after a year of discussions, students were allowed to take the computers to their houses.” Fernández Peña said that this shows that even schools stigmatise indigenous communities.

The community also faced difficulties with their community radio project. They secured a radio frequency under the country’s media law. Having the antenna and other necessary equipment, they began to build the studio on the first floor of Qadhuoté, with the help of a group of architects from the local university.¹³ But now they have no resources to finish the studio. They need windows, doors and electricity. The former national government launched a three-year fund for the development of audiovisual media,¹⁴ with a particular emphasis on community projects run by indigenous people. However, the Los Pumitas community never knew about the fund so they did not apply. Now the fund is no longer available.

“Everything always costs us more and more,”¹⁵ said Talero. “We need a framework of sustainability provided by the state. The culture is here, in the territory, the language, our customs; we have shamans, healers, midwives in the community. We have all that. We want to work with the state and they have to give us sustainability. If they do not, what we propose cannot be done and cannot be seen. That is the issue.”

Conclusions

While the internet holds great promise for indigenous communities, this report also suggests how the internet can be a “disabler” of rights – largely because communities without access cannot benefit from the policies aimed at helping them when these benefits are delivered online. The internet, in this way, increases their social marginalisation, highlighting the importance of working towards their digital inclusion.

¹³ www.matericosweb.com

¹⁴ AMARC Argentina. (2016, 25 julio). Los medios comunitarios, alternativos y populares nos movilizamos al ENACOM. amarcargentina.org/2016/07/25/los-medios-comunitarios-alternativos-y-populares-nos-movilizamos-al-enacom

¹⁵ Ciarniello, M. C. (2013, 14 May). “Cuando el pueblo originario defiende su tierra tenemos en claro que corre sangre”. *EnREDando*. www.enredando.org.ar/2013/05/14/cuando-el-pueblo-originario-defiende-su-tierra-tenemos-en-claro-que-corre-sangre

¹¹ www.anses.gob.ar/prestacion/asignacion-universal-por-hijo-92

¹² www.conectarigualdad.gob.ar

Although the main duty bearer with regards to fulfilling the socioeconomic rights of indigenous communities is the state, other stakeholders, such as civil society and the private sector, also have a role to play. The media – which frequently reports on indigenous communities in a way that reinforces stereotypes – also has a role to play in making the needs and demands of these communities visible.

Los Pumitas is, however, on the path. They are offering the community Wi-Fi access to the internet through the telecentre, and secondary school children have computers to use through the *Conectar Igualdad* programme. As regards the use of internet, they identified the need for connecting to state services, but also mentioned uses related to their identity and online cultural content. In the cultural field, illiteracy and the conservation and diffusion of their culture are key challenges facing the community.

Our evaluation of the capacity-building workshops held at the telecentre shows that the community felt training was valuable. The evaluation stated that: “We can say that the internet has become an effective bridge to the outside world. The people we trained can pass their skills to others in the community. The sense of solidarity in the group’s work allowed the participants to gain confidence in themselves, believing in the real possibility of social integration.”

A good analogy can be found in a documentary called “Punto Qom” (Dot Qom, a play on .com). A powerful image in the documentary shows Talero standing on a bridge over the Bermejo River in Chaco. A fade-in of another shot is used, this time of him on a bridge over a small river near Los Pumitas in Rosario. “Our point of view today,” Talero said, “is the Punto Qom point of view.”

Action steps

The following action steps can be suggested for helping indigenous communities:

- Develop a campaign that highlights the need of communities to access the internet so that they can in turn access state benefits meant for them.
- Collect and document good practices from the region with regard to accessing and using the internet in intercultural contexts.
- Gather accurate statistical data on the extent to which indigenous communities have access to the internet. This should feed into policy and legislative frameworks that seek to advance the socioeconomic rights of these communities.
- Make the needs and demands of indigenous communities visible in policy and multistakeholder spaces nationally, regionally and globally, including the national and regional Internet Governance Forums.
- Develop materials to work on these issues through feedback provided by the communities.

ARMENIA

THE BATTLE AGAINST THE KREMLIN'S ONLINE HOMOPHOBIC PROPAGANDA



KEYWORDS: **gender, culture**

Olya Azatyan and Arthur Minasyan

Introduction

In spite of the fact that economic, social and cultural rights (ESCRs) in Armenia are guaranteed by the Armenian constitution¹ as well as by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Armenia ratified in June 1993, recent Amnesty International² and Human Rights Watch³ reports highlight that discrimination against lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI) individuals is a concern. This is particularly the case in the absence of gender-specific anti-discrimination legislation and amid widespread reports of hate speech. Armenia lacks any internet-related legislation and this area is out of the government's "direct and lawful" control.

This report suggests how active discrimination against any group is the first barrier that needs to be overcome for a country to fully realise its obligations to the ESCR covenant.

Internet access in Armenia

The Armenian internet space has been successfully expanding in the last several years. According to General Data for Armenia 2016 Quarter 2⁴ country statistics, the total number of internet subscriptions stands at 2,155,428 out of a population of 2.9 million. The number of subscriptions has increased by 28,712 since 2014. The report puts broadband subscriptions at 261,784 (up 15,395 since 2014), mobile broadband subscriptions at 231,698 (down 25,912 since 2014), and mobile phone internet users at 1,661,946 (up 39,229 from 2014). Currently there are five companies which provide an international internet gateway to Armenia, while there are 71 internet service providers (ISPs) operating in the country. The number of daily Facebook users

is 650,000, with a total of one million people registered on the social media site. While there are 110,000 Instagram users, Twitter is not widely used. Several online media platforms, especially Facebook and YouTube, have become quick, first-hand information sources for Armenians. Social media has opened up the potential for citizen journalism in the country. Activists, NGOs and sometimes even opposition parties also use social media on a daily basis for their campaigns, to organise events, and to live stream.

Political background

Armenia is considered as a semi-authoritarian state, with a controlled media and internet. While the Armenian constitution bans discrimination in its various expressions, the list does not include discrimination based on sexual orientation and gender identity. The country also does not have a stand-alone piece of legislation dealing with discrimination. While same-sex relationships were decriminalised in Armenia in 2003, same-sex marriages or unions are not recognised by law. "Gender equality" is interpreted explicitly as a term referring to the equality of men and women in the eyes of the law. As a result, the protection of the rights of LGBTQI people is not reflected in law, and alternative cultures and lifestyles are constantly at risk of retaliation without recourse for the victims.

Homophobia, intolerance and a discriminatory attitude towards LGBTQI people are widespread among the population. For the past 15 years, fuelled by a negative public attitude, we have witnessed the rise of a national conservative ideology promoted by the people in power – and here national means ethno-cultural nationalism. As part of this rise, the authorities have increasingly allowed the Armenian Apostolic Church to influence state functions, violating the principles of secularism in the state. This can be seen most clearly in the education system. In this context it is unacceptable to the current authorities for LGBTQI rights to be recognised by law.

Another decisive factor when it comes to LGBTQI rights in Armenia is the country's dependence on the Kremlin. The best example of this is when the Armenian authorities, after years of negotiations

1 concourt.am/armenian/constitutions/index2015.htm

2 <https://www.amnesty.org/en/countries/europe-and-central-asia/armenia/report-armenia>

3 <https://www.hrw.org/world-report/2016/country-chapters/armenia>

4 www.media.am/Social-networks-in-Armenia-2016-autumn

with the European Union (EU) on integration, made an abrupt turn, scrapping the country's European integration agenda and joining the Kremlin-led Eurasian Economic Union. Among current Eurasian Economic Union member states,⁵ universal values identified as "European" are described as going against Eurasian values, which are considered the only true values.

The Armenian authorities have reinforced this identity online by creating groups, platforms and media resources that promote the Union's identity and ideology. The Pan-Armenian Parents' Committee – identical to the Pan-Kremlin Parents' Committee – is one of those platforms. The committee includes members of parliament from the ruling Republican Party such as Artashes Geghamyan, Hayk Babukhanyan and others. The latter is the head of the editorial board of the newspaper *Iravunk*.⁶ This is the newspaper which published a list of people promoting and protecting the rights of LGBTQI people, openly calling for people to discriminate against them. The citizens whose names appeared on the list took the case to the court. However, the court ruled against them.

www.stop-g7.com

For a long time, *Iravunk* was the most prominent promoter of hate speech against LGBTQI communities, both in print and online. However, in 2016, an Armenian-language website called [stop-g7.com](http://www.stop-g7.com) appeared on the internet. It was run by Arman Ghukasyan, the head of an NGO called International Humanitarian Development which works closely with the Pan-Armenian Parents' Committee. The website campaigns against stand-alone legislation dedicated to discrimination and domestic violence, arguing that such laws promote "perversion" and the "spread of European values" in the country. An anti-LGBTQI campaign is also under way on various online media platforms, in different ways linked to the authorities. Most of them also promote their content via their social media channels.

The participation of drag queen Conchita Wurst⁷ at the 2015 Eurovision Song Contest created another wave of debate on Armenian social media regarding LGBTQI rights. During the exchanges, *Iravunk* created another list of Facebook users who demanded LGBTQI rights with hyperlinks to their profiles, labelling them as "enemies of the state and nation". The newspaper also called on

employers not to hire them, and asked people not to communicate with them. Given that *Iravunk* is a registered legal entity, the citizens appearing on the list took the editor-in-chief of the newspaper to court. While the courts again dismissed the case, the issue received widespread public support, both locally and internationally, which created a series of problems for the authorities, including a negative impact on their international reputation.

To avoid any future court proceedings, those promoting homophobia and hate crimes turned to different tactics – www.stop-g7.com. The website has no legal registration in Armenia and, besides Ghukasyan, who is the editor, its editorial board remains unknown. Moreover, the website's domain is .com and not .am, a move probably also aimed at avoiding any legal responsibility. The website's name is a pun: for any English-speaking person it can be seen as a campaign against G7 countries, while in the Armenian language, G7 sounds like "gyot" ("yot" means 7) which is the equivalent of the English word "faggot".

Arguably the wordplay was aimed at bypassing the attention of non-Armenian ISPs, in the hope that they might consider the site a political initiative aimed at the G7, rather than a hate speech site that might have to be shut down.

This website consists of several sections:

- Country/regional sections for the United States (US), EU and former Soviet countries.
- A section referencing countries "spreading perversion with subversion", including lists of individuals and local and international NGOs.
- A section for supporters, with lists of individuals and local and international NGOs.
- A section on religion, which deals with sins, obscenities and conversion.
- A section on laws, with sub-sections on laws that address the issues of gender, domestic violence and anti-discrimination.

It is clear that the aim of this website is to oppose the adoption of any legislation protecting the rights of LGBTQI people and to identify and shame individuals and organisations promoting "perversion" in Armenia. Website content is also posted on Facebook⁸ and other social media networks such as YouTube, Twitter, VKontakte (VK)⁹

5 Russian Federation, Armenia, Belarus, Kazakhstan and Kyrgyzstan.

6 www.iravunk.com

7 https://en.wikipedia.org/wiki/Conchita_Wurst

8 [https://www.facebook.com/](https://www.facebook.com/Stop-G7-in-Armenia-1577810829183104)

[Stop-G7-in-Armenia-1577810829183104](https://www.facebook.com/Stop-G7-in-Armenia-1577810829183104)

9 <https://vk.com/feed>

and Odnoklassniki.¹⁰ This information is often re-shared by homophobic media outlets, including *Iravunk*. According to credible media sources, the NGO run by Ghukasyan receives state grants from the Russian Federation.

The counter narrative of the LGBTQI community and its supporters

Local human rights defenders, organisations and activists protecting and promoting LGBTQI rights and values have formed an Anti-Discrimination Coalition and use their own websites and social media to promote the rights of LGBTQI communities. There is also LGBTnews.am, which regularly covers LGBTQI issues, using social media pages and online networks effectively. Apart from this, there are numerous closed or secret groups on Facebook where the LGBTQI community, NGOs and supporters jointly discuss online and offline actions, share news, and debate and discuss many specific points on the protection and promotion of LGBTQI rights.

The appearance of stop-G7.com united the LGBTQI community, which organised a closed online discussion on ways to neutralise hate speech, and how to assert the right to participate in national cultural formation and promote a different, non-mainstream culture.

The activists decided to:

- Launch a campaign that exposes homophobic social media pages. This would also involve sharing information on who is behind stop-g7.com, what their objectives are, and how they are funded.
- Share all the international treaties and covenants which Armenia has signed and which ban discrimination on any grounds.
- Publish articles on the Armenian constitution to increase awareness that LGBTQI rights are protected by the constitution.
- Publish articles that highlight the regressive and conservative nature of homophobia.
- Send an email to all media legally registered in Armenia reminding the editors of Armenian legislation and the European Court of Justice precedents on sharing discriminatory content, including hyperlinks to discriminatory content (so far, this part of the campaign has been quite successful).
- Launch an online “comments campaign” where activists respond to homophobic comments posted online with an explanation of the

dangers and consequences of homophobia and hate speech and promoting the rights of LGBTQI people.

- Create an e-poster asking Armenian Facebook users to “unfriend” Facebook users circulating homophobic content for political purposes.
- Alert the international community about stop-G7.com. The US and EU embassies were advised not to provide visas to the people who could be identified as being involved. The diplomatic community was also encouraged to discuss and raise concerns about the website with Armenian authorities.

The results of the above interventions were positive: although the site still continues, there was a sense that stop-G7.com became significantly less influential in the Armenian public space.

Conclusion

Enacting and enjoying ESCRs in Armenia – rights that require specific financial investments by the state, the development of an action plan and strong independent institutions – can sound like a dream. It is not encouraging that Armenia took 11 years (from 2000 to 2011) to present its 2000 progress report to the UN Committee on Economic, Social and Cultural Rights (CESCR).

General Comment 21 of the CESCR highlights an interpretation of the ESCR covenant that is clearly missing in Armenia. On the issue of “adaptability” the comment concludes that “States should adopt a flexible approach to cultural rights and respect the cultural diversity of individuals and communities.” Culture cannot be “a justification for practices that discriminate against specific groups or violate other human rights.”¹¹ Furthermore, as a guardian of the freedom necessary to enjoy cultural rights, states are required to practice “both abstention (i.e. non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).”¹²

The limited freedom of expression enjoyed by the LGBTQI community, and the culture of shaming and hate speech it has to endure, reveal the absence of mechanisms in Armenia to protect and realise the ESCRs of LGBTQI people in the country.

¹¹ <https://www.escr-net.org/resources/cultural-rights>

¹² tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f21&Lang=en

¹⁰ <https://ok.ru>

This goes beyond cultural rights: discrimination impacts negatively on access to social services and employment and on the mental health of those affected, all of which are rights defined by the ESCR covenant.

At the moment Armenia lacks the necessary political will to secure the rights of affected communities, a situation which is aggravated by the ideological baggage in the opposition set up between European and Eurasian values. If there is a ground zero, after signing and ratifying the ESCR convention, Armenia is there in terms of its inability to create a positive environment for cultural diversity to flourish. In this context, the internet has become uncharted territory to reinforce stereotypes and prejudices, and to serve as a tool of the Kremlin's anti-European mandate. As this report shows, LGBTQI activists have also used the internet to push back against this discrimination, with some success. But this comes with a price, including physical danger – an indication of the extent to which people are prepared to go to deprive the LGBTQI community of their rights, and to reinstate the so-called “natural order”.

Action steps

There are several key areas which require urgent improvement to enable the full exercise and protection of LGBTQI rights in Armenia.

As the CESCR has recommended, Armenia should “adopt comprehensive anti-discrimination legislation, guaranteeing protection for all against discrimination in the enjoyment of economic, social and cultural rights, as stipulated in article 2, paragraph 2, of the Covenant.”

Civil society should use the forthcoming CESCR reporting cycle to emphasise the discrimination of the LGBTQI community in Armenia, and to point out how this impacts negatively on their ESCR rights. It should also advocate for Armenia to adopt the Optional Protocol to the ICESCR. This would provide access to an additional mechanism in support of litigation and as a strategic tool and tactic to access justice in a society which is severely controlled and hampered by widespread corruption in all state institutions, including the judiciary.

BANGLADESH

ICTS, HEALTH RIGHTS AND HEALTH FINANCING MODELS IN BANGLADESH



KEYWORDS: **health**

Bytes for All Bangladesh

Partha Sarker and Munir Hasan

www.bytesforall.org

Introduction

The United Nations General Assembly on 16 December 1966 adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), a multilateral treaty that came into effect in January 1976. It enshrines the economic, social, and cultural rights (ESCRs) of individuals, including the right to an adequate standard of living, the right to an education, labour rights and the right to health. The covenant currently has 160 parties as signatories. Bangladesh ratified the covenant in October 1998. This report focuses on the right to health in Bangladesh in the context of accessibility and affordability. It looks at how information and communications technologies (ICTs) enable a health financing model in support of the implementation of the right to health.

Government health policy

Article 12 of the ICESCR, referring to the right to health, calls on state parties to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” including “conditions which would assure to all medical service and medical attention in the event of sickness.”¹ These conditions, outlined in the comments and subsequent discussion, have been taken to include “economic accessibility”, i.e. health facilities, goods and services must be affordable for all. Payment for healthcare services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups.²

The Bangladeshi constitution refers to ESCRs in Part II, where the rights are described as “fundamental principles of state policy”. The constitution says: “It shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people with a view to securing to its citizens: a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.”³ However, Article 8(2) of the constitution specifies that these principles “shall not be judicially enforceable” – in other words, they are not legally binding.⁴

Since the declaration of Bangladesh as an independent state in 1972, the government has focused on primary health care and family planning services, particularly for the rural poor. It has achieved some successes in this. For example, the infant mortality rate has come down from 92 per 1,000 live births in 1990/91 to 38 in 2014. Maternal mortality has come down from 574 per 100,000 live births in 1990/91 to 170 in 2013, with a sharp increase in the percentage of births attended by skilled health personnel (from 5% in 1990/91 to 42.1% in 2014).⁵ With increased access to healthcare facilities, immunisation, nutrition and overall economic development, the average life expectancy in Bangladesh has gone up by around three years, from 67.2 years in 2009 to 70.4 years in 2013.⁶ Most importantly, the gender gap in life expectancy at birth – so prevalent since the country’s independence – has completely disappeared in recent years.

In the absence of a formal health policy, all health-related planning and programming in

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

2 National Human Rights Commission, Bangladesh. (2012). The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance. nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/International%20Covenant%20on%20Economic%2C%20Social%20and%20Cultural%20Rights%20a%20study%20on%20Bangladesh%20Compliance.pdf

3 Constitution of Bangladesh. bdlaws.minlaw.gov.bd/pdf_part.php?id=367

4 Waheduzzaman, M. (2014). Economic, Social and Cultural Rights Under the Constitution: Critical Evaluation of Judicial Jurisprudence in Bangladesh. *Bangladesh Journal of Law*, 14. www.biliabd.org/article%20law/Vol-14/M.%20Waheduzzaman.pdf

5 UNDP. (2015). *Millennium Development Goals: Bangladesh Progress Report 2015*. www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html

6 Bangladesh Bureau of Statistics. (2013). Report on Sample Vital Registration System 2013. www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/MSVSB_Report_2013.pdf

Bangladesh was guided by the sections dealing with the health sector included in the country's Five Year Plans.⁷ The first National Health Policy of Bangladesh was approved by parliament only in 2000; it was revised in 2011 to reflect the principle that every citizen has the basic right to adequate healthcare.⁸

The government is constitutionally obliged to ensure healthcare for its citizens, and both availability and affordability of medical services are addressed in the policy, foregrounding the issue of equity in health financing. The policy deals with health insurance for employees in formal sectors, and the provision of free medical and health services to poor and marginalised population groups using government resources. The policy highlights the need to maximise the innovative and best use of information technology for the development of the health sector and to ensure healthcare to all.

It encourages local innovative models for health services and talks about an Integrated Management Information System (IMIS) with a computer network extending across the country to support the implementation and monitoring of the policy action plans. The use of "smartcards" for previously underserved groups to enable them to access health services efficiently is also part of the implementation plan.

Health financing solutions

To support the implementation of the health policy, the government's Health Economics Unit announced the Health Care Financing Strategy 2012-2032, which "provides a framework for developing and advancing health financing in Bangladesh." According to the strategy, "The framework and its direction are aimed at increasing the level of funding for health, ensuring an equitable distribution of the health financing burden, improving access to essential health services, reducing the incidence of impoverishment due to catastrophic health care expenditures and improving quality and efficiency of service delivery." The strategy aims to reduce out-of-pocket expenditure from 64% to 32% of total health expenditure, to increase government expenditure on health from 26% to 30%, to increase social protection from less than 1% to 32%, and to reduce dependence on external funds from 8% to 5%.

One of the core aims of this strategy is to provide universal healthcare coverage in Bangladesh by 2032.

The strategy includes three key interventions:

- Design and implement a social health protection scheme, called Shasthyo Surokhsha Karmasuchi (SSK),⁹ with some aspects focusing specifically on those living below the poverty line.
- Strengthen financing and provision of public healthcare services, such as through the use of results-based financing and the scaling up of a demand-side financing programme.
- Strengthen national capacity to design and manage the social health protection scheme, including in financial management and accountability.

The strategy divides the population into three categories:

- Around 47.5 million people who are below the poverty line will receive publicly financed healthcare through a free health protection scheme.
- Around 83.4 million people who are engaged in the informal sector will be under different health financing schemes, including publicly financed health care, community-based health insurance initiatives, and micro-health insurance.
- Around 20.5 million people who are in the formal sector can receive publicly financed healthcare, and can subscribe to other private healthcare coverage and/or social health protection schemes.

The SSK provides a "smartcard" to households qualifying for the benefits. The card includes the names of dependent members in the household. Each household receives benefits for up to BDT 50,000 (around USD 1,000) per year. The health cards provide access to local hospitals and other relevant services. The cards are connected to a database with patient details that can be accessed at SSK centres.

Hospitals treat SSK patients according to standard guidelines¹⁰ and claim reimbursements from the scheme operator based on the designated fees

7 For more on the Five Year Plans, see: www.plancomm.gov.bd

8 National Health Policy of Bangladesh 2011. www.mohfw.gov.bd/index.php?option=com_content&view=article&id=74&Itemid=92&lang=en

9 www.heu.gov.bd/shasthyo.php

10 The treatment guidelines help to calculate and standardise the reimbursement to the hospital. Reimbursements follow a case and diagnosis-based payment system, which will be gradually refined. See: sskcell.gov.bd/PDF/home.pdf

attached to the benefit package. All patient records are maintained electronically, and accounting, claim processing and disbursement happens online, using a mobile network linking SSK, the scheme operator and the local hospital, for efficiency and transparency.

Prior to establishing the SSK model, demand-driven health financing models were already in place in Bangladesh. For example, initiated in 2007, a government-led Maternal Health Voucher Scheme targeted poor women with the aim of providing better maternal health services by reducing financial burdens. The scheme provided eligible women a voucher that entitled them to a package of three antenatal check-ups, safe delivery care in a health facility or at home, and a small gift box. Among voucher recipients, safe infant delivery rates were an impressive 89% compared to 40% in institutional deliveries in 2012.¹¹

Some innovative initiatives have also been launched to try and test locally managed health financing models in small communities. The following examples are worth mentioning.

The Benapole Municipality in Jessore District has introduced a health financing model to provide free health services to its senior citizens (aged 60 and over) who otherwise cannot afford to bear the cost of those services. As part of this model, more than 1,000 senior citizens living in the area have been given smartcards. This gives them access to healthcare facilities and services including examinations and diagnoses by doctors and prescription drugs provided for free or at a nominal cost. Patient records are verified by accessing a database using the smartcard and a fingerprint reader. Our visit to the hospital in the district revealed that the hospital's server is connected to the doctor's office, the emergency unit and the medical diagnosis centre, so that information and instructions from one unit can be accessed by another unit. A good number of patients visit the hospital regularly to access different healthcare services.

The Uzirpur Upazila Health Complex¹² in Barisal District has also introduced a health financing model servicing more than 1,000 patients from extremely poor population groups, including landless people, people with disabilities and the elderly.

The patients are given a smartcard to access different health services, including examinations and diagnoses and free prescription drugs. Their medical details are stored on a database. Patients are verified using secure web-based software and are notified of appointments and of any change in prescription drugs or the treatment procedure via mobile phone text messages. The Upazila Health Complex manages the programme.

The SSK model of health financing is also being piloted in three different local hospitals: the Kalihati, Ghatial and Modhupur Upazila Health Centres in the Tangail district of Bangladesh. Patient registration is captured in a database, and there are plans to distribute smartcards to patients.

Conclusion

Bangladesh has invested “considerable resources in strengthening its management information systems using ICTs,” seeking to ensure that all *upazila* (sub-district) health complexes have access to computers and wireless modems for internet access, and anticipating that the information management system will “use all possible ICT equipment” as a means to gather, channel, process and distribute health information.¹³ Most of the government-run *upazila* health complexes and district hospitals now have mobile phone-based health service call centres where users can call for free 24/7 and get medical advice from a doctor or registered nurse over the phone. A recent study has identified 26 different e-health and m-health initiatives in Bangladesh that are mostly working on delivering health services or managing health information.¹⁴

However, health sector financing in Bangladesh continues to face three main challenges: the inadequate allocation of funds for health; inequity in access to health services because of inadequate financing mechanisms; and an inefficient use of existing resources. In general, Bangladeshi public health expenditure patterns appear to be regressive – allocating more resources to richer districts than the poorer ones.¹⁵ The World Health Organization

11 Ahmed, S., & Khan, M. (2009). *A maternal health voucher scheme: What have we learned from the demand-side financing scheme in Bangladesh?*

12 *Upazila* is a geographical region in Bangladesh used for administrative or other purposes. They function as sub-units of districts. https://en.wikipedia.org/wiki/Upazilas_of_Bangladesh

13 Ministry of Health and Family Welfare (MHFW). (2008). Health Bulletin 2008. Dhaka: Government of the People's Republic of Bangladesh, Management Information System (MIS), Directorate General of Health Services (DGHS).

14 Ahmed, T. et al. (2014). eHealth and mHealth initiatives in Bangladesh: A scoping study. *BioMed Central*. bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-14-260#CR35

15 Islam, A., & Biswas, T. (2015). *Health System Financing in Bangladesh: A Situation Analysis*.

recommends a minimum per capita health expenditure of USD 54, but this currently stands at USD 27 in Bangladesh. According to Ravi Rannan Eliya, director of the Sri Lanka-based Institute for Health Policy, universal health care consists of two things, “access to healthcare” and “risk protection” – health care should not make people poorer. “On that outcome Bangladesh is bad,” he said, “[because of] the low level of public spending.”¹⁶

The SSK is a step in the right direction to ensure the right to health for marginalised and vulnerable groups. The use of smartcards and a centralised database are key to this solution – and although the state has not yet attained its 2032 targets, it is currently rolling out pilot models. Nevertheless, a national database of electronic records of patient information along with the digitisation of hospitals and capacity building would be a mammoth task. These pilot initiatives still need to be scaled up in other locations to understand the challenges faced by a national roll-out.

Action steps

Bangladesh needs to take several steps to strengthen the current approach to securing the right to health:

- The government must significantly increase its public funding for health to strengthen the equitable distribution of resources, with a special strategic focus on the poor.
- The government needs to invest heavily in ICT-based health infrastructure to move e-health initiatives beyond the pilot stage. E-health strategies should include smartcards for health services, the digitisation of hospitals, and giving people access to medical services using mobile phones.
- Civil society needs to be more directly engaged in evidence-based research and advocacy in building up the case for health financing to secure the right to health. Currently there is little engagement by civil society on this issue.

¹⁶ Hasib, N. I. (2015, 15 January). Per capita health spending rises in Bangladesh, but concerns remain. *bdnews24.com*. bdnews24.com/health/2015/01/15/per-capita-health-spending-rises-in-bangladesh-but-concerns-remain

BENIN

USING THE INTERNET TO ENGAGE MARGINALISED COMMUNITIES IN BENIN



KEYWORDS: access, marginalised communities, literacy

POPDEV Bénin

Sênouéd Pacôme Tomètissi

Introduction

In Benin, adult literacy is around 44.6%.¹ This presents a major challenge to using the internet to enable economic, social and cultural rights (ESCRs) in the country. To make matters worse, many government documents that provide information in key areas such as health are written in French. While French is the official language, many marginalised communities do not speak it.

As this report suggests, while the government is committed to expanding the information society in Benin, it has not given due consideration to the socio-economic contexts that marginalised communities find themselves in. Adult literacy programmes are the first step towards enabling the rights of these communities, and several projects show how these can be developed using the internet, while providing communities with life-essential information.

Policy, economic and political background

Benin is a West African country, 114,763 km² in size, and bordered by Nigeria, Burkina Faso, Niger and Togo. It has a population of over 10.74 million.² Since 1990 Benin has organised 17 elections, including six presidential, seven legislative and three local elections. Its constitution, the oldest in Africa, has never been modified, although the newly elected President Patrice Talon plans to organise a referendum to adopt a new constitution which will include a new term of office and mandate for heads of state. Benin has a good reputation on political rights such as freedom of expression.

The country's constitution establishes that the government has to provide each citizen with equal access to health, education, culture, employment and vocational training.³ There is also a requirement for the public's access to information. In 1992,

two years after the adoption of the constitution, the country ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In 2008, the government adopted a policy and strategy paper for telecommunications, ICT and postal services.⁴ The mission of the policy was to implement an information society and full internet access for everyone by 2025. The main vision of the policy is to transform the country into an African digital hub with two key pillars: e-government and e-business. The aim is to improve governance, civil service and the economic environment by focusing on the legal and institutional framework, infrastructure, human resources, content and competitiveness. In 2014, the parliament passed a law on electronic and postal communications to regulate the sector.⁵

Early in 2016, the former Ministry of Communication and New Technologies was transformed into the Ministry of Digital Economy and Communication.⁶ The government then organised a conference and launched a call for public contributions to an action plan with a focus on the digital economy.⁷ This plan puts ICTs at the heart of the social and economic development agenda. At the launch of the agenda in June 2016, the president committed to work on a law to enable access to the internet, stating that the digital economy is the future. The necessary resources for the implementation of the action plan on the digital economy are yet to be mobilised.⁸

Barriers to accessing the internet for marginalised communities

It is 8 a.m. in a cybercafé in Abomey Calavi, Benin's second largest city after Cotonou. The manager has just finished wiping down the 10 desktop computers in the café, and has started switching them on.

1 National Statistics Bureau of Benin.

2 Ibid.

3 Article 8 of the Constitution of the Republic of Benin, available at: www.cour-constitutionnelle-benin.org/lacourpresent/decrets/Constitution.pdf

4 arcep.bj/admin/wp-content/uploads/2014/11/DPS_BENIN.pdf

5 assemblee-nationale.bj/fr/dernieres-lois-votees/369-loi-nd-2014-14/file

6 www.communication.gouv.bj

7 https://docs.google.com/forms/d/e/1FAIpQLSc7Kxp7eDXffQdEjJ_oMxm4uJHMocxjQED7pBqyWQ7va5zFw/viewform

8 President Patrice Talon's speech at the Innov Bénin 2021 conference, 31 May 2016. www.l-integration.com/?p=11736

Fanny, a 22-year-old biology student, has arrived and has handed XOF 250 (USD 0.50) to the manager in exchange for an hour of internet access. She is looking for information for an exercise that her teacher assigned to the class the day before. Many other people start to arrive, some to check their emails, to log into their social media accounts or even to visit adult websites. Like Fanny, there are many people who use cybercafés for internet access in Benin.

As of July 2016, Benin had 1,232,940 internet users out of an estimated total population of 10,741,458 people, with around 800,000 Facebook subscribers.⁹ According to the ICT regulation authority, in 2015 the country had around two million mobile phone internet subscriptions, with more than nine million phones in circulation.¹⁰ However, the quality, affordability and geographic reach of the internet in the country are questionable. Given its cost, the 3.7 million people¹¹ living below the poverty line are not likely to access the internet. Many based in rural areas also have no or limited access. An article in the daily newspaper *Adjinakou* suggested that while in Hong Kong the average internet speed is 45.57 bits per second (bps), in Benin it is 0.73, the second slowest in Africa.¹²

As the owner of the internet infrastructure, the government coordinates the market and organises the sector through the ministry of communication, the national telecommunications company, and the electronic communication regulatory authority, ARCEP.¹³ Internet service licences are allotted through an agreement between the government and internet service providers. Each year, the government organises an “internet week” to promote its plans on ICT roll-out in Benin.¹⁴ While many initiatives such as setting up Wi-Fi service in universities have been implemented by the government, the real cost of access for beneficiaries that would in particular allow vulnerable groups to access the internet has not been taken into account.¹⁵

Analysts say that for people living in poverty, and for those with a low monthly income, technology is a luxury item. Besides cost, illiteracy and poor electrical infrastructure are further obstacles for

marginalised communities.¹⁶ The challenges around illiteracy are worsened by the fact that much of the government public information available is written in French, the official language of Benin, rather than in the mother tongues – Fon, Adja or Baatonou – of indigenous communities. Many in these communities cannot speak French, meaning that there is a real need for information on socioeconomic rights in indigenous languages. These barriers limit the potential of using the internet to meet the information needs of marginalised communities.

Informal e-education and e-learning as an emergency exit

Many organisations, including international and local NGOs, have launched literacy-for-empowerment programmes, which include projects focusing on the mother tongues of beneficiaries as part of their core work. Many of them run learning centres focusing on adult literacy in villages. Community workers and illiterate people are gathered and trained using language-learning manuals. The communities, including, for example, farmers and women’s organisations, have been taught practical skills such as sales management and accounting, as well as being provided with information on development issues relevant to their work and lives, such as climate change, family planning and gender rights. This strategy helps learners meet their literacy needs, as well as attending to their socioeconomic rights.

Some of these initiatives use the internet in their work. For example, The Hunger Project Benin (THP Benin) works with communities to enable their access to basic services.¹⁷ People are involved in functional adult literacy and numeracy classes so they can increase their skills and build capacity. Hundreds of adult literacy courses are offered in a dozen centres implemented by THP Benin. Two of the centres have information technology hubs. In Tanguiéta, a city in the north of Benin, the NGO Action & Development educates parents, opinion leaders and young people through youth work and functional literacy. With the support of several other organisations it installed a library with over 7,000 books and a cyber centre with 10 computers.¹⁸

The Réseau national des opérateurs privés pour la promotion de l’alphabétisation et des langues

9 www.internetworldstats.com/stats1.htm

10 ARCEP. (2015). *Annuaire Statistique 2015*. arcep.bj/statistiques

11 www.actubenin.com/?Default-de-plan-de-developpement-de-l-economie-numerique-Le-Benin-dans-les

12 bj.jolome.com/news/article/qualite-de-l-internet-le-benin-classe-avant-dernier-en-afrique-659

13 arcep.bj

14 www.dgcep.gouv.bj/vues/siz2015/vues/actu.php?action=afficheArticle&idarticle=2

15 bj.jolome.com/news/article/accessibilite-a-une-connexion-internet-haut-debit-le-reseau-iwi-desormais-disponible-sur-le-campus-d

16 BeMARKETING. (2013). *Les FAI au Bénin: quel plan marketing pour un marché statique*. bemarketingmagazine.com/Etude_de_cas_Les_fai_au_Benin_quel_plan_marketing_pour_un_marche_statique.html

17 www.thp.org/our-work/where-we-work/afrika/benin/literacy-education-benin

18 www.planete-urgence.org/documents/conge-solidaire/fiche-projet-conge-solidaire.php?PROJET=2125

(ReNOPAL)¹⁹ is a network of close to 100 NGOs working on literacy for empowerment. ReNOPAL helps people to read and write, and to learn the basics of spoken French. It also teaches them elementary maths. Some other civil society organisations, such as POPDEV Bénin, use popular education as a strategy to promote people's participation in development. In doing so, it educates people on their rights. Learning strategies for these two organisations include computers and sometimes the internet.

For-profit groups have also developed some projects focusing on adult literacy in Benin. For example, Boîte A Innovations (BAI), a Canada-based organisation with a local branch and civil society partners in the country, uses video learning and user-friendly mobile applications as training strategies.²⁰ Issues learned include micro-finance and the use of ICTs. According to Tony Simard, the founder and CEO of BAI, when a person with a low level of literacy is able to read and write, and use a computer and the internet in both their mother tongue and in their official language, it means that a new world is born with hopes of new opportunities.²¹

Conclusions

This report shows that the digital divide is still wide in Benin. The government, the main duty bearer, is failing to implement what some consider the right to the internet for all. This means that the potential to use the internet as an enabler of ESCRs is limited. Access to information, well-being and even education could be improved with e-learning. The constitution of Benin guarantees its citizens access to health and social services. In a resolution, the United Nations called on governments to enable digital literacy and to facilitate access to information on the internet as a strategy to promote the right to education.²²

Despite the legal framework, policy and strategies, only a limited number of people have internet access in terms of quality, affordability and availability. The government has yet to develop a realistic and holistic action plan on the digital economy.

Infrastructural and social determinants of internet access, such as electricity, income and illiteracy, are further barriers to access.

Adult literacy programmes using the internet combined with life-relevant skills show promise. There is a need for stakeholders to understand the benefits of these programmes, and their challenges and successes, in order to effectively use the internet as an enabler of ESCRs in Benin.

Action steps

The following steps are necessary in Benin:

- Stakeholders should set up an action plan with a clear timeline to meet the internet rights of people in Benin. This means the provision of internet access that is affordable and appropriate, in particular for people living under the poverty line. The government has to make provision for this in its annual budget. Civil society organisations need to continue to lobby the government and financial partners in this regard.
- Civil society organisations have to invest more in popular education and in adult literacy programmes. These can be combined with computer and internet literacy. Content should be relevant to the lives of marginalised communities, including developing online open access materials on human rights, and in all of the country's languages. A national movement on functional adult literacy should include all civil society organisations, and a manifesto should be developed. The manifesto should include strategies on advocacy, knowledge sharing, and functional resources development, as well as deadlines for the internet to be made available to all people in Benin.
- Despite the low level of access, the number of people with mobile phones as well as the number of internet subscribers is growing in Benin. This is an opportunity for using the internet to enable ESCRs. For example, health information strategies could be developed using mobile phone messaging, as could programmes that provide farmers with market information. Mobile apps could also be used for adult literacy programmes.
- Access to the internet is essential for the youth. Stakeholders should foster young people's e-literacy and raise awareness among the youth of their socioeconomic rights. Using the internet, they could, for example, document human right violations through storytelling. Young people could share their stories through dedicated blogs, social media or other open access tools.

19 Allabi, A. (2014, 25 February). L'éducation non formelle au Bénin: Une expérience valorisante pour les analphabètes. *La Nation*. news.acotonou.com/h/18480.html

20 <https://bai.alphaomedia.org>

21 Sinathlafricaine. (2013, 1 May). Internet en Afrique: Déjà accessible aux populations analphabètes! *Daily Sinath*. sinathlafricaine.mondoblog.org/2013/05/01/internet-en-afrique-deja-accessible-aux-populations-analphabetes

22 McKenney, K. (2016, 5 July). The UN Declares Internet Access a Basic Human Right. *Paste*. <https://www.pastemagazine.com/articles/2016/07/the-un-declares-internet-access-a-basic-human-right.html>

BOSNIA AND HERZEGOVINA

RESCUING CULTURAL HERITAGE, CHALLENGING STATE INACTION



KEYWORDS: **gender, culture**

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Introduction

Bosnia and Herzegovina is often described as a fragile democracy. The truth, after more than 20 years since the end of the war, is that it is a “non-country” constantly on the verge of a new secession. It is a country trapped in a pervasive ethnic discourse that fosters and nurtures the three nationalistic oligarchies of the country’s constituent peoples – Bosniaks, Croats and Serbs – while the population experiences rampant poverty and a high unemployment rate. In a society in perennial conflict over the recent past, and feverishly busy rewriting history to better serve ethnic divisions, the internet helps to spread the fire.

A census held in 2013, but published almost three years later on 30 June 2016 – the last valid day for publishing the results – showed the extent to which nearly all of the country’s territories are divided along ethnic-religious lines, how low the education rate is, and an astonishing level of computer illiteracy.¹

Despite the findings of the census, Internet World Statistics (IWS) states that internet users in the country stand at 2,628,846, which means a 68.1% penetration rate. Facebook is the leading media platform with 1.5 million users, equal to a 38.8% penetration rate.²

This level of access means that the internet has also enabled people to do what institutions do not want to do. In particular, when it comes to access to culture, the internet has proved itself a free space that has enabled the rights of individuals and communities that states have often been reluctant to enact.

This report considers how the internet was used in Bosnia and Herzegovina to reopen the National Museum, and how a feminist archive of women’s resistance against fascism was made accessible

online. Both these initiatives challenged state inaction when it comes to enacting the right to culture in the country.

Political, economic and policy context

Yugoslavia signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 8 August 1967 and ratified it on 2 June 1971.³ At its collapse, the new states inherited the covenant through a succession process.⁴ Bosnia and Herzegovina acceded to it on 1 September 1993, during the war.⁵ This resulted in a constitutional provision reflecting the covenant in the Bosnia and Herzegovina Constitution.

The main document that provides the framework for legislation and decision making in Bosnia and Herzegovina is the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement)⁶ signed in December 1995. The relevant sections, in our case, are Annex 6 (Agreement on Human Rights)⁷ and Annex 8 (Agreement on a Commission to Preserve National Monuments).⁸ This background is essential to understand the way in which cultural institutions and culture in general are framed in the post-war society. Annex 6 sets a framework for the respect of internationally recognised human rights and fundamental freedoms, and establishes the Office of the Ombudsperson and its powers. Annex 8 establishes and regulates the creation of an independent commission to preserve national monuments, its power and processes.

In 2008, the Council of Ministers adopted a strategy on culture in Bosnia and Herzegovina, and developed a plan of action, but this was never implemented. Two entities, the Republic of Serbia and the Federation of Bosnia and Herzegovina, have both adopted cultural strategies (for 2010-2015 and 2010-2020 respectively). However, in general, cultural rights are ignored and diminished in favour of ethnically divisive rhetoric. This was made

1 According to census results on education, 1,152,353 people are computer illiterate. popis2013.ba

2 www.internetworldstats.com/europaz2.htm#ba

3 In January 2012, Bosnia and Herzegovina was among the first 10 countries to sign and ratify the Optional Protocol to the ICESCR.

4 https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights

5 Official Gazette of the Republic of Bosnia and Herzegovina, 25/93.

6 peacemaker.un.org/bosniadaytonagreement95

7 Annex 6 - www.ohr.int/?page_id=63259

8 Annex 8 - www.ohr.int/?page_id=63265

clear by the Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, written after her mission to Bosnia and Herzegovina in 2013.⁹ It captures the essential fragmentation and hyper-politicisation of culture in the country. The financing of culture is low given that it is not a political priority – except when it comes to the celebration of martyrs, entertainment, or a few mainstream cultural events which are the exceptions confirming the rule.

“I Am the Museum”

When we talk of culture in Bosnia and Herzegovina we enter a tunnel of exclusive and hierarchical identity politics where there are the “constituent peoples” and the “others” – the 17 minorities groups in the country.¹⁰ The category of “other” identifies and excludes anyone who does not self-identify with one particular major ethnic group. (This is reminiscent of the public discussion on gender and non-binary self-identifying individuals).

This was identified as a major challenge by Shaheed:

Such divisions constitute a serious obstacle to social cohesion, and are conducive to violations of cultural rights, in particular, the right of each person to manifest her/his own identity, to participate (or not) in particular aspects of cultural life, and to have access to one’s own cultural heritage, as well as that of others. Artificial boundaries have been created between peoples, and are being entrenched.¹¹

Because of this divisive framing of what “national” means, and reflecting the tensions between the dominant ethnic groups, in 2013 the citizens of Bosnia and Herzegovina witnessed the closure of the National Museum.¹²

The National Museum of Bosnia and Herzegovina was one of the seven cultural institutions defined as of “national importance” in the Dayton Peace Agreement. However, in 2010 the Ministry of Civil Affairs in Bosnia and Herzegovina had stopped funding the seven institutions. Project funding from international donors sustained the institutions until 2012 before they collapsed.

Unfortunately the Peace Agreement did not define who would have control over the museum – whether at the state, entity, canton or municipal level – so the museum spent 20 years in a legal vacuum waiting for the responsible state institutions to reach a solution. Following pressure, the Federation of Bosnia and Herzegovina decided at the end of 2013 to finance five of the seven institutions, except the Museum and the Kinoteka. In the end, because no one took responsibility for the museum, no one felt obliged to finance its operations. In 2013 it looked as if it were about to be closed down completely.

Ja Sam Muzej (“I Am the Museum”)¹³ was an initiative that combined online and offline actions to advocate for the revitalisation of the museum. The initiative started formally in September 2015. After just over a month of advocacy, the museum reopened and the initiative was awarded the prestigious European Prize for Cultural Heritage Europa Nostra.

On 15 September 2015 the museum reopened its doors for 40 days, offering a rich programme to the public. People were signing up to be curators and cultural workers, volunteering their presence to keep the doors of the museum open to the public. There was an incredible, exciting flow of visitors and citizens, all managed publicly and online. The core people involved were from an association called *Akcija Sarajevo*:¹⁴ Aida Kalender, Ines Tanovic Sijerčić, Zijah Gafić, Jasna Kovo and Azra Rizvo. The following people supported the initiative: Eldin Herenda, Srdjan Čalija, Ines Bulajic, Ezana Zekiri, Alexander Brezar, Slaven Ištuk and Dženan Medanović. The campaign received much public attention, and, as a result, the museum was granted public funding until 2018.

How the internet created awareness of cultural heritage

What the *Ja Sam Muzej* site did was tell people the story of the country’s cultural heritage beyond the usual rhetoric. It introduced the museum workers, their lives and visions. It talked about heritage in

9 Shaheed, F. (2014). Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. Addendum: Mission to Bosnia and Herzegovina (13-24 May 2013). www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_49_Add.1_ENG.DOC documents-dds-ny.un.org/doc/UNDOC/GEN/G14/117/22/PDF/G1411722.pdf?OpenElement

10 The 17 minorities as recorded by the 1991 census prior to the 1992-1995 war: Albanians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians. www.osce.org/bih/110231?download=true

11 Shaheed, F. (2014). Op. cit.

12 In her report, Shaheed refers to “the current uncertainty surrounding the fate of seven major cultural institutions of Bosnia and Herzegovina: the National Museum, which had to close in 2012, as well as the National and University Library, the National Gallery, the Museum of History, the Film Archives Kinoteka, the Library for the Blind and Visually Impaired Persons, and the Museum of Theatre and Literature. These institutions were created by the pre-war Socialist Republic of Bosnia and Herzegovina, but were never accepted by all as the official State institutions after the conflict.” Ibid.

13 jasam.zemaljskimuzej.ba

14 akcija.org.ba/about-us

an inclusive and non-discriminatory way and leveraged the testimonials of well-known people, which helped the campaign remain on the news agenda, both online and offline. It was a powerful, well-thought-out and technically sophisticated campaign which used its funding as a tool to achieve its ends, not as a means to pay personal or institutional bills. The participants' reputations were at stake, and the criticism of the initiative that occurred – with some accusing it of being a self-serving project – was dismantled by the participation of a large number of people as volunteers.

In terms of the definition of the state as “duty bearer”, we can say that the revitalisation of the museum exposed the state for its incapacity and unwillingness to mobilise resources to protect the cultural rights of people in Bosnia and Herzegovina. The people working on the project experienced what it meant to be “rights holders” and were empowered to engage as individuals with rights in order to protect and promote their access to culture. The internet enabled their empowerment, and helped to expose the state's lack of political will. This included a Facebook page,¹⁵ with a thriving community of 5,088 members, and the strategic use of other social platforms such as Instagram,¹⁶ Twitter¹⁷ and YouTube.¹⁸ As many as 95 videos were posted online, generating viral media attention that helped to crowdfund participation beyond the immediate circles of activists and artists: 185 people and collectives volunteered for shifts at the museum and their names were published on the project's website.¹⁹ It was a joyful experience to participate in; for many a political obligation, for others a public relations exercise. Regardless of the motivation, the campaign changed the usual walled garden that separated activists and their concerns in Bosnia and Herzegovina.

Feminist culture archive of resistance

A different, but equally successful initiative was launched by a feminist cultural collective called CRVENA that developed an archive of women resistance against fascism: *Arhiv Antifašističke Borbe žena Bosne i Hercegovine i Jugoslavije*. As stated by the project's home page: “Our task is to preserve

and publicise the historical evidence of the work and activities of the Antifascist Front of Women of Bosnia and Herzegovina and Yugoslavia, as well as women's participation in the People's Liberation Struggle and in the building of Socialist Yugoslavia. The Archive aims to motivate our new struggles – on fronts that we need to identify, in numerous battles that we need to win. The revolution has taken place. Let's start another one!”²⁰

The role of the internet here was to make a part of a forgotten collective culture accessible, and to provide access to valuable documents that were otherwise inaccessible. The four-year project, led by the feminist artists and activists Andreja Dugandžić and Adela Jušić, involved researching and curating materials from six different institutions in a unique virtual space. The archive was launched on 8 March 2015, and is available for anyone, including feminists, activists, students and researchers, to browse and learn about a historical period often mystified by the current political elites. The archive is a testimony once more of the strength of civil society collaborating with institutions as equal partners.²¹

Once more the rights holders – a specific group of citizens – took it upon themselves to fulfil the responsibility of the state as duty bearer. Perhaps because the initiative reached a smaller public than the *Ja Sam Muzej* initiative – its deeply political content could not count on widespread public interest – it did not receive state support, but instead turned to the public for support through crowdfunding.²² The web was used as a strategic tool to open up an archive which was otherwise inaccessible for the general public.

Conclusion

Bosnia and Herzegovina has submitted two reports to the Committee on Economic, Social and Cultural Rights (CESCR): in 2005 and 2012, while a third is expected in November 2018. In its reporting requirements for the first report, the Committee made a specific link between Article 15 on cultural rights and the impact of war on this right in the country: “Please provide information on measures taken by

15 <https://www.facebook.com/pages/JasamMuzej/952858684780362>

16 <https://www.instagram.com/jasammuzej>

17 <https://twitter.com/jasammuzej>

18 https://www.youtube.com/watch?v=4l6rUKWfo-E&list=UUe_oQsUCvU5zdWz_Yqwoztw

19 jasam.zemaljskimuzej.ba/dezuram-za-muzej

20 afzarhiv.org/da-zivi-afz

21 The online archive mentions the public institutions where the documents were sourced, such as *Historijski muzej Bosne i Hercegovine*; *Nacionalni arhiv Bosne i Hercegovine*; *Muzej II zasjedanja AVNOJ-a, Jaice*; *UABNOR*, *Centar Sarajevo*; and *Muzej istorije Jugoslavije*, but their banners are not included, suggestive of the democratic structure of the initiative.

22 afzarhiv.org/podrska

the State party to restore the cultural heritage damaged during the war.”²³

This requirement was refined in the subsequent reporting cycles as follows:

Please provide information on legislative and other measures, as well as on the effectiveness of those measures, to ensure equal enjoyment of cultural rights by all groups, while preserving their own cultural identities and promoting intercultural understanding and appreciation of cultural heritage of other communities, in the entire territory of the State party.²⁴

Culture is not regarded as relevant by the Bosnia and Herzegovina government, a position that has meant that this has been the responsibility of entities, districts and cantons in the country. In total, 14 different and independent government levels are in charge of cultural policy and legislation (two entities, one district and 10 cantons).

This complex administrative structure has been recognised by the CESCR as more of an impediment than an enabler of rights. Culture is trapped in the different visions offered by the state and the two entities. The Republic of Serbia mirrors the position of the state, while also pushing for stronger decentralisation. The Federation promotes a centralised state-level vision.

The internet has in the cases described broken the siege on culture, and shown a different way of promoting culture and a different way of achieving rights – but in each case it has been a civic initiative, bound by commitment, knowledge and a broader political agenda. Institutions reacted with disbelief, or did not react at all.

Despite these initiatives, which offered a wind of hope for the country, the mainstream cultural agenda has remained intrinsically unchanged – and some of this is to do with a lack of better use of the internet to further ESCRs in the country. Rather than furthering commercial purposes, internet

infrastructure should be devoted to research and to science, with academic networks forming the backbone of our national knowledge.²⁵ People do not see the precariousness of our internet infrastructure and lack a vision for its development. Intermediaries do not provide access and space for strengthening ESCRs, but for boosting their business models. Bosnia and Herzegovina has on several occasions shown an interest in recognising information and communications technologies (ICTs) as a critical component for economic development, and the development of society in general. But in reality the lack of ICT support and the fragmentation of a people-orientated network continue to postpone these benefits.

Action steps

The internet cannot be an enabler of all ESCRs – and its potential to realise rights is diminished if there is no political will. Yet as this report has shown, it has the power to connect, to bypass restrictions and the limitations of authorities, to generate knowledge and to make content visible that is otherwise invisible. It has the potential to generate a critical mass of public support necessary for getting attention from the government as the principal duty bearer.

One thing that needs to be strengthened relates to seeing the internet as a “public interest” infrastructure. Bosnia and Herzegovina needs an open internet to host initiatives that challenge the fragmentation mastered by the political parties in power.

Politicians have learned that the internet is powerful, and after the massive protests in the country in 2013²⁶ and 2014,²⁷ they have tried to control it, using terrorism and the safety of children as excuses. Bosnia and Herzegovina citizens cannot risk losing the internet they know if they want to continue their fight for human rights.

23 Committee on Economic, Social and Cultural Rights. (2004). List of issues to be taken up in connection with the consideration of the initial report of Bosnia and Herzegovina concerning the rights referred to in articles 1-15 of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.65) (E/C.12/Q/BIH/114). tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FQ%2FBIH%2F1&Lang=en

24 List of issues: Committee on Economic, Social and Cultural Rights Pre-sessional working group. (2013). List of issues in relation to the second periodic report of Bosnia and Herzegovina (E/C.12/BIH/2), adopted by the pre-sessional working group at its fifty-first session (21-24 May 2013) (E/C.12/WG/BIH/Q/2). tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FWG%2FBIH%2FQ%2F2&Lang=en

25 Pellizzer, V., & Akagic, A. (2009). Bosnia and Herzegovina. In Finlay, A. (Ed.), *Global Information Society Watch 2009*. APC and Hivos. <https://www.giswatch.org/country-report/20/bosnia>

26 Mujanović, J. (2013, 11 June). “Bebolucija!": The #JMBG Movement in Bosnia-Herzegovina. *Politics, Re-Spun*. politicsrespun.org/2013/06/bebolucija-the-jmbg-movement-in-bosnia-herzegovina/

27 Kern, M. (2014, 3 March). The politics of division and sabotage. *Bosnia-Herzegovina Protest Files*. <https://bhprotestfiles.wordpress.com/2014/03/03/the-politics-of-division-and-sabotage>

CAMBODIA

INTERNET, SOCIAL MEDIA AND LABOUR RIGHTS IN GARMENT FACTORIES: DO THE CAMPAIGNS WORK?



KEYWORDS: **labour, gender**

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Introduction

“This sector is the rice pot for all of us,”¹ Chheang Vun from the governing Cambodian People’s Party (CPP) said about Cambodia’s garment industry, which is worth more than USD 5 billion² and employs more than 600,000 workers,³ mostly young women. With one of the fastest rising GDP growth rates in its region, Cambodia remains among the poorest countries. The garment sector is the single biggest employer and driver of the economy, as it accounts for a total of 80% of export revenues.⁴ But it is largely based on cheap labour, as Cambodia has one of the lowest minimum wages in Asia-Pacific.⁵ Clothes, footwear and other fashion goods produced in the factories across the country supply big popular brands such as Nike, Gap, Walmart, H&M, Puma, Adidas, Levi Strauss, Marks and Spencer, and others.

In the last decade local and international labour rights activists have documented widespread abuses against the economic and social rights of workers. Cambodian women toil in non-air-conditioned, hot and overcrowded factories with poor safety standards and work long shifts for low wages, often facing unpaid overtime and exploitative practices such as harassment, violence in the workplace and illegal short-term contracts.⁶

Well-organised trade unions⁷ have been campaigning for higher wages and labour rights through mass strikes, and there have also been local and international campaigns on social media. The internet craze has been taking over Cambodia, which has seven mobile providers who compete with offers of internet access packages. Although less than a quarter of the population of 15.58 million⁸ has access to internet (more than 2.98 million users), mobile subscribers surpassed the country’s population with 20 million subscribers in 2013.⁹ Freedom House ranked Cambodia in its annual ratings as “not free”,¹⁰ but freedom of the internet ranked better – “partly free”.¹¹

Policy and political background

Economic, social and cultural rights (ESCRs) are guaranteed in the Cambodian constitution, and the country has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹² but the compliance of garment-producing companies remains a widespread problem. Minimum wages are not consistent across sectors, though the mass strikes and international pressure have gradually achieved the current USD 140 minimum monthly salary in the garment sector.¹³ In September 2015 the Cambodian government announced a further rise in the minimum wage for garment sector workers to USD 153, beginning in 2017.¹⁴

1 Thul, P. C. (2016, 4 April). Cambodia passes disputed trade union law as tension flares. *Reuters*. www.reuters.com/article/us-cambodia-unions-idUSKCN0X11HX

2 Better Factories Cambodia. betterfactories.org/?page_id=25

3 Kane, G. (2015). *Cambodia Factsheet*. Clean Clothes Campaign. <https://cleanclothes.org/resources/publications/factsheets/cambodia-factsheet-february-2015.pdf>

4 Soravy, T. (2013, 18 July). Conditions in Cambodia’s Garment Industry Worsen: ILO. *Radio Free Asia*. www.rfa.org/english/news/cambodia/garment-07182013175956.html

5 ASEAN Briefing. (2013, 16 April). Minimum Wage Levels Across ASEAN. www.aseanbriefing.com/news/2013/04/16/minimum-wage-levels-across-asean.html

6 Human Rights Watch. (2015). “*Work Faster or Get Out*”: Labor Rights Abuses in Cambodia’s Garment Industry. <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry>

7 Nuon, V., & Serrano, M. (2011). *Building Unions in Cambodia: History, Challenges, Strategies*. Friedrich Ebert Stiftung. apinet.ilo.org/resources/building-unions-in-cambodia-history-challenges-strategies

8 World Bank Data. data.worldbank.org/country/cambodia

9 Telecommunication Regulator of Cambodia. <https://www.trc.gov.kh/mobile-phone-subscribers>

10 Freedom House. (2016). Freedom in the World: Cambodia. <https://freedomhouse.org/report/freedom-world/2016/cambodia>

11 Freedom House. (2015). Freedom on the Net: Cambodia. <https://freedomhouse.org/report/freedom-net/2015/cambodia>

12 In 1992. See: indicators.ohchr.org/

13 Dara, M. (2015, 9 October). Garment Sector Minimum Wage Raised to \$140. *The Cambodia Daily*. <https://www.cambodiadaily.com/news/garment-sector-minimum-wage-raised-to-140-97018>

14 Narim, K., & Peter, Z. (2016, 29 September). Government Raises Garment Wage to \$153. *The Cambodia Daily*. <https://www.cambodiadaily.com/news/garment-sector-minimum-wage-set-153-118642>

What remains legally challenging is the issue of labour rights within the recently adopted new Trade Union Law.¹⁵ Activists and members of unions have opposed the lack of transparency in the drafting of the law, which has happened without any input from civil society. The new law also failed to include two key articles of the International Labour Organization (ILO) convention on freedom of association of workers and rights of trade unions to convene and organise. Critics claim that these two missing links are a way for the Cambodian government to restrict the activities of trade unions and to prosecute members more easily.¹⁶

Community organisations and civil society are further restricted through the previously passed new NGO law,¹⁷ which puts community organisations under government control with particular legislative tools to oversee, fine and close or refuse to register civil society groups.¹⁸ This restrictive and repressive legislation is complemented by the new draft of the Cyber Security Law. Prepared in familiar secrecy, activists expect the cyber legislation will curtail freedom of the internet,¹⁹ which remains the last unregulated medium in Cambodia. This could potentially impact online campaigns supporting trade unions and workers. In this legal pincer, workers and their economic and social rights are under increasing threat.

Economic resources are available in Cambodia, including in the USD 5-billion garment industry, to provide higher wages and better working conditions. But the demands and strikes of workers are met with insufficient political will and are often seen as mere opposition and even suppressed as a threat to the almost 30-year rule of the CPP and Prime Minister Hun Sen. Political opposition stands on the side of workers and often refers to the garment industry in its government critique.

The power of the internet: Global solidarity

On the industrial outskirts of the capital city of Phnom Penh, a young 21-year-old woman, Srey Oun, works alongside thousands of other women in garment factories, earning a minimum wage. The shifts here can be up to 12 hours long, but overtime is often left unpaid. Srey Oun herself is on a short-term contract (six months) because of her age and the fact that she has recently married. Her employer worries Srey Oun will get pregnant and the company will have to provide social and health benefits. Short-term contracts in the garment sector are illegal according to Cambodian law. The factory Srey Oun works for is in a large, old building, housing about 500 workers. The space is not air-conditioned and temperatures inside can reach more than 40 degrees Celsius. Many of Srey Oun's co-workers have fainted during long hours without sufficient breaks. They commute in overcrowded minivans – a travel expense they pay out of their own pockets – back to the shantytowns they live in on the outskirts of Phnom Penh. There, Srey Oun lives in a small room shared with other women to save funds. Most of the salaries earned by Srey Oun and her co-workers are sent back home to the Cambodian provinces, where the money helps to feed their children, husbands and impoverished families.

Garment factory workers have been staging strikes for higher wages and better working environments for almost a decade. During this time, thanks to the internet, their struggle has been publicised and brought closer to the developed countries, where more and more consumers are critically rethinking the consequences of fast and cheap fashion. New technologies and social media have become an effective tool in documenting and sharing the accounts of exploitation by garment factories worldwide, including low pay and violence, and factory strikes and protests have become globally visible.

Anna McMullen from Labour Behind the Label,²⁰ a UK-based labour rights organisation, talks about an increase in the use of international support by Cambodian garment workers and trade unionists to raise the profile of their struggle. New technologies and social media are an important link to the outside world: “A good example is CENTRAL Cambodia’s citizen journalists programme, and using social media on the ground as an organising tool, helping workers collaborate and share images of

15 OHCHR Cambodia. (2016). *A Human Rights Analysis of the Draft Law on Trade Unions*. cambodia.ohchr.org/WebDOCs/DocNewsIndex/2016/032016/TUL_Analysis-Eng.pdf

16 LICADHO. (2014). *Cambodia's Draft Law on Unions of Enterprises: Legal Analysis*. <https://www.licadho-cambodia.org/reports/files/199JointBriefAnalysisDraftTradeUnionLaw2014-English.pdf>

17 LICADHO. (2011, 15 December). *Draft Law on Associations & NGOs: Comments on the Fourth Draft*. www.licadho-cambodia.org/collection/10/law_association_ngo_fourth_draft; LICADHO. (2015, 30 July). *ADHOC and LICADHO Urge Cambodian Constitutional Council to Reject Unconstitutional LANGO*. www.licadho-cambodia.org/pressrelease.php?perm=390

18 ARTICLE 19, Human Rights Watch, & Southeast Asian Press Alliance. (2015, 3 June). *Rights groups urge end to Cambodia NGO law*. *IFEX*. https://www.ifex.org/cambodia/2015/06/03/ngo_law

19 *Cambodian Center for Independent Media*. (2014, 31 October). *Cybercrime Timeline*. www.cimcambodia.org/cybercrime ;

20 labourbehindthelabel.org

what is happening in the factories.”²¹ McMullen says that the problem with the garment industry is how disconnected consumers are from the production process, as most people do not know who makes their clothes or how difficult it is for them: “Social media is fantastically helpful in sharing images: this is what a factory looks like, these are the people, who are just like you, who make your clothes.”

In some of the existing labour rights campaigns in Cambodia’s garment sector, the power of the internet has played a major role. Joel Preston, speaking for CENTRAL Cambodia²² – the Center for Alliance of Labour and Human Rights – says that the “We want 177” campaign for a higher minimum wage back in September 2014 included a large number of photos and videos from inside factories and of the workers’ strikes being uploaded online. The internet created the link to international partners like trade unions and organisations supporting labour rights in the West. “Free the 23” was another big campaign, where workers and union leaders with smartphones shared photos via Facebook and shared them with international partners like the Clean Clothes Campaign.²³ They have absolutely been successful,” Preston says.²⁴ That campaign led to the release of the 23 unionists arrested and prosecuted for striking and “inciting public disorder”.

The power and success of social media and the internet allow the local to link with the global in solidarity and in a way that allows for strategic advocacy. “Actually, a lot of change happens in negotiations, in speaking to brands, taking part in important discussions,” says McMullen. “Labour Behind the Label and the Clean Clothes Campaign, which we are part of, use social media as a tool to back up our position or workers’ demands and amplify them, raise them at the right places, where we get access to decision makers.”

CENTRAL Cambodia agrees that positive change for labour rights in Cambodia’s garment industry is an outcome of collaboration on all levels – strong and organised unions at the local level, and coordinated solidarity among unions and local NGOs as well as among garment-producing countries, all the way up to the international level including global unions and partners like the Clean Clothes Campaign. “In the ‘Free the 23’ campaign we coordinated a

series of global actions – strikes and demonstrations in Cambodia in front of garment-producing companies and head offices, identifying offices of brands across the region including Korea and Hong Kong, all the way up to stores in the United States and European Union,” explains Preston. “That pressure pushed a coalition of brands like H&M, Adidas, Levi’s and others to discuss the release of the 23 arrested garment factory workers and unionists with the Cambodian government.” After Levi’s called off USD 50 million worth of garment orders from Cambodian suppliers, and communicated that move to the Ministry of Finance, the 23 were released a few days later.

If we look closer at the gradual increase of the minimum wage in Cambodia’s garment sector in recent years, since 2011 it has more than doubled – from USD 61 to the current USD 153 – and social media played a major part in that, linking the campaign to the consumers in the West and further pressuring the big brands. After the massive protests in late 2013 and early 2014, where more than 200,000 workers went on strike, 40 were shot and five killed by security forces, and the famous “23” were arrested, an open letter from Cambodia’s major buyers promised to compensate factory owners based on the minimum wage increase. “In terms of the industry, it was an unprecedented move for some of the biggest buyers to say they were going to increase their buying prices and contribute to the wage increase. It had a lot to do with the increase from 100 to 128 dollars, a 28% wage increase, which is the largest in the history of Cambodia’s wages,” says Preston

Similarly, the Clean Clothes Campaign pressured H&M in 2012 because of the large number of workers who had fainted in their suppliers’ factories. Part of this was Labour Behind the Label’s “Conscious collection is unconscious collection”²⁵ campaign featuring big ads of workers fainting in the factories and some street-theatre re-enactments performed outside H&M shops in the West. Then a reality TV documentary from Scandinavia called “Sweatshop,”²⁶ where young fashion bloggers were brought to Cambodia to live and work with women who make their clothes, was released on social media. “A year after that, H&M announced they were starting a roadmap with focus on Cambodia to ensure that a living wage was paid to workers. Over

21 Interview with Anna McMullen from Labour Behind the Label, 1 August 2016.

22 www.central-cambodia.org

23 <https://cleanclothes.org>

24 Interview with Joel Preston from CENTRAL Cambodia, 20 July 2016.

25 Clean Clothes Campaign. (2013, 25 March). ‘Conscious collection’ H&M leaves seamstresses unconscious. <https://cleanclothes.org/news/press-releases/2013/03/25/conscious-not-really>

26 www.imdb.com/title/tt3996912

that year, thousands of consumers signed the petition and much online pressure from people sharing the documentary was generated,” says McMullen. Around the time of the massive general strike in 2013, Labour Behind the Label also published a report called “Shop till they drop”²⁷ linking low wages to malnutrition among garment factory workers, to which H&M reacted with another promise to finally do something about the living wage. “It was a result of many different factors, but quite a big landmark achieved also by pressure from people posting images online and trying to show the reality,” says McMullen.

Cambodia is an interesting case in terms of its globally small but rather vibrant garment industry. In terms of labour rights it is full of odds. The unionisation rate is very high – while nationally only five percent, in the garment industry it is 60%! But many of these unionists are from the “yellow” pro-government unions, causing a division and often conflicting demands towards the government and private sector on the increase of minimum wage. Preston says that while many garment-producing countries look up to Cambodia as an example of successful labour rights struggle, workers are still being arrested and prosecuted for going on strike and campaigning: “[They are usually accused of] inciting violence, disturbing public order, trying to overthrow the government, but these accusations are ridiculous misapplications of what those provisions are supposed to be useful for.” While the last big case of the 23 garment sector unionists ended in the release of the workers, the new trio of repressive documents – the trade union law, the NGO law and the cyber security law now in preparation – are likely to make the struggle for labour rights much more difficult. In particular, the cyber legislation is expected to put garment industry unionists’ activities on the internet and social media under government surveillance and control. Although drafted in secrecy without any insight into what is being prepared, clearly for the Cambodian government every new strike, protest and disruption to the production of such large export value pushes the big brands and their suppliers to look for more stable countries with much lower minimum wages.



Shop ‘til they drop

Fainting and Malnutrition in Garment Workers in Cambodia

Conclusions

According to trade unions in Cambodia, as well as activists campaigning for ESCRs for garment industry workers, the internet and social media are clearly not solely responsible for the positive change and success of campaigns. But the internet is a very effective and certainly a key tool in that struggle – on the ground it allows garment workers and unionists to organise and document abuses, while it also allows activists to popularise the campaigns globally, bringing the reality of garment production to the distant West, where the clothes from Cambodia are exported and sold. To communicate the demands and unmet rights of Cambodian garment workers to consumers, the private sector and garment-making companies as well as the government, the internet and social media are able to amplify messages and can create much-needed pressure advocating for fair and sustainable production.

The gradual increase in the minimum wage in the past five years is proof that the internet can be used to pressure authorities to pay attention to economic and social rights and can bring the Cambodian government as well as garment-producing companies to dialogue and action.

However, for the freedom of trade unions and garment industry activism, the future is unsure in

²⁷ Labour Behind the Label & Community Legal Education Centre. (2013). *Shop ‘til they drop: Fainting and malnutrition in garment workers in Cambodia*. <https://cleanclothes.org/resources/national-cccs/shop-til-they-drop>

Cambodia. The right to strike, the right to protest, to organise and to demand economic and social rights will all be challenged under the new legal environment brought about by the “repressive trio” of laws recently passed or currently being prepared by the governing CPP. The lack of transparency and the lack of input from opposition parties and civil society will result in legislation that can be directed to control and curb human rights ambitions, threatening garment factory workers and activists with arrest and imprisonment.

One can hardly stop the wheel of time and grassroots demands for justice. The internet is giving young women without much education or resources the much-needed empowerment to participate in the making of change. This path can only be threatened by a draconian cyber law, which can criminalise organising using the internet and social media, and using the internet to share, exchange and expose abuses by the private sector and Cambodian authorities. The internet is the last free medium in Cambodia, but will it stay that way?

Action steps

While the use of the internet to create pressure from campaigners and activists to achieve better economic and social rights in Cambodia’s garment sector has so far worked well when directed at the big brands and garment-producing companies, more pressure needs to be put on the government. There should be more international online campaigns directed against repressive laws in Cambodia, which focus on trade unions and workers’ rights of association, unionisation, community organisations and on a free internet.

What remains questionable is whether such government-oriented pressure from the outside world using the internet and social media will work at all. If we break down the minimum wage increase and the abovementioned “Free the 23” campaign, these have been successful because of internationalisation of unions and Western consumer pressure placed on the private sector. Only then did the government act. But can one expect such pressure to spill over to trade unionists’ rights and freedoms? The rise in the minimum wage goes against the private sector, because it raises the price of their production. If the wages continue to rise in Cambodia, the garment producers will soon move elsewhere. Therefore, what motivation does the private sector have to pressure or motivate the government to allow more freedoms for garment factory workers and unions – physically and online?

Without a drastic change in policies like the trade union law, the NGO and community organisations law as well as the cyber security law, it will be increasingly difficult to achieve economic and social rights for Cambodia’s garment sector. Moreover, in this legislative framework, trade unions and striking workers running campaigns will have to find new ways to advocate for economic and social rights to avoid the threat of being arrested and prosecuted. This might lead to self-censorship online and on social media, and the search for more clandestine tools and techniques to get their message out there – abroad as well as domestically. In the future, civil society will have to focus even more on effective and safe documentation of ESCR abuses and violations, and also strengthen the public campaigning online focused on Western consumers and international partners such as unions and ethical clothing campaigners.

CHILE

THE SALUD + DESARROLLO E-HEALTH PROGRAMME AND ITS IMPACT ON THE MOST MARGINALISED POPULATION GROUPS



KEYWORDS: **health, ICTs**

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Introduction

Ever since Chile joined the Organisation for Economic Co-operation and Development (OECD) in 2010, national health indicators have improved. Life expectancy is near the OECD countries' average and public health spending has increased. However, the Chilean healthcare system is far from perfect, with the quality of service being lower compared to other OECD countries, and its financing characterised by demanding high contributions to the payment of costs from patients.¹

Chile is among the first countries in Latin America to develop a public policy on digital technologies.² In the last decade the potential of technology has been incorporated into different sector plans. In the field of the right to healthcare, the Chilean Economic Development Agency (CORFO)³ launched “Salud + Desarrollo”⁴ (“Health + Development”), otherwise known as S+D. This is a strategic national programme that aims to strengthen the development of healthcare services and management.

This report will discuss regulations concerning the right to health, the main problems that the public health system faces, and how they affect the exercise of the right to health by the most vulnerable in the population. Given the problems and shortages that the public healthcare system constantly faces, the introduction of e-health can be useful to help improve the situation and improve the country's indicators; however, it may also create new challenges and risks.

The right to healthcare in Chile

Chile signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1972, though it only became law officially in 1989.

The UN High Commissioner for Human Rights has elaborated on the right to health as supported in the ICESCR, stating that the right contains entitlements such as:

- The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health.
- The right to prevention, treatment and control of diseases.
- Equal and timely access to basic health services.

The UN also states that all services, goods and facilities must be available, accessible, acceptable, of good quality and provided without discrimination.⁵

At a national level, the right to healthcare is recognised in Article 19 No. 9 of the Chilean constitution.⁶ However, the constitutional protection of this right is incomplete. As one of the consequences of the changes to the Chilean economic structure during the Pinochet regime, the exercise of the right to receive healthcare is often limited by the resources of each person. Unlike other rights guaranteed in the constitution, the right of access to healthcare cannot be directly demanded from the state through judicial action, except for the right to choose a public or private health insurance provider.⁷

Chile has confronted the public healthcare system's problems with several public policies and strategies. Although public expenditure on healthcare has grown, it is still below most OECD countries.⁸ Expenditure constitutes close to 8% of Chile's GDP.⁹ The most important challenges of the public healthcare system are: meeting the needs of an ageing population, access to and

1 OECD. (2015). *Health at a Glance 2015: How does Chile compare?* <https://www.oecd.org/chile/Health-at-a-Glance-2015-Key-Findings-CHILE.pdf>

2 Katz, R. (2009). *El Papel de las TIC en el Desarrollo. Propuesta de Latinoamérica a los Retos Económicos Actuales*. Barcelona: Ariel.

3 www.english.corfo.cl

4 www.saludmasdesarrollo.cl

5 OHCHR & WHO. (n/d). *The Right to Health*. www.ohchr.org/Documents/Publications/Factsheet31.pdf

6 www.leychile.cl/Navegar?idNorma=242302

7 The state does not guarantee actual access to the promotion, protection and recovery of the health of a person and his or her rehabilitation, as established in the first paragraph of Article 19 No. 9. However, the case law is changing due to the AUGÉ Plan, a scheme that guarantees a set of healthcare services with no payment for a limited list of health conditions. See Zúñiga, A. (2011). Justicia y racionamiento sanitario en el Plan AUGÉ: dilemas bioéticos asociados a la distribución de recursos escasos. *Acta bioethica*, 17(1).

8 OECD. (2015). Op. cit.

9 static1.squarespace.com/static/55dc9136e4b05820bfo29511/t/560ae7d8e4b003b5f3oadd04/1443555288010/Informe++mesas+de+trabajo.pdf

quality of healthcare, infrastructure (facilities and staff), efficiency and coordination between units and private-public systems, and leadership and coordination.¹⁰ For example, there is a scarcity of equipment and medical personnel in many healthcare facilities (there are only 10.3 physicians per 10,000 inhabitants) and indigenous populations and people living in rural areas live far from the services, making transportation costs unaffordable.¹¹

Healthcare in Chile is provided by public and private entities. The public healthcare system provides service to 78.3% of the Chilean population¹² not affiliated to private insurers (or ISAPRES). With limited resources and an enormous demand, efficiency in the public system is crucial. The S+D programme defines the need for efficiency as one of its pillars. As the manager of the programme, Aisen Etcheverry, told us, there is the will in all public agencies involved to improve the healthcare system's coverage and quality, and the use of information and communications technologies (ICTs) to do this is key.¹³

The challenge of providing better healthcare to the underserved

The public healthcare system is available to all of the population; however, most people in higher income groups prefer private insurance. Along with most of the lower income population, the public system is also available to the most vulnerable of the Chilean population, which stands at 17.8 million in total.¹⁴ In order to determine the type of insurance, patients are divided into four different groups according to their monthly income. Public health insurance covers the first two groups without charge. These groups include people who do not have an income (a total of 3,296,448 people, including minors) and those who earn under the minimum wage (4,746,623 people). The third group is made up of people who barely earn more than the minimum wage (2,307,435 people), and the fourth (almost half the population) is people who earn above the

minimum wage but stay in the public system.¹⁵ Although the groups are mostly all divided among very low income brackets, the grouping allows for determining the amount of payment for a service in the public system, or the rate of co-payment if attending a private healthcare centre.

All of the people are most probably going to need healthcare service at some point in their lives. The government's Universal Access to Explicit Health Guarantees (AUGE) Plan¹⁶ establishes the minimum conditions of service, including maximum waiting times, financial protection for patients, and quality of service, as defined by the Ministry of Public Health, for a list of 80 health conditions that is regularly revised.¹⁷ However, it is important to note that wealth is not equally distributed across Chile; the higher percentages of poverty are located in the regions farthest from Santiago, which are also the most isolated. This poses challenges for meeting the right to health of the most vulnerable.

In this context, the role of the government is to give universal access to health, which is a constitutional right. The government develops policy and coordinates and controls implementation plans, all within the available resources.

Given the challenges that the healthcare system faces – in particular a shortage of medical personnel and the difficulty in accessing services for indigenous and rural populations – Etcheverry says that telemedicine a good option to improve the current circumstances. Even if the systemic shortage of medical professionals is not going to be solved easily, at least routine medical exams can be performed on patients living in isolated areas and sent to a physician for analysis. Patients can also access the services of specialists using the internet (or through tele-consultation).

The use of ICTs in healthcare is effective for multiple reasons. First, it reduces the costs associated with procedures. Etcheverry told us that one of the inefficiencies a programme like S+D tries to address is the lack of centralised medical records for each patient. If a patient goes to a public hospital located in the north of Chile and then goes to another in the south, a doctor in the latter might not know about the tests, diagnosis and prescriptions given by the first doctor. It is likely, for example, that tests will have to be performed more than once, and the

10 Taylor, E. A. et al. (2016). *Developing a Strategic Program for Chilean Health Information Technology: Environmental Scan and Key Informant Interviews*. Santa Monica, CA: RAND Corporation. www.rand.org/pubs/research_reports/RR1358z1.html.

11 Ibid.

12 Ministerio de Desarrollo Social. (2015). *Informe de Desarrollo Social 2015*. www.ministeriodesarrollosocial.gob.cl/pdf/upload/IDS2.pdf

13 Interview with Aisen Etcheverry, manager of the S+D programme, 20 June 2016.

14 Lezaeta, M. (2014, 4 September). INE establece que población chilena asciende a 17,8 millones de personas en 2014. *EMOL*. www.emol.com/noticias/nacional/2014/09/04/678578/ine-establece-que-poblacion-chilena-asciende-a-17-8-millones-de-personas-en-2014.html

15 Clínicas de Chile A.G. (2016). *Dimensionamiento del Sector de Salud Privado en Chile: Actualización a cifras año 2014*. www.clinicasdechile.cl/wp-content/uploads/2016/04/Dimensionamiento_sectorprivado_cifras2014.pdf

16 auge.fonasa.cl

17 www.supersalud.gob.cl/difusion/572/w3-propertyvalue-3130.html

whole process of diagnosis and treatment repeated. In theory, not only would the treatment be faster with a centralised database of health records, but it would also free up resources to be better used elsewhere.

However, the implementation of e-health solutions faces new problems:

- First, primary care units (especially the ones located in rural areas) have poor or no connectivity. Some do not even have computers or electricity.¹⁸
- Second, while centralised health records reduce costs, this comes with its own challenges. For example, public and private systems have created their own technical solutions and they will have to be compatible. Moreover, even within the public system, ICT systems that are not compatible with each other have been developed by different centres (many of them are, according to Etcheverry, also unstable systems). The interoperability of systems is crucial to allow the reciprocal flow of information. To improve interoperability, S+D plans to create a certificate of approval for the IT solutions the plan will finance.
- Third, current data protection provisions are outdated and lack proper enforcement. S+D's certificate of approval should consider standardised high data protection exigencies given how sensitive health data is.

According to Etcheverry, the above challenges mean that the roles of the government and private sector are important. The government needs to define the problems the healthcare system faces and coordinate both the solutions to these problems and their technical requirements. It also needs to make sure that all solutions are compatible with each other.

Because of resource limitations, there must be some criteria to know which e-health projects should be financed first. This can be answered by examining the technical skills and innovations of each proposal, something that falls under CORFO's expertise, and matching those with the needs of the healthcare system, which is the responsibility of the Ministry of Public Health. Etcheverry added that even if S+D cannot know if the final product will be sold to and used by the private or public sector, it does know that the government is an important purchaser, and therefore can request certain standards in the solutions produced and bought, thus ensuring quality and interoperability.

In a country with remote towns and communities very far away from the capital, access to the internet is crucial and the implementation of e-health initiatives depends heavily on communications infrastructure. Even if the difference of access between urban and rural areas is about 30%,¹⁹ Etcheverry said that a growing number of public healthcare centres have access to the internet. She mentioned that there are governmental policies focused improving connectivity, especially in regions far from the capital, Santiago.²⁰ She added that medical staff have been receiving IT training for almost a decade, and that the S+D programme includes more resources to strengthen the capacity of personnel, and even to improve the computer literacy of patients.

Conclusions

The duty to provide healthcare derived from the right to health depends on the available resources each country has. Chile's expenditure on public health has been growing in the last few years and although the country is behind the OECD's average, the situation is slowly improving.

However, in a highly unequal country like Chile, access to and quality of healthcare is unequal. People with higher incomes can choose to be covered by private healthcare insurance and attend private health centres; people with lower incomes most of the time will go to a public health centre. People who live in distant rural communities are in the worst position: they normally have lower incomes than the rest of the country and the location of their homes makes it very difficult to receive medical attention. They have to wait a long time to see a doctor and travel long distances.

The use of technology is key in bridging this healthcare divide, but this also requires access to technology and the capacity among medical staff to use it. Technology is not a panacea, and its use does not solve some traditional inefficiencies in public services. The S+D programme recognises the potential of IT in the public health service, not only as a way of using the available resources better, but also as a means of improving access to healthcare for many Chileans.

19 Stäger Koller, M., & Núñez Tissinetti, J. L. (2015). *Uso de internet en Chile: la otra brecha que nos divide*. Santiago: Fundación País Digital. paisdigital.org/wp-content/uploads/2015/07/Brecha-Digital-Internet-Estudio-Pa%C3%ADs-Digital-CASEN.pdf

20 For instance, the National Infrastructure Plan by the Undersecretariat of Telecommunications: www.subtel.gob.cl/quienes-somos/plan-estrategico

18 Taylor, E. A. et al. (2016). Op. cit.

Finally, the exercise of the right to health ideally includes the participation of the population in health-related decision making. Top-down programmes might find it difficult to provide an adequate response to social demands. It is still a question whether there will be room for improvements in this area in the future.

Action steps

Regarding the use of the internet and technological tools to improve public healthcare, the following action steps are suggested:

- Research healthcare needs properly, especially those involving marginalised groups. Include these groups in the decision-making process to establish priorities for the realisation of the right to health. Include a discussion of preventive health needs in this process.
- Build capacities and educate people in the use of the internet, among other tools, to obtain information on government services in general and healthcare services in particular. Provide personalised assistance to groups and persons unwilling or reluctant to use the internet.
- Improve internet connectivity, especially in rural areas and in isolated communities and regions, to allow greater access to public services.
- Implement high data security standards, especially if both the public and private sectors are going to process health information. Consolidate criteria regarding both the implementation of technology and security standards for private and public healthcare services.
- Establish clear coordination in terms of policies that relate to deployment of ICTs and fulfilment of governmental duties, including those related to healthcare.

CHINA

CLOSING THE DOOR ON CULTURAL FREEDOMS IN THE ERA OF “WEB CELEBS”



KEYWORDS: **culture**

Hudson Lockett

Introduction

In mainland China the internet has remained a territory of contention when it comes to economic, social and cultural rights (ESCRs), even as policy makers have allowed greater realisation of many key freedoms.

For economic and social rights, the battle lines are often clearly drawn: online platforms enable farmers to sell crops to a larger customer base at standardised market prices, but workers are forbidden from independently organising via cheap smartphones linked to ever more ubiquitous social media platforms – and, indeed, can be monitored through them when they do.

Since the 2013 accession of party secretary Xi Jinping, who has led the longest and most robust crackdown on civil society in decades, the contradictions within the cultural sphere have grown markedly as well.¹ Yet for many ordinary citizens whose chief concerns are framed in more personal economic and social terms, relentless restrictions on expression may be felt most keenly through the utter lack of compelling content broadcast by Chinese television stations.

Mainland TV is, by even domestic estimations, an endless sluice of substandard slop: anodyne variety shows, staid historical propaganda and the endlessly repeated tropes of a half-dozen genres of television drama.

Enter Jiang Yilei, aka Papi Jiang, whose essentially apolitical monologues launched her to stardom in early 2016 as the year’s first big “web celeb” (网红 or *wang hong* – literally “net”, for the internet, plus “red”, signifying popularity). Recognition of her work’s widespread resonance among young and mobile web-ready Chinese would ultimately net her millions in venture capital funding.

It would also draw the pointed attention of the party-state just as it ramped up efforts to tighten regulations on online content, charting a trajectory

for Jiang in which her economic rights – underpinned by the exercise of social and cultural rights – would hit their political limits.

Background

The Constitution of the People’s Republic of China grants citizens extensive rights including freedom of speech and assembly, but its preface states that all such guarantees are subordinate to the permanent leadership role granted to the Chinese Communist Party (CCP).

China is also a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the standing committee of its rubber-stamp legislature ratified the convention in 2001. But it did so with the proviso that the Covenant’s assertion of the right to form trade unions (Article 8, clause 1) must be carried out in accordance with its constitution, trade union laws and labour laws, which forbid the independent organisation of labour outside the state-controlled All China Federation of Trade Unions.²

In 2007 then-party secretary Hu Jintao made CCP supremacy still more explicit with the doctrine of “Three Supremes” placing party interests above the law. The end of Hu’s term was marked by a growing clampdown on civil society both on the street and online (see GISWatch 2014)³ – a drive his successor, Xi, kicked into high gear with a sustained campaign against rights-defence lawyers, domestic and foreign NGOs, activists of every stripe and journalists generally.

This has been accompanied by renewed controls over mass media, smothering attempts at new and original TV programming and driving those in the arts and cultural sector still hoping to break new ground to seek opportunities on China’s online video-hosting platforms such as Youku (优酷)⁴ and iQiyi (爱奇艺).⁵

1 Kaiman, J. (2014, 24 August). Beijing independent film festival shut down by Chinese authorities. *The Guardian*. <https://www.theguardian.com/world/2014/aug/24/beijing-independent-film-festival-shut-down-china-freedom>

2 Han, D. (2000, 1 March). China Ratifies ICESCR: A Change in Sight or More of the Same? *China Labour Bulletin*. www.clb.org.hk/en/content/china-ratifies-icescr-change-sight-or-more-same

3 Lockett, H. (2014). Discourse deferred: PRC netizens swap public microblogs for the not-so-private digital dinner table. *Global Information Society Watch* 2014, 106-109. <https://www.giswatch.org/en/country-report/communications-surveillance/china>

4 www.youku.com

5 www.iqiyi.com

The resulting profusion of more compelling cultural content has been accompanied by financial inflows enabling these and other sites to sign budding talent and turn out shows that viewers consider more relevant, thereby posing an even greater threat to traditional broadcasters whose bread and butter has out of necessity become increasingly conservative and predictable.

The rise and falter of Papi Jiang

It was in such an environment that the first major web celeb of 2016 would make her debut. Shanghai native Jiang Yilei, a 29-year-old graduate student in her final year at Beijing's prestigious Central Academy of Drama, had worked in media and theatre before. But the videos she began uploading in October 2015 were something else entirely.

Under the stage name Papi Jiang, she delivered rants in rapid-fire, occasionally profane vernacular, clocking in at three to four minutes apiece. With the addition of a computer-modulated, preposterously high falsetto, Jiang gave comically exasperated voice to the everyday hardships and frustrations faced by many young people in China.

A typical example excerpted below from "The Fourth Rule of Male Existence"⁶ is delivered in the span of about ten seconds through a series of rapid cuts of Jiang dressed in a different outfit for each line, reacting to an unseen boyfriend's latest less-than-stellar gift:

How much did you spend on this thing?
So this was on sale recently, wasn't it?
Am I only worth 30 yuan, then?
What the fuck am I supposed to do with this cheap little gift from the heart?
It has nothing to do with price!
You paid too much.
Tsk... it's a little inappropriate to spend that much...
I'm always telling you not to waste money!

October also marked the first complete publication by state news agency Xinhua of comments by Xi Jinping about contemporary Chinese culture made one year earlier.⁷ These amounted to blanket condemnation of mainland China's popular art and media as vulgar and culturally harmful, paired with quotes from Marx, Lenin and Mao and emphasising the continued necessity of patriotism and "positive energy". For example:

Contemporary arts must also take patriotism as a theme, leading the people to establish and maintain correct views of history, nationality, statehood, and culture while firmly building up the integrity and confidence of the Chinese people.⁸

This conservative outlook on media and culture would quickly be reflected in practice. On 20 January the hit gender-bending online drama "Go Princess Go" – in which a bawdy playboy is changed into a woman and sent back to the dynastic era, where he falls in love with a prince – was pulled from major video sites, along with four other low-budget online dramas.⁹

Meanwhile, buzz continued to grow about Jiang's videos, prompting observers to christen her China's first web celeb of 2016. Columnists highlighted the growing power of "self-media" stars who thrived outside the traditional celebrity industrial complex. Some suggested a growing number of "Papi Jiangs" were upending China's old celebrity economy, one in which budding stars had to depend on appearances in dramas and variety shows produced by stolid state-run broadcasters to achieve national exposure.

Renewed focus on the growing importance of content and intellectual property in such columns suggested a new stage of maturity for China's historically plagiarism-plagued domestic media ecosystem. But on 24 February another, still more popular online drama – this one depicting a romance between two male teenage students – was removed from major video platforms.

Three days later Li Jingsheng, head of China's State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), announced at a TV industry meeting that online dramas would be subject to the same regulations as televised dramas. At the same meeting Luo Jianhui, head of SAPPRFT's online audiovisual programming management division, told attendees extra attention would be paid to "shows that lead to heated discussion".¹⁰

Further clarity on the clampdown came as local media reported on new "General Rules on Production of Content for Televised Dramas", approved

6 The original, uncensored version of this video remains available on YouTube: <https://youtu.be/j05c1SYkNxc>

7 Jinping, X. (2015, 14 October). Talks at the Forum on Literature and Art Work. *Xinhua* (authorised publication). news.xinhuanet.com/politics/2015-10/14/c_1116825558.htm

8 Canaves, S. (2015, 25 October). Chinese President's Speech on the Arts: The Hollywood Connection. *China Film Insider*. chinafilm insider.com/chinese-presidents-speech-on-the-arts-the-hollywood-connection

9 Heavily censored episodes of "Go Princess Go" cut by as much as a third of their runtime were later uploaded and can be viewed at www.le.com/tv/10015173.html

10 Sina. (2016, 27 February). SAPPRFT strengthens supervision of online drama approval. *Sina News*. ent.sina.cn/tv/tv/2016-02-27/detail-ixpvysv4949295.d.html

by SAPPRFT on 31 December and announced at the same 27 February meeting of Chinese television producers. These forbade depictions of homosexuality, magic, violence and the use of vulgar language.¹¹

Jiang's star continued to rise, as did the number of her fans: on Youku her videos were garnering around two to three million views apiece. On the microblogging platform Weibo her followers totalled almost eight million. By mid-March search trend data from internet services giant Baidu would show queries for "Papi Jiang" rising to a frequency of around 40,000 per day – practically on par with searches for "Xi Jinping", though still less than half as searched-for when compared to a top-tier celebrity actress such as Fan Bingbing.¹²

On 20 March Jiang's status as a web celeb and social phenomenon in her own right was further vindicated by the announcement that she had secured CNY 12 million (around USD 2 million) in venture capital funding from major institutional investors, including the prestigious Zhen Fund, as well as from the respected host of the online talk show Logical Thinking (逻辑思维).

It was a truly groundbreaking development, but not all the attention Jiang garnered was positive: on 22 March Lin Yuhong, vice-director of the influential Communist Youth League's Centre for Network Film and Television, had criticised Jiang for using coarse language. Lin warned of Jiang's negative influence on young people's development and called on relevant government departments to "manage" her for deploying words unbecoming of a "properly raised young woman".¹³

Lin's call to action appeared to have little impact. But on the morning of 18 April online rumours swirled that SAPPRFT had ordered Jiang's videos taken down for containing profanity. Her investors lashed out at these claims, branding them malicious, and representatives at the video sites concerned denied having received any orders to pull Jiang's work.

By that afternoon rumour had turned to reality. At around 4 p.m. the party mouthpiece *People's*

Daily posted an article on its Weibo microblog account stating that SAPPRFT had ordered Jiang's videos taken down for containing vulgar expletives, and that "they can go back online after being rectified."¹⁴

The paper claimed in its post that "as a result of reports from the masses and expert evaluations," the regulator had demanded Papi's videos be taken down and scrubbed of profane content before they could be uploaded again. It also helpfully provided uncensored examples of profanity from her work, including "oh fuck" (卧槽) and "little bitch" (小婊子).

Soon all but a few of Jiang's original rants had been removed from Youku and iQiyi. That evening Yang Ming, CEO of the media company formed with Jiang using venture capital, issued a public apology that maintained the videos had not been censored – authorities had simply demanded they be "adjusted". He also drew attention to a new video about dieting that Jiang had published on the messaging service and app ecosystem WeChat that "contained not a single word of coarse language."¹⁵

In comments accompanying those of Yang, Jiang made explicit the effective new state of curtailed online expression: "In short, regulation has become more stringent, with uniform standards for online and offline media; if a television station can't broadcast it, the same applies online."¹⁶

In those comments and in an uncharacteristically penitent Weibo post, Jiang noted that she was "willing and happy to accept criticism" and pledged to conform with content demands and "spread positive energy" henceforth. In the context of mainland Chinese politics, the latter term refers to pro-party, pro-government, nationalist sentiment – by nature uncritical and essentially anathema to Jiang's trenchant social satire.

To drive its point home, the *People's Daily* published an editorial the next day titled "Growth Cannot be Barbarous" calling out Jiang for her use of profanity and citing Xi Jinping's call for a "clean and healthy" internet, which he compared to a "spiritual garden". The paper went on to outline a more palatable vision for "self-media" in Chinese culture – one in which individuals like Jiang popularise the party line among the populace at large:

11 Sina. (2016, 2 March). General rules for TV dramas revealed – no depictions of gay puppy love, reincarnation. *Sina News*. ent.sina.com.cn/v/m/2016-03-02/doc-ixfpyvsv511954.shtml

12 Baidu Index search results: index.baidu.com/?tpl=trend&type=0&area=0&time=13&word=papi%BD%B4%2C%CF%B0%BD%FC%C6%BD%2C%B7%B6%B1%F9%B1%F9#655757-bdhome-1-21214-73f3e2e78c9b7dee867b3d4b5be57c14

13 Yingshi Koubei. (2016, 17 April). Viral Papi Jiang experiences SAPPRFT shutdown. *China Digital Times* (repost). chinadigitaltimes.net/chinese/2016/04/%E8%85%BE%E8%AE%AF%E6%96%B0%E9%97%BB%E7%BD%91%E4%BC%Aopapi%E9%85%B1%E9%81%AD%E5%B9%BF%E7%94%B5%E6%80%BB%E5%B1%80%E5%B0%81%E6%9D%80/

14 Yang, L. (2016, 18 April). SAPPRFT: Papi Jiang videos taken offline for rectification due to containing vulgar expletives. *People's Daily* official Weibo account. m.weibo.cn/2803301701/3965643223462841

15 SCTN. (2016, 19 April). Papi Jiang's post-rectification "positive energy": Videos already without expletives from start to finish. *Securities Times*. news.stcn.com/2016/04/19/12675778.shtml

16 Ibid.

With sufficient tolerance, rationality and forbearance such “media dinghies” can be channelled into a broadcasting fleet. Only through use of their vivid, lively expression and their diverse, adaptive forms can true “invisible propaganda” – simultaneously “saying what they want to say” and “telling what we want to tell” – be achieved.¹⁷

Conclusions

Jiang’s videos were soon back online, *sans* expletives. Indeed, the censorship incident may have ultimately given her far greater exposure: on 18 April, Baidu queries about “Papi Jiang” hit an all-time daily high of more than 254,000. She has since managed to sustain public interest such that her first live-stream broadcast on 11 August was reported to have drawn more than 27 million simultaneous viewers at one point.

Following a successful first auction of advertising rights for CNY 20 million (about USD 4.5 million), Jiang and her investors announced plans to launch a YouTube-like service. However she ultimately fares, though, the outlook for meaningful online cultural expression and exchange in China is less certain than ever.

State media have produced a steady stream of articles describing Jiang’s success as a one-off and suggesting that fleeting web celeb status is not worth chasing, even as other publications noted the rapid development of a “web celeb supply chain”.

These and other measures suggest that the party is seeking to reassert and reinforce its authority over China’s cultural sphere, a development with substantial ramifications for the exercise of ESCRs. As in the case of Papi Jiang, the right to cultural participation with any real social resonance can be revoked when it does not sufficiently adhere to party precepts on content and tone, even if this entails undermining an individual’s economic rights to the material benefits of their work. Indeed, the greater one’s economic success from socially resonant work, the more substantial curbs seem likely to be when imposed.

This is borne out in other developments at the nexus of economic, social, and cultural rights in China. Live-streaming sites like those used by Jiang to interact with fans during her August broadcast have become another go-to platform for aspiring stars.

Most users seek low-level fame online, endorsing certain brands for compensation, selling their own goods or relying on donations from viewers who like what is being broadcast – for example, a suggestive pose struck by an attractive individual. But such activities were cited by authorities in the announcement of a three-month crackdown on streaming sites whose content was deemed too vulgar.

Other media both new and old have likewise come under increasing regulatory pressure from SAPPRT, which in late August explicitly pledged to cap celebrities’ “astronomical” pay, curb the flaunting of wealth, halt the “blind, shallow” promotion of stars and web celebs, and curb broadcasting of “mistaken ideas” such as fame seeking, money worship and overnight stardom.¹⁸ Entertainment news outlets were also told to avoid featuring these topics or elevating the pursuit of a “Western lifestyle”.¹⁹

By undermining the attractiveness of artistic expression as the foundation for economic success, regulators are seeking to maintain their monopoly on the definitions and discourse of culture. This limits the right to real cultural participation by the majority of citizens, whichever side of the lens they are on. But in ratcheting up controls just as new and domestically resonant cultural phenomena are starting to flourish, Beijing is also likely to forestall the most promising developments of a sector in which it frequently bemoans the enduring popularity of Western movies and television shows – despite regulations to limit their prevalence.

Such efforts to meld pop culture and the party line are unlikely to enjoy the popularity of works produced through less tightly regulated cultural activity – even if the success of the latter is limited by state-backed efforts to promote the former. Thus when another instance of high-visibility success results from artists claiming their economic, social and cultural rights online, it may push authorities to clamp down still further on their exercise.

Jiang’s story may yet somehow prove otherwise, but thus far her experience suggests that in China today, to walk through any door that remains open online to critical acclaim and commercial success is, more often than not, an invitation for the state to promptly close it to others behind you.

17 Phoenix News. (2016, 20 April). People’s Daily discusses web celebs like Papi Jiang: Growth cannot be barbarous (repost). tech.ifeng.com/a/20160420/41597277_0.shtml

18 CCDI. (2016, 26 August). SAPPRT party leadership group notification on the state of inspection reforms. Central Commission for Discipline Inspection official website. www.ccdi.gov.cn/yw/201608/t20160824_85787.html

19 Xinhua. (2016, 30 August). SAPPRT: Steadfastly prevent talking up private matters, personal disputes, family conflicts. *Xinhua*. sn.xinhuanet.com/yule/20160830/3412374_c.html

Action steps

The following observations in support of activism in China can be made:

- There is little sign that government pressure on the arts and cultural sector will let up any time soon, but the exercise of ESCRs remains far less restricted in online video compared to traditional television stations.
- The tension between policy makers' increasingly conservative cultural policies and the need for new drivers of economic growth is likely to allow online video to retain some degree of freedom in the near term, but basic familiarity with the growing skein of content regulations will be an ever more important prerequisite for avoiding unexpected curbs on rights expression.
- In most areas of online popular art and culture, transgression of content regulations previously only applicable to traditional media now leaves those engaging in cultural participation online vulnerable to sanction and punishment; less overt, more gradual expansion of subject matter that is not expressly forbidden is less likely to prompt authorities to push for still greater curtailment of rights.
- The reaction from Jiang and her backers provides a useful template for self-preservation in the event of being targeted by authorities for the exercise of ESCRs online: apologise, maintain innocence to the greatest possible extent, and promise greater adherence to the regulations cited.

COLOMBIA

THE ROLE OF ICTS IN THE COLOMBIAN PEACE PROCESS



KEYWORDS: ICTs, all rights, vulnerable groups

Colnodo¹

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Background to the armed conflict and peace agreement

Colombia has endured a long armed conflict against the Armed Revolutionary Forces of Colombia – People’s Army (FARC-EP). This is a guerrilla group formed in 1964 by peasant members of communist armed self-defence groups who resisted the military attacks during what was called *La Violencia* (armed clashes between the Liberal and Conservative parties). In Colombian history there have been other guerrilla groups such as the *Movimiento 19 de abril* (M-19), the National Liberation Army (ELN) and the Popular Liberation Army (EPL). After 16 years of armed fighting and peace negotiations with the government, M-19 surrendered their weapons on 8 March 1990. Soon after, they created a party called Democratic Alliance M-19 to participate in politics. The M-19 ex-combatants have had elected officials in key positions. In the last decades the armed conflict has worsened due to the creation of extreme-right-wing armed groups (paramilitaries) and drug trafficking.

In the 1980s and 1990s, peace negotiations were held with FARC on two occasions without success.² Although since 2010 the government has been holding private conversations with FARC, it was only in September 2012 that President Juan Manuel Santos (2010-2014 and 2014-2018) announced renewed negotiations with FARC, which began in November 2012 and ended four years later, on 23 August 2016, with an agreement. On 29 August 2016 the ceasefire began. The same day the Congress approved the agreement, and on 26 September a ceremonial signing of the agreement took place in the presence of the UN Secretary-General and more than 15

heads of state. On 2 October a national referendum will be held to verify if Colombians approve of the agreement.³

The responsibility of Colombians will be greater than just casting their vote in the national referendum. If the agreement is endorsed, there will be a long process of reparation, reconciliation and social inclusion in order to guarantee a long-lasting peace. This report analyses how information and communications technologies (ICTs) can contribute to this peace process.

Economic, social and cultural rights in Colombia

Colombia has made significant progress in recognising the population’s economic, social and cultural rights (ESCRs). The Political Constitution of 1991⁴ strengthened the foundations for participatory democracy with strategies, resources and mechanisms for Colombians to effectively exercise these rights. This constitution is a body of progressive principles aimed at recognising the rights of disadvantaged groups such as children, women, the youth, the elderly, people with disabilities and ethnic groups who can refer to the constitution to demand affirmative action and ensure the fulfilment of their rights. The constitution recognises the right to social security regarding access to health, a pension, a healthy environment, decent housing, leisure, sports and free time. It also recognises the rights to education, access to culture, the protection of cultural heritage, the right to work, the ownership of land and the development of agriculture.

Regarding international agreements and treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN in 1966, was ratified by Colombia on 29 October 1969. Colombia also recognises the American Convention on Human Rights, the Convention on the Rights of

1 With the contributions of Julian Casasbuenas, executive director; Ariel Barbosa, technology projects director; Marcya Hernández, ICT appropriation coordinator; and Linda Patiño, communications associate.

2 Refers to the governmental negotiations of President Belisario Betancur (1982-1986) that ended in 1984 and the negotiations begun by Andrés Pastrana (1998-2002) which ended in 2002.

3 This report was written ahead of the national referendum that resulted in a “No” vote against the peace agreement. Since then the country has been in limbo, and discussions have been held between the government and those who voted against the agreement. There have been massive peaceful demonstrations in different cities which have included the participation of youth, women, peasants and victims of the war, among others.

4 www.corteconstitucional.gov.co/inicio/Constitucion%20politica%20de%20Colombia%20-%20202015.pdf

the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

It is important to remember that all the international treaties and conventions ratified by Colombia must be enshrined in the country's constitution and legislative framework.⁵

The peace-building process

The end of the conflict and the building of a long-lasting peace face key challenges regarding the ESCRs of Colombians.⁶ The issues that have a direct impact on women, the victims and the rural population are described below.

One of the most relevant aspects of the agreement is the inclusion of a gender perspective and women's rights. This was the achievement of the feminist and women's movements⁷ in Colombia, which lobbied hard for the creation of a Gender Subcommittee in order for the voices of women to be heard; it was established in September 2014.

Among the proposals that benefit women are the following:

- Rural reform will be strengthened, including the development of agricultural activities to improve the productivity and living conditions of women in the rural areas; access to land and land ownership for women and lesbian, gay, bisexual, transgender and intersex (LGBTI) people will be formalised; women's health, including reproductive and sexual health, will be promoted; the fulfilment of the ESCRs of women and LGBTI people in rural areas will be strengthened generally, including balancing the earning gap between urban and rural areas.
- In the political participation section, the agreement includes the promotion of women's participation in public and political life; the protection of women leaders, activists, human rights defenders and their families; the strengthening of women's organisations, youth organisations and LGBTI organisations; and clauses dealing with the non-stigmatisation of people because of their sexual orientation. In

terms of women's political participation, including their participation in decision making and conflict resolution, Law 581 of 2000, known as the Quotas Law, states that at least 30% of management positions in the public sector should be for women. According to the government's annual report for 2015, this goal has been accomplished (38% of these positions are held by women).⁸

- With regard to the guarantee of the rights of women survivors of violence during the armed conflict, included in a section on truth, justice and reparation, the Gender Subcommittee will analyse the ways the armed conflict has had an impact on women's lives. The Jurisdiction for Peace, Investigation and Indictment Unit will consider cases of sexual violence.
- On the issue of illicit drugs, the agreement considers the situation of women, and seeks alternatives to growing crops for the drug trade. The specific issues affecting women in the drug production chain will be tackled. Women will be included in the planning and implementation of crop substitution programmes, and equipped with the technical and financial skills necessary to strengthen their participation.

The agreement recognises the rights of the victims of the conflict through granting them the right to truth, justice and reparation, and guaranteeing that they will not have to endure civil war again. This is one of the central topics of the negotiations and perhaps the one with the greatest impact, considering that Colombia has more than seven million victims; that is to say, 15% of the population. The "truth" is enshrined as a victim's right in order to enable the reconstruction of the social fabric and to contribute to reconciliation and living in peace. The reparation for victims and survivors is already happening and includes land restitution, returning to the areas where forced displacement took place, and psychosocial support.

The role of ICTs in building peace

Given this scenario, it is important to analyse the role ICTs play in the promotion of dialogue and the achievement of a long-lasting peace. Since the internet became widely available in Colombia, there have been initiatives aimed at promoting a peaceful culture, including educational initiatives,

5 Political Constitution of Colombia, Chapter 4 on the protection and enforceability of rights.

6 The full text of the Agreement can be found (in Spanish) at: www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Paginas/Texto-completo-del-Acuerdo-Final-para-la-Terminacion-del-conflicto.aspx

7 See an interview (in Spanish) with Rosa Emilia Salamanca, a recognised activist and human rights defender who promoted the inclusion of a gender perspective in the agreement between the Colombian government and FARC: colombia2020.elespectador.com/politica/por-que-es-tan-importante-el-enfoque-de-genero-en-los-acuerdos-de-paz

8 The Colombian Public Administration Compliance Report 2015 is available (in Spanish) at: <https://www.funcionpublica.gov.co/documents/418537/506925/Informe+Ley+de+Cuotas+Vigencia+2015+Final.pdf/70b242fa-e751-41bf-a2d9-2adf14ecaf24>

knowledge sharing in support of peace-building activities, initiatives that facilitate dialogue between different actors, and the dissemination of inspiring stories that offer a positive vision of the future to people.

One of the pioneer initiatives on the use of digital communication as a way of promoting dialogue is the communication initiative for truth and life run by the Association of Indigenous Councils of Northern Cauca (ACIN).⁹ This initiative, led by the indigenous group Nasa Paez, has used local radio stations, telecentres, mailing lists, social networks and a web portal to share indigenous knowledge and worldviews. It has also set up a communications school for training new leaders.

Other experiences aimed at education and peace are the Educational Alliance for Building a Culture of Peace¹⁰ and the Observatory for Peace.¹¹ The Educational Alliance was formed in 2002 in order to strengthen a culture of peace and democracy, and since then it has shared 300 experiences on its web portal on issues such as human rights, conflict resolution, political education, cultural identity, and job creation. The Observatory for Peace is a social organisation created in 1996 in order to promote dialogue on peace through education, research and knowledge creation, as well as to raise awareness and give a voice to the voiceless. Besides running a portal, they use an online information system for following up on educational content offered to families.¹²

There is a growing recognition of the role of ICTs in the creation of educational opportunities, access to knowledge, citizens' participation, support for productive projects, the strengthening of small businesses, and access to job opportunities. For example, the Farmers Digital Schools (EDC) initiative is present in eight departments in Colombia, offering educational opportunities to the rural population by promoting their social, cultural, digital and economic inclusion. This initiative uses ICTs for educational purposes through online courses.¹³ There is also an Android app that shares information on digital rights based on the Association for Progressive Communications (APC) Internet Rights Charter,¹⁴ and aimed at children between eight and 15 years old.

9 www.nasaacin.org

10 www.educacionparalapaz.org.co

11 www.obserpaz.org

12 Colnodo has supported these initiatives by developing the online portal and the information systems they use.

13 cursos.mundorural.co

14 <https://www.apc.org/en/node/5677>

Two other initiatives that use ICTs to provide skills training for vulnerable groups, including victims of the conflict, are the Escuelas Digitales Campesinas de la Accion Cultural Popular (ACPO)¹⁵ and the JuvenTIC project.¹⁶

JuvenTIC was created in 2015 with Google's support and was coordinated by Colnodo in 2016. It aims to contribute to the peace process and social inclusion by strengthening the knowledge and ICT skills of the young people affected by the conflict who have scarce educational opportunities. The goal is for the young people to have more tools to compete in the job market, to increase their job opportunities and help them create new business start-ups. JuvenTIC is a 120-hour face-to-face virtual course that uses an online learning platform with more than 3,000 learners – most of them from the most affected regions in the conflict.¹⁷

ICTs also have the potential to help implement the agreement given that they can enable the population to act as overseers of the terms of commitment. One initiative already in place is *Dejemos de Matarnos*¹⁸ (Let's Stop Killing Each Other) which includes educational videos explaining the conflict's background and the agreement's content. Another initiative is the campaign *Forjando Paz*¹⁹ (Forging Peace). This campaign aims to build peace by explaining the agreement through different educational and communication tools in order to promote the participation of citizens in the monitoring of the agreement. The Twitter hashtags #Dejemosdematarnos and #ForjandoPaz have been used widely: more than 250,000 accounts are connected to #ForjandoPaz.

The NGO Corporación Viva la Ciudadanía has promoted the initiative *Común Acuerdo*²⁰ (Common Agreement) which aims to raise awareness and encourage dialogue about the agreement, and to foster citizen participation in its implementation. This initiative offers online pedagogies for peace, and videos, audio, documents and other resources produced together with local actors interested

15 The ACPO initiative is recognised in studies on popular education and communication because of its radio station schools, which operated between 1954 and 1978 in different regions in Colombia. This experience was a blueprint for many radio stations in Latin America in education and rural development programmes. For more information (in Spanish) see: www.banrepultural.org/radio-sutatenza.

16 juventic.colnodo.apc.org

17 JuvenTIC has participants from municipalities where the peace agreement has enabled reconciliation and strengthened the social fabric, such as Vigía del Fuerte and San Carlos (Antioquia), Carmen de Atrato (Chocó), Granada (Meta), Campoalegre (Huila), Toribio (Cauca) and Buenaventura (Valle), among others.

18 www.dejemosdematarnos.com

19 www.forjandopaz.com

20 comunacuerdo.co

in promoting dialogue about the agreement. This initiative uses the hashtag #Nomasviolencia (Nomoreviolence).

Big media houses are also using hashtags to share their opinions and editorial perspectives: #AdiósALaGuerra (GoodbyeToWar) is used by the *El Espectador* newspaper²¹ and #FinDeUnaGuerra (EndOfTheWar) by *El Tiempo* newspaper.²² Both newspapers have national coverage.

In the last few years, instant messaging has also been used to challenge the threats, pamphlets, and other violent content used to silence people. These messages became viral and reached thousands of people. In this way they have helped to strengthen dialogue and citizen participation and helped at least in part to protect citizens from intimidation.

Resources for sharing, remembering, and hearing the unheard voices

In times of war, ICTs have been used to promote hatred and violent content abusing peoples' rights. They have also been used to threaten entire populations. In times of peace, ICTs can contribute to building dialogue, documenting and disseminating peace-building experiences, educating populations, and fighting discriminatory messages.

ICTs have the potential to help recover social memory; to help grieve and to retell our stories so that they are not forgotten, and to slowly heal the old wounds of the 52-year-long conflict. Remembering is an "open process of reinterpretation of the past in which the knots are tied and untied to understand events in a new way."²³ ICTs can help to not overlook and forget the tragic nature of our war. They allow people to share not only survivors' stories, but also the stories of so many in the affected territories who in everyday life are negotiating and reaching agreement with local actors and stakeholders as new terms of social engagement are reached – peace goes beyond the agreement with FARC.

ICTs can also help disseminate discourses that are not reaching a large audience to counteract the dominant hegemonic discourse of the mass media, allowing people to propose alternatives that are not necessarily mediated by political and economic interests. Although these voices reach fewer people, they offer an alternative to the traditional media and have the potential to result in better-informed people.

ICTs are also a way to counteract exclusion: without them we would not have had all the discussions about the agreement, heard the voices of women, of farmers, and of indigenous people; and the voices of the affected territories would not have been heard at the national level. The internet has enabled communities to speak directly and without censorship on different topics.

Action steps: Reaching a sustainable and inclusive peace

One of the challenges faced in using the internet for peace is the digital divide: only 53.5% of Colombians have access to the internet. There is infrastructure in remote rural areas allowing public access to the internet, provided by the Ministry of ICTs,²⁴ local governments and private institutions (Puntos Vive Digital and Kioskos Vive Digital). The challenge is to integrate these spaces so that they become participatory spaces for training and peace-building initiatives.²⁵

ICTs are a vehicle to narrate the stories of women, families, ethnic minorities, small producers and victims of the conflict in new ways, with respect and without commercial interests and sensationalism.

Reconciliation and the reconstruction of the social fabric are part of the agreement with FARC, but this goes beyond an agreement between two parties. A culture of peace needs the involvement of all Colombians in resolving local conflicts; in dealing with polarised positions; in respecting different beliefs, without hating each other, or becoming violent towards someone who thinks differently. ICTs can contribute to harmonious dialogue, to reach understanding and to make visible all the local, inspiring stories where people agree on solutions to conflicts. These stories offer an opportunity to grow instead of a reason to promote violence and division.

The internet also enables access to knowledge for rural populations in order to improve their agricultural activities; access to virtual learning, to jobs and technology-based businesses (the creation of digital content is one of the opportunities where ICTs play a key role). There must be equal opportunities for all of the actors involved in the conflict, including the guerrillas giving up their weapons, who are in a position of great disadvantage regarding their level of technical skills and will need support to re-enter society and avoid digital exclusion.

21 www.elespectador.com.co

22 www.eltiempo.com.co

23 Richard, N. (1998). *Residuos y metáforas: ensayos de crítica cultural sobre el Chile de la transición*. Santiago: Editorial Cuarto Propio.

24 www.mintic.gov.co

25 For more information on the outcomes, indicators and use of ICTs in Colombia see the ICT Industrial Sector Report 2015 produced by the Communications Regulatory Agency (in Spanish): colombiatic.mintic.gov.co/602/articles-15957_archivo_pdf.pdf

CONGO, DEMOCRATIC REPUBLIC OF (DRC)

OUTSOURCING IN THE MOBILE SECTOR BENEFITS ONLY THE COMPANIES,
NOT THE WORKERS



KEYWORDS: labour, subcontracting, outsourcing

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Introduction

In February 2013, about 400 dealers in SIM and prepaid cards for the French-owned telecoms multinational Orange – which became a major player in the Democratic Republic of Congo’s (DRC) telecoms sector after buying out Congo Chine Télécom – went on strike. The reason was the poor working conditions they were subjected to by an Orange subcontractor.¹ Subcontracting or outsourcing is quite common in what is said to be one of the most profitable markets for the mobile sector in Africa. But telecom companies often turn a blind eye and demand no accountability from their subcontractors on their treatment of their Congolese workforce – treatment that is frequently in contravention of their rights.

The legal provision for decent work in the Democratic Republic of Congo

The DRC signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Article 7 of the ICESCR states the right of everyone to the enjoyment of “just and favourable conditions of work which ensure, in particular, remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value.”²

Although there were several attempts to turn most of the ICESCR’s provisions into national law, it was only in 2002³ that a comprehensive labour and social security code was adopted. Since then it has been updated to include nine new provisions related to, among others, gender equality, HIV status and the organisation of unions.⁴

The DRC is one of the poorest countries in the world, with a gross domestic product (GDP) per capita of USD 475 in 2014 and 64% of the population living below the poverty line according to 2012 statistics. Social and political unrest have also affected the country in recent years. Only a decade ago, the DRC surfaced from years of civil war and chaos. Although there has been gradual progress, the consequences of this vast humanitarian crisis still reverberate and cast a shadow over all aspects of life in the country.

Despite this, the DRC is said to be a large, lucrative market for information and communications technology (ICT) companies. There is regulatory freedom to operate in the sector for new investors and an untapped market share waiting to be profited from, making it an attractive and competitive business climate for the private sector. A sustained economic growth rate of 9% has accompanied the rapid development of internet-based services, from small dealers to franchises to mobile banking.

In this environment, mobile telephony represents a success story for the country. Mobile penetration grew from 2.2 million unique subscribers in 2005 to over 22 million in the second quarter of 2015, a ten-fold increase. There are currently around six million mobile internet users, half of whom adopted mobile internet within the last two years.⁵ The contribution of mobile operators to the Congolese economy is substantial: the International Telecommunication Union (ITU) reports that in the five year period from 2006 to 2010, their contribution to GDP was over USD 5.2 billion, amounting to 5.9% of GDP each year on average. According to the World Bank, in 2008 the mobile industry contributed more than USD 160 million to the government budget, over 37% of the revenue collected by the national tax collection agency. The GSMA, an association representing mobile operators worldwide, estimates the sector’s contribution to be a little lower, but still substantial: it says that in 2010 mobile industry revenues comprised 4.1%

1 Radio Okapi. (2013, 28 February). Congo Recruitment, sous-traitant d’Orange, accusé de ne pas respecter les contrats de travail. www.radiookapi.net/economie/2013/02/28/kinshasa-grogne-des-vendeurs-des-cartes-prepayees-de-la-societe-orange

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

3 www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

4 www.leganet.cd/Legislation/DroitSocial/Loi%2016.010.15.07.html

5 Deloitte. (2015). *Digital inclusion and mobile sector taxation in the Democratic Republic of the Congo*. London: GSMA. www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/01/gsma-digital-inclusion-and-mobile-sector-taxation-in-the-democratic-republic-of-the-congo-report.pdf

of GDP, growing to 4.9% in 2014. The mobile sector can be compared to fixed-line penetration which currently stands at around 1%.

Despite these developments, the DRC lags behind many African countries in mobile connectivity: the average mobile penetration in sub-Saharan Africa stands at 40%, compared to the DRC's 31%. 3G penetration stands at 3% compared to 10% in sub-Saharan Africa.⁶

The liberalisation of the ICT sector in the framework of economic reforms enabled the mobile sector to rank among the key growth sectors of the Congolese economy.⁷ Mobile services also create opportunities for investment, innovation and employment in a variety of other jobs that form part of the mobile ecosystem, such as hardware providers, workers in the network, the engineering and maintenance industry, and providers of mobile-related business services.⁸

International telecoms companies operating in the DRC such as Airtel, Orange and Vodacom are all using local subcontracting and outsourcing. However, statistics on the extent of this subcontracting are difficult to obtain. According to a report by an intern, in 2008 Vodacom Congo, one of the leading telecom companies, alone created 500 jobs (both open-ended and part-time positions) and thousands of indirect jobs through the outsourcing of certain services and work such as cleaning, security, and the construction and maintenance of communications sites. This excludes the potential jobs created and economic impact of its everyday business activities (such as advertising, chartering airplanes, and even the company's use of consumables).⁹

Airtel, part of the Indian Bharti group, also present in the DRC, is known for launching a business model based on reduced costs driven by subcontracting, which allowed it to quickly expand its services and provide its customers more ready access to its mobile products and services.

"The more the market is becoming profitable, the more the telecoms companies are using outsourced labour. In 2010, Vodacom tried to fire 11% of its staff but was not allowed to by the Ministry of Labour at the time. This and many other strategies show that outsourcing could be more profitable for them," says Juvenal Kabedi,¹⁰ a senior employee of

one of the outsourcing companies used by Vodacom Congo. Outsourcing is seen as a way to bypass labour regulations, and to avoid the difficulties of managing a permanent staff base, by passing these challenges onto a third party. Kabedi explained that outsourced workers generally receive lower salaries than permanent staff – sometimes as much as half of what a company employee receives for the same work. Very often they receive no payment for overtime, or half of what an ordinary employee receives. They are also the first to lose their jobs when the company downsizes.

In a country where the law governing outsourced labour was mainly created to regulate the mining industry and does not take into account the specificities of other business sectors, especially the telecoms sector, there is a need for a mechanism to control and protect the Congolese labour force against exploitation. Ngoy Freddy, a lawyer from Lubumbashi who was interviewed for this report, deplores the vagueness which persists in the relationship between subcontractors and telecoms companies: "Some companies employ full-time or part-time agents that they do not pay directly, leaving all their contracting issues to subcontracting companies. The subcontractor's staff have no relationship with the parent company. When you take the telecom companies on, you cannot distinguish the permanent employees of the company and those of the subcontractor. That is something that must be condemned."¹¹

Ekoli Biko,¹² an employee of a company that provides equipment to a telecom company, was first employed by the said telecom company before he was given the choice of losing his job completely or working for the subcontractor and receiving almost half of his salary for the same job. "There was no choice. I needed a salary to sustain my family. So I continue doing the same job, with the same uniform, but receiving less money overnight," he said in an interview.

In May 2015, a new outsourcing bill to replace the old outsourcing law that primarily focused on mining services was tabled in parliament for discussion. There has been no decision on it yet.¹³

6 Ibid.

7 www.generaff.com/newsite/en/index.php/ct-menu-item-13/ct-menu-item-14/ct-menu-item-32

8 Deloitte. (2015). Op. cit.

9 Samushet, Y. (2008). Rapport de stage effectuée a VODACOM Congo. (Unpublished.)

10 Name changed for purposes of confidentiality.

11 Radio Okapi. (2013, 8 March). RDC : la sous-traitance n'est pas appliquée en conformité avec la loi, selon Me Freddy Ngoy. www.radiookapi.net/economie/2013/03/08/rdc-la-sous-traitance-nest-pas-appliquee-en-conformite-avec-la-loi-selon-freddy-ngoy

12 Name changed for purposes of confidentiality.

13 Assemblée Nationale de la RDC. (2015, 27 April). L'Assemblée nationale juge recevable la loi portant activités de la sous-traitance en RDC. www.assemblee-nationale.cd/v2/?p=4962

Conclusions

There is a need for the DRC to live up to its commitments under the ICESCR, which it signed in 1976. Labour laws need to take into account the rights of outsourced labour, which has become the backbone of one of the biggest contributors to the Congolese economy, the mobile sector. Policy makers need to come up with mechanisms to protect the local labour force in the face of the economic power of multinational companies. If the telecom sector is to be profitable, it needs to benefit all, include the outsourced labour force.

Action steps

The following action steps are recommended for the DRC:

- The government needs to give the new outsourcing bill serious consideration and pass it so that the mobile sector can be properly regulated.
- Telecoms companies need to be held accountable for the contracts they pass on to their outsourcing partners. They should not be using outsourcing as a way to bypass labour regulations, and in doing so, violate the rights of workers.
- Congolese trade unions need to be made aware about the plight of outsourced labour in the telecoms sector.

CONGO, REPUBLIC OF

THE ROLE OF THE INTERNET IN ACHIEVING THE RIGHTS TO EDUCATION AND HEALTHCARE IN INDIGENOUS COMMUNITIES



KEYWORDS: **education, health, indigenous**

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Introduction

The Republic of Congo ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1983, and is obliged to respect and uphold the rights enshrined in the covenant.

Several mechanisms are in place to fulfil the economic, social and cultural rights (ESCRs) of the Congolese people – rights that are constitutionally guaranteed – but these mechanisms do not allow everyone to enjoy the rights equally. This is the case with Congo’s indigenous peoples who do not fully enjoy the right to healthcare and the right to education, to name a few, in the same way that the country’s Bantu ethnic majority do.¹ The realities of Congo’s indigenous people have long been ignored by many, including the government.

With the advent of the internet, it is easier to find information on the problems faced by indigenous peoples – mostly information published by non-governmental organisations working in promoting and defending the rights of indigenous peoples. Not wanting to stay on the sidelines, indigenous women have formed an association, and, using the internet, began sharing information in order to advocate for their rights and to denounce the discrimination and injustices they suffer. Among other needs, they wanted their culture to be valued and known, their work to be respected, and their children to enjoy the right to education and the right to healthcare. Yet they are facing a number of challenges in using the internet.

This report looks at how these communities are using the internet to promote and defend their rights, including the right to healthcare and education. It also considers the challenges that indigenous youth face regarding access to the internet.

¹ Indigenous people are a minority ethnic group in the Republic of Congo. They face a very difficult economic and social situation. They are often victims of discrimination and marginalisation by the Bantu, who are in the majority in the country. Indigenous people do not enjoy the same access to work, housing, education, health services, and participation in public life enjoyed by the Bantu. They tend to be semi-nomadic and live mainly from hunting, fishing, and gathering food from the forests.

Legislative context

It is important to outline both the legal framework relating to information and communications technologies (ICTs) in the Congo, as well as the framework for the protection of the rights to education and healthcare.

The legal framework for ICTs

Law No. 9-2009 of 25 November 2009 regulates the electronic communications sector. This law describes the requirements for the installation and operation of electronic communications networks and services. Section 85 of the Act states that “public authorities guarantee the necessary conditions for the development of access and universal service (...).” To this end, a national development policy for ICTs was adopted, known as the Cyber Strategy 2009-2015.

Other laws are about to be developed which are relevant to the internet, such as the draft framework on the Congolese information society and digital economy, and a national development plan for broadband.

The legal framework on the rights of indigenous peoples

The constitution and the various related laws address the rights of indigenous peoples. They define state policies in different areas such as family, healthcare, education, social welfare, employment and social security. These include a law on the family (17 October 1984), a law on child protection (14 June 2010), a law on the fight against HIV and AIDS and protecting the rights of people living with HIV (3 June 2011), a law on the promotion and protection of indigenous rights (25 February 2011), Law No. 014-92 of 29 April 1992 establishing the national health development programme (PNDS), and Law No. 25-95 of 17 November 1995 on the reorganisation of the education system in the Congo.

Regarding education, in 2013 and 2014 the government announced a specific focus on basic education and skills training, including improving the working conditions of teachers and the construction of schools and other infrastructure.

The role of the internet in the realisation of the ESCRs of indigenous people

The internet, despite its low penetration in rural and indigenous communities, already contributes to the achievement of certain rights, including the right to education, healthcare, and the social welfare of indigenous people, as evidenced by the following story.

In the Republic of Congo, as indeed in many African countries, the rights of indigenous people to health, education, labour and others were not sufficiently guaranteed until recently, largely because national policy makers and international organisations were not well informed of the issues relating to indigenous people. The internet has made this possible.

Aware of the advantages of the internet, Carine Nzimba Zere, president of an association of indigenous women called *Debout Femmes Autochtones*,² now uses the internet for the group's work. She has posted information about healthcare, education, the right to work and other rights of indigenous women and children on the organisation's Facebook page. The page includes not only articles, but also stories from indigenous people, as well as research that serves as evidence to back up their advocacy.

Carine was able to establish, through the internet, partnerships with several international organisations which now fund their projects. In June 2016, the organisation held training workshops on basic ICT skills and the internet for indigenous youth. The aim was to enable them to speak directly about their concerns online. Carine also said that the internet has contributed to the success of some of their advocacy initiatives such as the right to education, health and other indigenous rights that are now guaranteed by a law.

However, she noted that access to the internet remains a concern especially in rural areas. During a trip to Impfondo, in the department of Likouala in northern Congo, she found that she could not connect to the internet and respond to one of the organisation's partners. While this may be a common inconvenience for many travelling to rural areas, for those living in these areas, the lack of access is life-limiting.

Advancing the right to healthcare for indigenous communities

Several problems had been identified when it comes to realising the right to healthcare for indigenous communities. These include: childbirth occurring at home without proper medical supervision, or out in

the open, including under trees in forests; the lack of child vaccination; and a lack of care for children with malaria and other diseases.

To raise these different healthcare challenges faced by indigenous people, email and social networks were used as the primary communications channels by the association. "We use the internet, especially Facebook and emails, to advocate for the rights of indigenous women, girls and children," said Carine.

She explained that the internet allows the organisation a global reach: "The internet is used to communicate with our partners nationally and internationally. Today, the outcomes are satisfactory due to the inclusion of indigenous issues in government policy discussions."

Other programmes and projects, with similar objectives, have been implemented in the Congo. For example, the United Nations Population Fund (UNFPA)³ has raised awareness of sexual and reproductive healthcare for indigenous women in Pokola and Ouesso, and sought to strengthen the quality of health services for the indigenous people.

A number of these awareness-raising projects have used the internet as a communications platform. Fongwama⁴ was created to raise awareness on malaria prevention methods, treatment, and understanding of the disease.

Tic Tac Ados⁵ is a youth information forum dealing with adolescent sexual and reproductive health. The forum offers young people, including indigenous youth, the opportunity to ask relevant questions and receive answers.

Some initiatives are no longer running. For example, another website, www.242sante.com, aimed to increase access to health information for the population generally. "This site intends to be a source of scientific information on various diseases and information related to treatment, as well as the correct use of health products. It is intended as a reference for information for health professionals, users and administrations in health products," commented Dr. Wernher Euclid Okolou Iбата when the site was operational.

Using the internet as a training tool for indigenous students

The internet is also being used to promote the right to education. Toyekola⁶ is a space for sharing free content that allows students, teachers and even

3 www.unfpa.org

4 <https://fongwama.github.io/EduPalu>

5 www.tictacados.org

6 www.toyekola.com

2 https://web.facebook.com/ADFACongo/?hc_ref=SEARCH&fref=nf

relatives of students to share lessons, past examinations that have been marked with corrections, or tutorials. This website has been set up by the mobile company MTN Congo. According to one indigenous student in the department of Lekoumou who benefited from training, the website serves as a library for the community: “This website is for us a real library, to the extent that we find all the documentation necessary for our learning.”

The student added: “The advantage is that there are courses for different levels and disciplines. For those of us who are poor, and living in places where it is difficult to have libraries, this site solves the problem because it is simple to sign in to access the documentation.”

However, while these initiatives are beneficial for indigenous communities, the primary challenge of internet access remains.

The challenges of using the internet to enable the ESCRs of indigenous communities

The role of the internet in enabling the ESCRs of indigenous communities is limited by the challenges of access and training.

Lack of internet access

The agency in control of electronic communications in the Congo, ARPCE, lists 15 internet service providers (ISPs) in Brazzaville and Pointe-Noire, two major cities in the country. But although the government is making every effort to increase access to the internet, including the deployment of fibre optic cables, it is clear that currently the hinterland is not sufficiently serviced by ISPs. This situation is also due to a lack of electricity in rural areas. Because of this, it is rare to see a cybercafé or community centre where you can access ICTs in these areas.

According to Carine, “if indigenous youth community centres had access to the internet, the youth could benefit from the advantages of the internet, including access to information about their rights. The only option left is to use mobile internet; but the price of a smartphone is not affordable for all, since they cost at least 50,000 CFA francs (USD 100).”

Lack of training on the use of ICTs

Another challenge hindering the use of ICTs in general and the internet in particular is the lack of training on the use of ICTs and the internet. Young indigenous people would like to be trained on the use of the internet, because very few are trained and few have computers. This disadvantages indigenous communities in education. “Today there

are about 20 indigenous students studying in Brazzaville,” said Carine. “It is desirable that they be equipped with computers and have internet access for their studies,” she said.

Conclusion

While the internet has the potential to become an indispensable tool for the realisation of many ESCRs, the authorities have not yet adopted policies that incorporate this potential. It is mostly the private sector and civil society that have access to the internet, limiting its overall potential among the population in general. As is clear, internet access is the primary bottleneck in using the internet to benefit the realisation of rights, especially among marginalised communities. While there have been several online initiatives that promote the rights of these communities, their impact is limited by a lack of internet access.

Action steps

To enable the Congolese people, especially the most vulnerable communities, to realise their rights using the internet, several actions must be taken involving the government, the private sector, civil society and international organisations:

The government

- As a priority, increase the reach of fibre optic broadband networks in the country.
- Continue to roll out electricity infrastructure to unserved areas.
- Develop rights-based internet policies that promote the internet as an enabler of ESCRs.
- Integrate ICT training into the Congolese education system at all levels of education.

Civil society organisations

- Educate and train indigenous people in the strategic use of the internet to help them realise their rights.
- Encourage the creation of internet content that meets the needs of indigenous people.
- Advocate for community access centres to be established in rural areas so that indigenous people can access the internet.

International partners

- Provide the necessary financial resources to fund the training of indigenous communities in the use of the internet and ICTs in general.

COSTA RICA

RURAL TECHNOLOGY HUBS: THE CASE OF NORTHERN COSTA RICA



KEYWORDS: rural, ICTs, gender, science and technolog

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Introduction

Costa Rica has signed 17 of the 18 international human rights instruments – with only the covenant on migrant rights outstanding. It is asserting itself in Latin America as a country with a growing and dynamic digital sector with high development potential. Most opportunities, however, are mainly concentrated in urban centres, which deepens existing economic gaps between urban and rural areas, to the detriment of the latter. This situation occurs in other countries both regionally and globally: the digital sector tends to generate concentrated activity in cities, excluding vulnerable people who live elsewhere.

This report considers the development of a rural technology hub in Ciudad Quesada, the capital of the San Carlos municipality in northern Costa Rica.

Since 2012, Sulá Batsú has been working in northern Costa Rica to promote the inclusion and leadership of rural women in the information and communications technology (ICT) sector. Based on this experience, and on research and various formal and informal interviews we did, we will discuss some key elements of the rural ICT hub model. Our purpose is to support and consolidate the work of key ICT actors in the northern rural area and also to use this report as a basis to promote similar spaces in other regions of the country, as well as in other Latin American countries with similar contexts.

Main features of the rural technology hub in northern Costa Rica

The tech hub in San Carlos has been made possible thanks to a number of ICT companies which invested in the area, stimulating employment, the creation of new digital businesses, and the participation of the sector in other economic, social, political and cultural activities in the area. This sector has contributed to the economic dynamism of the area as a whole.

In Ciudad Quesada there are 11 ICT companies. Eight of them were created and are directed by

young men from the same area.¹ There are two companies² that are nationally owned but operating in the area to take advantage of the opportunities of the rural hub and to contribute to its development.

Recently one transnational company³ also set up here in order to benefit from the potential of the hub. Even if it is creating employment opportunities in the area, this transnational company also competes with small and medium businesses for specialised human resources, reducing the human resources available to local digital companies.

In total these companies have generated about 250 jobs, especially for young people in the same region. They are usually permanent jobs offering comparatively competitive salaries and high potential for learning and working in challenging environments. The market for these digital companies is primarily international (particularly North and Central America) and secondly local and national. Business innovation is key and explored by working teams led by young entrepreneurs.

A local digital technology chamber⁴ was set up, allowing the companies to establish common agendas, work collaboratively and act collectively within the framework of other initiatives in the region. This has enabled the digital sector to become a major player in the development of the northern region of Costa Rica.

KEY FEATURES OF THE RURAL TECH HUB IN NORTHERN COSTA RICA

- 11 digital technology companies
- 250 jobs generated
- 8 companies set up by local entrepreneurs
- 2 companies run by national entrepreneurs
- 1 transnational company that recently set up operations in the area
- 1 local digital technology chamber

1 www.dinterweb.com, www.go-labs.net, www.ncq.co.cr, www.dotcreek.com, www.proditekcr.com, www.sistemasjet.com, www.computel.com, www.agempresarial.com

2 www.avantica.net, www.gbsys.com

3 www.growaccelerationpartners.com

4 www.ceticzn.org

Factors boosting the development of the rural technology hub

A combination of mutually reinforcing factors has encouraged the creation of the technology hub in this region of Costa Rica. It is necessary to further analyse the conditions which have catalysed its development. From discussions with various stakeholders, the following factors were identified:

- People with degrees in technology in the area: Definitely a key factor is the excellent training in digital technologies offered by academic institutions in the area. For example, the existence of university centres for the training of engineers in high technology has been a key factor in the generation of the hub. These specialisations have been instrumental in promoting research and keeping digital technologies up to date.
- The teachers of technological degree programmes are originally from the same area: A significant number of new generation teachers are from the same northern region, which strengthens an already present sense of identity. It is also essential to mention that many of these professors are themselves entrepreneurs who have set up small and medium-sized companies in the area. In this way a virtuous circle is created which drives new generations to create new initiatives and to participate in the hub.
- Opportunities for young people in the area: Although Costa Rica's universal model of development no longer exists and despite a reduction of social programmes at national level, there still remain some opportunities for people in vulnerable areas of the country that can produce considerable outcomes if taken advantage of. The possibility of accessing scholarships, internships, laboratories, grants and night courses, among others, have been invaluable for young men and women in the area to pursue degrees in technology and take appropriate measures to fulfil their potential as far as social mobility is concerned. When talking to students with technology degrees, the substantive impact that such a degree may have on members of peasant households is quite evident.
- A digital company as driving force of the tech hub: It is important to emphasise the role that one of the national companies has played as a pioneer in the development of the hub. It did not limit itself to moving part of its operations to the rural area generating employment opportunities for young people locally; it also made sure that local people managed its company. It

FACTORS BOOSTING THE ESTABLISHMENT OF A RURAL TECH HUB

1. Universities offering young people specialisations in digital technologies.
2. Teachers from the area who, with their own work and background, demonstrate the importance of digital technologies locally.
3. Programmes which create opportunities for young people in rural areas (scholarships, internships, appropriate schedules for working and studying, etc.).
4. Shrinking of the digital divide.
5. A culture of working collaboratively, e.g. forming partnerships and networks.
6. Pioneer digital companies which believe in the potential of rural areas.
7. Young people with roots in their own local area and the desire to remain and contribute to its development.

has additionally promoted and supported other digital businesses in the local digital technology chamber.

- An electricity company in the area which provides local connectivity: It is important to mention the role of a local cooperative whose original purpose was providing electricity to the rural area and which has subsequently focused on telecommunications and rural connectivity. It has had a major role in reducing the digital divide in the area, and has also created a local television channel in partnership with the local digital technology chamber that is very popular.
- A strong culture of collaboration and working in networks in the area: One of the factors highlighted in the interviews is the importance of working in networks and establishing partnerships. Much of the development of the San Carlos municipality itself has been the result of these partnerships (integration is a special focus of the local development agency).⁵ Despite the challenges faced in any partnership, regular meetings have allowed the partners to contribute where they can to the development of the municipality, based on their individual agendas.

⁵ www.adezn.org

The municipality has a culture of working in partnerships and the digital sector has integrated well into these spaces and contributed value from its own perspective.

- A sense of being rooted in the area of origin: Digital entrepreneurs were in agreement on the importance of local roots. All of them have had the opportunity to migrate to urban areas and join national and transnational companies in the centre of the country. However, they decided to stay in the area, create their own businesses in the region, and attract new local professionals with work opportunities that encourage them to remain in the area. All the people we talked to express a genuine interest in contributing to their place of origin. Many other rural areas in the country could meet the other conditions listed above, but the desire of young people to develop their own local space is essential to building rural tech hubs.

A few words about the participation of women and marginalised groups

As generally happens in the field of digital technologies – and northern Costa Rica is no exception – the participation of women is very low. Participation is even lower among indigenous people, those of Afro-Caribbean descent, and people with disabilities. Major efforts should be made to ensure that the hub is inclusive of these population groups. If achieved, this would increase its impact.

To this purpose, our work has been focused on building women's leadership in the field of digital technologies locally. This has not been limited to promoting the integration of more women in the sector, but has also extended to building their capacity to become business owners. Under the umbrella of our TIC-as programme⁶ which has been in place since 2012, Sulá Batsú worked with local networks to achieve this goal. There was significant support from all sectors to achieve our objective.

Conclusion and action steps

To conclude, the technology hub of San Carlos, although still in development, is a very important example to follow both at a national and international level. The hub shows how the economic sector of digital technologies can become a catalyst for inclusion if innovative approaches are applied. To make this possible it is necessary to:

- Continue developing the hub and documenting its progress so that a local development model based on digital technologies can be created.
- Work from the perspective of the economic rights of rural populations in the framework of the digital economy so that more vulnerable groups of people are included and the social exclusion of rural populations is reduced.
- Strengthen the factors that have catalysed the development of the hub (university degree programmes, scholarships, local teachers, entrepreneurs-teachers, etc.) and replicate these in other national and international spaces.
- Create public policies to support and encourage local digital businesses in rural areas.
- Consolidate networking between the digital sector and other sectors in rural areas that are mutually beneficial.
- Strengthen organisational associations in the sector such as the local digital technology chamber.
- Raise awareness about the importance of generating rural digital hubs among key actors such as students, teachers, entrepreneurs, customers and politicians.

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INDIA

HEALING FROM AFAR: INDIA'S TELEHEALTH INITIATIVES ARE BRIDGING A GAP, BUT CAN THEY REALLY SOLVE THE COUNTRY'S HEALTH WOES?



KEYWORDS: e-health

Society for Promotion of Alternative Computing and Employment (SPACE)

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At opposite ends of the spectrum: Access to healthcare versus access to the internet

The twin issues of healthcare and the internet are of great relevance to 21st century India.

Information and communications technologies (ICTs) are reaching the far corners of the nation. As of June 2016, there were estimated to be 462 million internet users in India,¹ second only to China. Among these, 309 million are urban and 153 million are rural,² and 80% of the users access the internet through mobile phones.

While internet access is growing, the availability of physical healthcare, especially in rural areas, remains abysmal: 63% of rural patients have to travel more than five kilometres to access an in-patient healthcare facility (compared to 27% in urban areas).³ As per 2011 World Bank data, India has 0.7 physicians per 1,000 people, much lower than China (1.5), the United Kingdom (2.8), the United States (2.5), and other low and middle-income countries (1.2).⁴ Nearly 75% of India's hospital beds are concentrated in urban centres,⁵ despite cities accounting for only 28% of the population of over 1.3 billion.⁶ Lastly, as extrapolated from a sample survey conducted in rural areas in India's central state of Madhya Pradesh, a staggering 67% of

healthcare providers in rural India have no medical qualifications.⁷

In such a scenario, the time for telehealth (or what has been called "distance healing")⁸ has come.

In this report we examine how telehealth initiatives aid in the realisation of the right to health, as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁹

India "acceded" to the ICESCR on 10 April 1979,¹⁰ with accession being defined as "the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification."¹¹ In other words, India has ratified and is a full signatory of the ICESCR. Interestingly, most of the socioeconomic provisions of the ICESCR (such as the rights to work in humane conditions, social security, protection of family and children, health and environment, education, protection of minorities and preservation of culture) were already part of India's Constitutional framework¹² which came into force in 1950, a full 29 years before India ratified the ICESCR. This shows the progressive outlook of India's legislators. That said, there have been delays

1 Internet and Mobile Association of India. (2015). *Internet in India 2015*. www.iamai.in/media/details/4490
2 Verma, S. (2015, 2 December). India on course to overtake US next month in Internet user base. *Livemint.com*. www.livemint.com/Politics/9Vipq3XmcfQuhJRMbleuW/Indias-Internet-users-set-to-increase-49-to-402-million-by.html
3 IMS Institute for Healthcare Informatics. (2013). *Understanding Healthcare Access in India: What is the current state?* www.imshealth.com/en/thought-leadership/ims-institute/reports/understanding-healthcare-access-in-india
4 data.worldbank.org/indicator/SH.MED.PHYS.ZS
5 IMS Institute For Healthcare Informatics. (2013). Op. cit.
6 www.worldometers.info/world-population/india-population (live extrapolation derived from the 2011 official Census of India figures of approx. 1.21 billion- www.censusindia.gov.in/2011census/censusinfodashboard/index.html)

7 Das, J., Holla, A., Das, V., Mohanan, M., Tabak, D., & Chan, B. (2012). In Urban and Rural India, A Standardized Patient Study Showed Low Levels of Provider Training And Huge Quality Gaps. *Health Affairs*, 31(12). content.healthaffairs.org/content/31/12/2774.full
8 Dasgupta, A., & Deb, S. (2008). Telemedicine: A New Horizon in Public Health in India. *Indian Journal of Community Medicine*, 33(1), 3-8. www.ncbi.nlm.nih.gov/pmc/articles/PMC2782224
9 Besides health, other rights that indirectly benefit as a result of telehealth initiatives are enshrined in Articles 6 and 7 (right to work), 10 (right to protection of the family), 13 (right to education) and 15 (right to benefits of science and technology). International Covenant on Economic, Social and Cultural Rights. www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
10 However, India has not ratified the Optional Protocol to the ICESCR. See: National Human Rights Commission, India. (2012). *A Handbook on International Human Rights Conventions*. New Delhi: NHRC. www.nhrc.nic.in/documents/india_ratification_status.pdf
11 Articles s.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969. https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml accessed via www.treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml
12 Hussain, N. (2016). ICESCR and India: At Fiftieth Anniversary. *Social Action*, 66 (April-June), 118-119. www.isideli.org.in/ckfinder/userfiles/files/lead-art-sa%20apr16.pdf

on India's part to submit its periodic state reports¹³ that are meant to outline "the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein" as mandated in Articles 16¹⁴ and 17¹⁵ of the ICESCR.

India's legal and policy framework for telehealth

When it comes to telehealth in India, three strands of policy are important: 1) the laws around healthcare for citizens, 2) the emphasis on ICT roll-out, and 3) the promotion of business start-ups and entrepreneurship.

Healthcare in India is governed by a gamut of laws and corresponding regulations including the Indian Medical Degree Act (1916), the Drugs and Cosmetics Act (1940, with respect to the sale of drugs), the Indian Medical Council Act (1956), and the regulations issued by the Medical Council of India.¹⁶

The right to health is even reflected in India's internet policies, such as the Information Technology Act (2000) and under the Draft Policy on Internet of Things (2015).¹⁷

However, healthcare is governed foremost by the Constitution of India. Under Chapter IV, Articles 38, 41, 42 and 47 of the Directive Principles of State Policy impose duties upon the state to promote public health. Subsequently, through judicial pronouncements, it has been held that the right to health is part of the fundamental right to life under Article 21.¹⁸

For the second and third strands of policy, thanks to Indian Prime Minister Narendra Modi's three

flagship initiatives – Startup India,¹⁹ Standup India²⁰ and Digital India²¹ – a number of internet-based healthcare applications have emerged, and are discussed below.

However, it is important to point out that while there is no political conflict around the issue of providing healthcare to all, from the implementation standpoint, adequate economic resources are not being made available to achieve the universal right to health.²²

Using the internet to overcome mountainous health barriers

In 2015, a Bollywood movie was released called *Manjhi – The Mountain Man*.²³ It told the story of a village couple living in a remote corner of the state of Bihar. The wife has an accident and needs to be rushed to the hospital, but to get there, villagers need to take a detour around a mountain which adds 40 kilometres to an otherwise 15-kilometre journey. The wife passes away, and the shattered husband, Dashrath Manjhi, gives vent to his frustrations by spending the next 22 years of his life manually carving out a path through the mountain.

"More than 70% of India's population lives in the rural areas. For medical treatment, the first points of contact are doctors who are primary care physicians (PCPs). PCPs are general physicians who don't have the expertise to treat conditions requiring specialist intervention," says Anshul Mittal, co-founder of the company that produces a healthcare app called Konsult App.²⁴ "The patients requiring advanced care have traditionally been referred to bigger hospitals and specialist doctors in cities even though some of them could have been treated remotely. The problem for the patient is travel, time and cost."

Konsult is a Delhi-based healthcare start-up working with more than 500 specialist doctors and medical establishments from the National Capital

13 As can be gleaned from official data, India's last report was the Combined Second, Third, Fourth and Fifth Periodic Report of India up to 2006, which was submitted in March 2007. [www.refworld.org/publisher,CESCR,STATEPARTIESREP,IND,,,o.html](http://www.refworld.org/publisher/CESCR,STATEPARTIESREP,IND,,,o.html)

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

15 Ibid.

16 Dalmia, V. P. (2013, 12 February) Telemedicine In India - Legal Analysis. *Mondaq.com*. www.mondaq.com/india/x/221258/food+drugs+law/Telemedicine+In+IndiaLegal+Analysis

17 Under clauses 1.5 and 4.4, 5.1.1, 5.1.4 and 5.1.7 it is stated that the Internet of Things can help provide automated solutions to problems faced in health services, smart health in smart cities, like the remote monitoring of health, or support for patients suffering dementia to prevent them from getting lost. The draft policy also calls for the creation of standards to ensure that there are no health hazards from the use of electronic gadgets. Department of Electronics & Information Technology (DeitY), Ministry of Communication and Information Technology. (2015). *Draft Policy on Internet of Things*. www.mygov.in/sites/default/files/master_image/Revised-Draft-IoT-Policy-2.pdf

19 www.startupindia.gov.in/index.php

20 www.pradhanmantrijoana.co.in/stand-up-india-loan-scheme-sc-st-women-sbi-hindi-pdf

21 www.digitalindia.gov.in

22 India has the notorious distinction of being among the countries that spend the least on healthcare. As per the 2016-2017 Union Budget, India's expenditure on health is a mere 1% of the overall GDP, compared to 3% in China and 8% in the UK. See: Sharma, N. C. (2016, 2 March). India's health woes: Budget for the National Health Mission remains stagnated at Rs 19,000 crore. *India Today*. www.indiatoday.intoday.in/story/indias-health-woes-budget-for-the-national-health-mission-remains-stagnated-at-rs-19-000-crore/1/609824.html

23 Panwar, P. (2015, 20 August). Dashrath Manjhi: The Mountain Man – The inspiring & untold story of an unsung hero. *OneIndia.com*. www.oneindia.com/feature/dashrath-manjhi-the-mountain-man-the-inspiring-untold-story-of-an-unsung-hero-1841887.html

24 Email interview with Konsult App Pvt. Ltd. co-founder Anshul Mittal, 24 April 2016. See: www.konsultapp.com

Region (NCR). Its app allows patients from the NCR and neighbouring regions to access expert medical advice for a fee. The availability of mobile internet services is central to its success.

Konsult is not the only healthcare app on the Indian market today. With rampant corruption²⁵ and poor facilities in governmental hospitals,²⁶ the marginalisation of communities due to gender²⁷ and caste,²⁸ and geographic and economic factors that result in negligible emergency services and rising costs of treatment, private doctors, goodwill Samaritans and entrepreneurs are taking the lead in finding innovative healthcare solutions. Numerous apps²⁹ such as Practo, Portea, MedicExpress and TweetzHealth are targeting different verticals in the healthcare ecosystem, including facilitating medical tests and appointments with practitioners, offering second opinions for diagnoses, and medical tourism.³⁰

Konsult App is available for Android and iOS and can be used by both patients and doctors. The operations team first selects top doctors from the NCR, then gets them to download the app and use it to register as a doctor. Information required for the registration includes specialisations, qualifications, experience and medical registration details. After a careful review by the back-end team, the profile is

approved, the doctor gets listed on the system and his or her profile becomes visible. At the time of the registration, doctors can set their per-minute call charges and can also change their availability status to on/off in real time. Patients can consult the doctor on a voice call or using chat. Patients are also able to share their medical records with the doctors. The payment is based on the duration of the call or chat.

The app has received 15,000 downloads from NCR and neighbouring regions, with 3,000 monthly calls (as of July 2016) and 40% month-on-month growth.³¹ Currently the app's user base includes cities in NCR (New Delhi, Gurugram, Noida, Faridabad) and satellite towns like Hisar, Alwar, Panipat, Sonapat and Kurukshetra. Other cities include Lucknow, Kanpur and Bareilly.

Globally speaking, over 165,000 mobile health (m-health or mHealth) apps are available to customers using iOS and Android devices. Out of these, 90% are free to download.³² While the majority of these apps are concentrated in the areas of wellness, diet and exercise, nearly a quarter of these apps "focus on disease and treatment management reflecting the growing interest in the use of mHealth apps for chronic disease management."³³ Additionally, a small number of mHealth apps are responsible for over 90% of consumer downloads.³⁴ It is estimated that by 2017, health-related apps will have been downloaded 1.7 billion times, with global revenues expected to touch USD 21.5 billion by 2018.³⁵ (These figures are inclusive of revenues earned from connected medical devices such as wirelessly connected glucometers, heart rate and blood pressure monitors, etc., apart from healthcare apps.)

In India, the top 10 free medical apps listed on Google Play have been cumulatively downloaded approximately 14.25 million times.³⁶

Mittal points out that the numbers of consultations are the highest in relation to seasonal illnesses, paediatric problems, gynaecological problems, skin problems, urology-related issues, neurological

25 Collins, S. J. M. (2013, 18 April). A government hospital that runs on bribes. *The New Indian Express*. www.newindianexpress.com/states/tamil_nadu/A-government-hospital-that-runs-on-bribes/2013/04/18/article1549905.ece

26 Yellapantula, S. (2014, 27 November). Unhygienic Conditions Raise a Stink in Government Hospitals. *The New Indian Express*. www.newindianexpress.com/cities/hyderabad/2014/11/27/Unhygienic-Conditions-Raise-a-Stink-in-Government-Hospitals/article2542852.ece

27 Mehrotra, M. A., & Chand, S. (2012). An Evaluation of Major Determinants of Health Care Facilities for Women in India. *IOSR Journal of Humanities and Social Science*, 2(5), 1-9. www.iosrjournals.org/iosr-jhss/papers/Vol2-issue5/A0250109.pdf?id=5674; See also: Planning Commission of India. (2012). *High Level Expert Group Report on Universal Health Coverage for India*. Chapter 8 on Gender and Health. www.planningcommission.nic.in/reports/genrep/rep_uhco812.pdf

28 Jacob, K. S. (2009, 22 August). Caste and inequalities in health. *The Hindu*. www.thehindu.com/opinion/lead/caste-and-inequalities-in-health/article7075.ece; see also: Kowal, P., & Afshar, S. Health and the Indian caste system. *The Lancet*, 385(9966), 415-416.

[www.thelancet.com/journals/lancet/article/PIIS0140-6736\(15\)60147-7/fulltext?rss%3Dyes](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(15)60147-7/fulltext?rss%3Dyes)

29 Gadgets 360. (2016, 20 January). Roundup: 10 Indian Healthcare Startups You Should Know About. *NDTV.com*. gadgets.ndtv.com/apps/features/roundup-10-indian-healthcare-startups-you-should-know-about-792075

30 Interestingly enough, for all its drawbacks, India remains a hugely popular medical tourism destination thanks to its increasing adherence to international best medical practices, the availability of accredited hospitals, state-of-the-art technologies and innovative methods that allow for treatment at up to one-tenth of the cost compared to developed Western nations. Govindarajan, V., & Ramamurti, R. (2013, 15 October). India's Secret to Low Cost Healthcare. *Harvard Business Review*. www.hbr.org/2013/10/indias-secret-to-low-cost-health-care

31 Email interview with Konsult App Pvt. Ltd. co-founder Anshul Mittal, 14 August 2016.

32 IMS Institute for Healthcare Informatics. (2015). *Patient Adoption of mHealth: Use, Evidence and Remaining Barriers to Mainstream Acceptance*. www.imshealth.com/en/thought-leadership/ims-institute/reports/patient-adoption-of-mhealth

33 *Ibid.* at page 1.

34 *Ibid.* at page 23.

35 *The Economist*. (2016, 12 March). Things are looking app: Mobile health apps are becoming more capable and potentially rather useful. *The Economist*. www.economist.com/news/business/21694523-mobile-health-apps-are-becoming-more-capable-and-potentially-rather-useful-things-are-looking

36 https://play.google.com/store/apps/category/MEDICAL/collection/topselling_free?hl=en

problems and sex-related or psychological issues. This seems to indicate that remote consultations are especially preferred when accessibility is an issue (due to rains), when patients are physically weaker (children and pregnant women), or when socially sensitive cases are involved (potentially embarrassing skin, sexual or mental issues).

The benefits of an app like Konsult are not restricted to Indian patients alone. Perhaps their most interesting case involves an international patient. Asif (named changed for privacy reasons), a six-year-old boy, travelled from Kyrgyzstan to India in early 2016 for treatment for a facial tumour. He underwent surgery (an embolisation followed by resections and facial reconstruction surgery) at a leading hospital in New Delhi. Kyrgyzstan did not have medical facilities for this treatment. After treatment the medical team in his home country required a lot of follow-up with the Indian doctors who treated him. They used Konsult App extensively for voice calls and sharing the latest reports.

With the aim of bridging the access to affordable and quality healthcare divide between rural and urban India, the start-up also runs what are called “Konsult Clinics”. Many rural patients may not be tech-savvy, suffer from language barriers, or not have access to smartphones with strong internet connectivity. So, for their clinic model, Konsult has linked up with several PCPs who use its application to speak to specialist doctors on behalf of the patients. As the PCP has already examined the patient physically, she or he is able to accurately describe the symptoms and the physical condition to the specialist doctor who can then advise treatment. Here both the PCP and specialist use the platform to share medical records and opinions. For cases which require more serious intervention, the patient is referred to the specialist doctor who already has the benefit of knowing the patient’s history. The specialist doctor can advise the patient to get the required tests done even prior to meeting her or him for the first time. This makes the whole process more convenient and affordable for the patient. According to estimates, this process can roughly translate to a cost saving of 90% for medical care.³⁷

Profit-based telehealth models can only go so far

“While the major advantage with these apps is that it helps us fix our consultation rates, the fact is that I remain hesitant to diagnose serious diseases over the phone,” says Dr Aditi Gupta, a 29-year-old Delhi-based dermatologist who has been using Konsult extensively.³⁸ “As doctors we have to balance the risks with the benefits, and I don’t feel comfortable prescribing strong medicines with side effects over the phone, because I don’t want to get into any legal complications.”

Disinclination to make advanced diagnoses is just one of the many limitations of telehealth.³⁹

Another serious issue which has not been addressed is the gender dimension. Theoretically, these apps ought to facilitate gender inclusivity by enabling healthcare access for women through remote consultations. However, Gupta points out that when it comes to her set of tele-referrals alone, there has not been any noticeable numerical increase in female consultations specifically following adoption of the app. This could well be a pointer to the larger socio-gender problem of women being restricted from using mobile phones⁴⁰ in order to prevent “disturbance in society”.⁴¹

Additionally, despite initiatives like Konsult Clinics, criticism persists that being profit-oriented models, these apps can initially focus only on the urban, rich or “white-collar” user base, leaving large swathes of rural households in the same perilous position they were in before.⁴² Furthermore, the business model of these apps, which involve incentivised payments to doctors based on the number of online consultations, could perpetuate the tendency of government doctors to sideline their work in public hospitals and cater only for better paying app-based patients.

37 Bhowmik, D., Duraivel, S., Singh, R.K., & Kumar, K.P.S. (2013). Telemedicine – An Innovating Healthcare System In India. *The Pharma Innovation*, 2(4). www.thepharmajournal.com/archives/2013/vol2issue4/PartA/1.1.pdf For Konsult App the average cost of treatment for an app user is INR 200-250 (USD 3-3.7) (average call time is four minutes). The patients seen by PCPs pay INR 100-200 (USD 1.5-3) for telephonic consultations. This is very cheap as compared to INR 500-1,500 (USD 7.5-22.5) for OPD fees – INR 500 (USD 7.5) for doctors in smaller cities to 1,500 INR (USD 22.5) for super-specialists sitting in top hospitals, in addition to travel and time costs.

38 Phone interview with Dr. Aditi Gupta, 14 August 2016.

39 Other challenges include ensuring the continuous availability of power and telecom connectivity, overcoming the linguistic barriers between doctors and patients from different parts of the country, the privacy of sharing confidential medical information, and overcoming the resistance to the adoption of technology, both on the part of the patients and doctors. See: Bhowmik, D., Duraivel, S., Singh, R.K., & Kumar, K.P.S. (2013). Op. cit.

40 Men account for 71% of the total internet user base, with women constituting only 29%. See: Internet and Mobile Association of India. (2015). Op. cit.

41 Lewis, K. (2016, 22 February). Girls and unmarried women in India banned from using mobile phones to prevent ‘disturbance in society’. *The Independent*. www.independent.co.uk/news/world/asia/girls-and-unmarried-women-in-india-forbidden-from-using-mobile-phones-to-prevent-disturbance-in-a6888911.html

42 Arakali, H. (2015, 16 December). New Indian Startups And Apps Improve Healthcare In Urban India Through Smartphone Technology. *International Business Times*. www.ibtimes.com/new-indian-startups-apps-improve-healthcare-urban-india-through-smartphone-technology-2225511

Because of the above, public sector telehealth initiatives, from the local to the federal government level, need to continue to play a significant role towards ensuring the universal right to health. In this context, among other initiatives,⁴³ the government's ambitious Social Endeavour for Health and Telemedicine (SEHAT) initiative, launched in 2015,⁴⁴ is significant. Introduced under the Digital India programme, SEHAT expanded the scope of the already-existing common services centres (CSCs) to include healthcare services. CSCs, established at every *panchayat* (i.e. village level), act as service delivery points in rural India. With SEHAT, these CSCs will now also make diagnostic facilities available, operate generic drugs stores, and offer teleconsultation services. For the latter, the government has linked up with leading private hospital chains Apollo and Medanta, a promising sign of public-private partnerships in the healthcare space.⁴⁵

Multi-pronged approach needed

The link between ESCRs and the internet, particularly in the sphere of healthcare, will keep getting stronger. The internet has definitely been an enabler of ESCRs. However, with many of these telemedicine initiatives having been launched only in the last few years, it remains to be seen what the future holds.

In light of the numerous challenges and limitations as discussed above,⁴⁶ offline methods of treatment still hold sway. Public perception tends to favour traditional modes of face-to-face treatment. Changing the mindset of consumers is the most difficult task that these start-ups face. Most telehealth initiatives today, whether government-run or private, are only just beginning to tap into the rural patient base. The whole sector is very fragmented, but with the steady penetration of ICTs in India, the consolidation of the space can be expected in the years to come.

The e-health situation can be equated with the e-commerce boom in India. "Until a few years ago nobody would buy things online and now consumers trust online purchases. Patients visit doctors

and then speak to them on the phone for follow-ups. Speaking to doctors on the phone is not new – monetising it and offering it as a separate service is new. It will take some time for mass adoption, but it will surely happen because of the advantages it offers," concludes Mittal on a positive note.⁴⁷

While telehealth can eventually become the starting point of diagnosis for millions of people in India, it can *never* singularly resolve India's healthcare crises. For that to happen, physical public health infrastructure, especially in the rural areas, has to be drastically strengthened, if not overhauled completely. The business models of established and critically acclaimed offline cost-saving surgical initiatives such as Aravind Eye Hospital⁴⁸ and Narayana Hridayalaya⁴⁹ can be replicated across the country.

The reality is that public, private, online and offline initiatives all need to work together to realise the right to health for all.

Action steps

The following action steps are suggested for India:

- *Strengthen the National Rural Health Mission through increased funding and social audits:* The National Rural Health Mission (NRHM), launched in 2005,⁵⁰ is India's largest public health programme and seeks to address all the ills plaguing rural health, as detailed above. Unlike past programmes, the NRHM has been considered a "minor success"⁵¹ and therefore needs to be further strengthened⁵² through increased funding⁵³ and better state-wide utilisation of funds.⁵⁴ Finally, social audits

43 In January 2016, four m-health services were also announced by the Union Ministry of Health and Family Welfare, which collectively aims to improve family health. Press Information Bureau. (2016, 15 January). Shri J P Nadda Launches Mobile Health Services – Mobile Academy, Kilkari, M-Cessation and TB Missed Call initiative – to Strengthen Public Health Infrastructure. www.pib.nic.in/newsite/PrintRelease.aspx?relid=134503

44 Press Information Bureau. (2015, 25 August). 'Sehat' Unique Initiative for Health Care Launched. www.pib.nic.in/newsite/printrelease.aspx?relid=126318

45 Ibid.

46 Dasgupta, A., & Deb, S. (2008). Op. cit.

47 Email interview with Konsult App Pvt. Ltd. co-founder Anshul Mittal, 14 August 2016.

48 Ydstie, J. (2011, 29 November). India Eye Care Center Finds Middle Way To Capitalism. *NPR.org*. www.npr.org/2011/11/29/142526263/india-eye-care-center-finds-middle-way-to-capitalism

49 Rai, S. (2015, 17 December). Rs 600 cr Narayana Hridayalaya IPO: Balancing affordable healthcare and the impending pressure for profits. *The Indian Express*. www.indianexpress.com/article/business/business-others/rs-600-cr-narayana-hridayalaya-ipo-balancing-affordable-healthcare-and-the-impending-pressure-for-profits

50 www.nrh.m.gov.in/nhm/nrh.m.html

51 Dhar, A. (2011, 15 September). National Rural Health Mission "a minor success". *The Hindu*. www.thehindu.com/todays-paper/tp-national/national-rural-health-mission-a-minor-success/article2454690.ece

52 Jacob, K. S. (2013, 10 August). For a new and improved NRHM. *The Hindu*. www.thehindu.com/opinion/lead/for-a-new-and-improved-nrh.m/article2333819.ece

53 "There was only 2% increase in the total budget allocation for FY 2016-17 compared to FY 2015-16." Janakiraman, P, & Kapur, A. (2016, 26 February). National Health Mission (NHM) GOI, 2016-17. *Budget Briefs, 8(3)*. *Accountability Initiative, Centre for Policy Research*. www.cprindia.org/sites/default/files/policy-briefs/NHM.pdf

54 Ibid.

need to be institutionalised to ensure proper implementation.⁵⁵

- *Weed out quackery through public-private partnerships:* As revealed in an alarming recent WHO report,⁵⁶ 57% of India's allopathic doctors (across both urban and rural areas combined) do not have any medical qualification.⁵⁷ The state must set up a database through a public-private partnership (including those who offer healthcare app services) to weed out fraudulent medical practitioners from the system. The mechanism that is set up can publicly disclose the names, designations and experience of all medical practitioners online, thereby reducing scope for misrepresentation.
- *Continue emphasising preventive measures:* Building on the old adage "prevention is better than cure", numerous studies have shown that simply ensuring clean water, sanitation and hygiene can dramatically improve public health.⁵⁸ To this end, India's massive *Swachh Bharat Abhiyan* (Clean India Mission) campaign⁵⁹ should continue to be promoted by politicians, media and celebrities alike.
- *Provide more support to the telehealth sector by improving:*
 - The ease of doing business for healthcare start-ups: There are no specific laws governing telehealth and there is a need to interpret traditional medical regulations for today's digital age. For example, many

healthcare start-ups function as aggregators of doctors and medicines. However, there is no clarity on how to assess their liability in cases of deficiency in medical service (e.g. the wrong prescription of drugs) or when there is malpractice on the part of the doctors listed on their apps. Such ambiguity must be cleared up. Additionally, support must be provided in the use of innovative mobile technology applications to enhance and standardise the quality of healthcare by frontline rural health providers in low-resource settings.⁶⁰

- The quality, inclusivity and penetration of telecommunication networks:
 - More mobile towers need to be erected and better regulation of mobile networks by the Telecom Regulatory Authority of India and the Ministry of Communication and IT is needed so as to ensure better connectivity, prevent undue profiteering by private telecom operators, and bring down costs further.⁶¹
 - Special government programmes need to be developed to support women. These programmes should aim to increase their internet access and sensitise others against the social stigma and ostracisation they have to endure in many contexts, and which currently restrict them from accessing ICTs.⁶²

55 Chauhani, N. (2015, 13 April). CAG for social audits of NGOs, rural bodies. *Times of India*. www.timesofindia.indiatimes.com/india/CAG-for-social-audits-of-NGOs-rural-bodies/articleshow/46901448.cms

56 Anand, S., & Fan, V. (2016). *The Health Workforce in India*. Geneva: WHO. www.who.int/hrh/resources/16058health_workforce_India.pdf

57 In rural India only 18.8% of allopathic doctors possess valid medical qualifications. See Ibid.

58 www.who.int/water_sanitation_health/publications/facts2004/en

59 Which *inter alia* emphasises eradication of public defecation by 2019 through the construction of toilets, especially in rural areas. See: www.swachhbharat.mygov.in

60 Gautham, M., Iyengar, M. S. & Johnson, C. W. (2015). Mobile phone-based clinical guidance for rural health providers in India. *Health Informatics Journal*, 21(4), 253-266. jhi.sagepub.com/content/21/4/253.abstract

61 "Although the Indian telecom industry is one of the fastest-growing industries in the world, the current teledensity or telecom penetration is extremely low when compared with global standards. India's teledensity of 36.98% in FY09 is amongst the lowest in the world. Further, the urban teledensity is over 80%, while rural teledensity is less than 20%, and this gap is increasing. As majority of the population resides in rural areas, it is important that the government takes steps to improve rural teledensity. No doubt the government has taken certain policy initiatives, which include the creation of the Universal Service Obligation Fund, for improving rural telephony. These measures are expected to improve the rural teledensity and bridge the rural-urban gap in teledensity." www.dnb.co.in/IndianTelecomIndustry/OverviewTL.asp

62 Lewis, K. (2016, 22 February). Op. cit.



KEYWORDS: all rights, migrants, youth

Eurovisioni

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Introduction

Italy is one of the countries that have adopted most of the charters and conventions related to economic, social and cultural rights (ESCRs). Despite this excellent track record, in the last years many of these good intentions have been put under stress by the impact of the general economic and political trends in Europe and by the success of populist parties and simplistic politics.

In a certain sense, the Italian case is the perfect example of how ESCRs can come under threat in a solid democracy, when economic and political crises knock at the door. This report gives an overview of recent socioeconomic developments in Italy, but suggests how a lack of resources and a weak and disorganised civil society are preventing the full potential of the internet from enabling ESCRs.

Policy and political background

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed by Italy on 18 January 1967, and ratified on 15 September 1978.¹ The so-called Optional Protocol to the ICESCR was adopted by Italy on 3 October 2014 through the promulgation of Law No. 152.²

Italy is also committed to respecting ESCRs through its adoption of European Union (EU) and Council of Europe (CoE) rules, some of which are even older and with a broader scope than the UN conventions.

For instance, in 1965 Italy ratified the CoE's European Social Charter of 1961,³ which anticipates most of the principles of the ICESCR, as well as the Additional Protocol to the European Social

Charter (approved in 1995 and ratified on 3 November 1997),⁴ which contains most of the principles included in the Optional Protocol to the ICESCR. The Revised European Social Charter of 1996 was ratified by the Italian parliament on 5 July 1999 through Law No. 30.⁵

A further layer of obligations for Italy derives from its membership in the EU and especially through the adoption of the European Charter of Fundamental Rights – which also includes a certain number of ESCRs – adopted in Nice on 7 December 2000. This Charter has since been included in the so-called Lisbon Treaty, which is the current base of the EU.⁶

Italy is also a prominent member of the International Labour Organization (ILO)⁷ and has ratified most of its conventions and agreements. Therefore, on paper, Italian legislation is up to date with the ratification of international treaties, and the country has adopted most existing global “best practices”. However, none of these – for the moment – makes specific reference to the internet.

The most important legislative achievement of the last years has been the new law on civil unions, approved by the parliament after years of discussion on 20 May 2016.⁸ Even if this law does not allow same-sex marriages or stepchild adoption (as is the case in other countries), it has been a hugely positive result in a country that is under the control of the Catholic Church. The victory was largely due to internet campaigns and street demonstrations.⁹

However, other rights have come under the spotlight too. For example, the Ministry of Health was forced to withdraw the advertising campaign for its

1 The full text of the Covenant has been published in Italian in the Official Gazette: www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1977-12-07&atto.codiceRedazionale=077Uo881&elenco30giorni=false

2 www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016;170

3 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ac10d>

4 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a84e>

5 www.camera.it/parlam/leggi/99030l.htm

6 eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12007L%2FTXT

7 www.ilo.org

8 Law No. 76, 20 May 2016, in force from 5 June 2016: www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-05-21&atto.codiceRedazionale=16G00082&elenco30giorni=true

9 Among the most vocal associations on this issue are LGBT-Radio and Associazione Genitori di omosessuali (Agedo), and also these websites: www.arcigay.it, www.parlarecivile.it, www.progettogayforum.altervista.org/chat, www.retedellaconoscenza.it, www.gaycenter.it, www.azionegaylesbica.it

National Plan on Fertility,¹⁰ facing accusations¹¹ that it was portraying women as having reproduction as their primary purpose,¹² neglecting all other aspects of the issue, notably social and economic ones. Two national demonstrations with opposing views took place in January 2016: one called Family Day, which supported the campaign, and the other called Sveglitalia, organised by a women's and lesbian, gay, bisexual, transgender and intersex (LGBTI) movement which was against the campaign.

Despite the good track records of the past, in the last year Italy has come under heavy criticism on many points concerning ESCRs at international fora, mainly because of the consequences of the prolonged economic crisis.¹³

According to data published in July 2016¹⁴ by the national Institute of Statistics (Istat), 6.1% of Italian families and 7.6% of the population are living in what is considered absolute poverty. This is the worst data since 2005 and shows a higher concentration of poverty among the families of the unemployed (19.8%), younger people (10.2% among those aged 18 to 34), non-nationals (32.1%), and people with lower educational levels and employment qualifications.

Another peculiarity of Italy within Europe – fruit of the welfare system of the past – is that retired people are less affected than in other countries, because the pension system is still providing them with enough resources.

These data show the growing divide within an ageing society, where the most exposed to the risk of losing their ESCRs are the young and foreign-born.

A ruling in May 2016 – largely reported by international media such as the BBC¹⁵ – on the case of a Ukrainian homeless person absolved by the Italian

Supreme Court for stealing food from a supermarket because “the right to survival prevails over property” is the tip of the iceberg that shows how ESCRs are beginning to be seen differently in the country.

Reform of the labour market

The current government has since its inception been under heavy pressure from the EU and the International Monetary Fund (IMF) because of the country's huge public debt (133.6% of GDP at the end of 2015)¹⁶ and because of the negative economic growth trend over the last years.

To please to the international financial watchdogs and to boost employment, the Renzi government has managed, after heavy disputes, to pass the so-called Jobs Act¹⁷ and a new Labour Code law through parliament. This reduces guarantees for fixed-term jobs and forces companies to grant stronger guarantees for short-term contracts. The law is aimed at adapting the labour market to the new reality of internet companies and of a digital economy, extending some guarantees that until now were reserved only for long-term contracts to short-term contracts.

Trade unions and a spontaneous movement of young people (who are collecting signatures for a referendum on the web)¹⁸ have opposed this law, accusing it of transforming permanent contracts into contracts where the employees are vulnerable.

Broadband internet as a resource for growth and new jobs

The main mantra of the current centre-left government in Italy, led by Prime Minister Matteo Renzi (who succeeded Silvio Berlusconi), is that the digital economy is the only way for Italian companies to relaunch growth and create new jobs. In this sense the government has tried to do its best to attract the big internet economy companies to invest in Italy. Until now this effort has not been crowned with any success and the only practical effect has been that Apple, Google and other internet giants have silently negotiated tax exemptions and reduced fines for tax evasion.

10 www.salute.gov.it/imgs/C_17_pubblicazioni_2367_allegato.pdf

11 Among the most active websites, you can check: www.famigliearcobaleno.org, www.retedellaconoscenza.it, www.sportellomigrantilgbverona.blogspot.it, www.lacittafutura/dibattito/la-mappa-dell-intolleranza-nel-bel-paese.html, www.ambrosia.noblogs.org/post, www.womenews.net/fertility-day-larabbia-sui-social-network, www.uominiedonnecomunicazione.com/17/12284/buferera-sul-Fertiliti-Day

12 Ministry of Health Fertility Day website: www.fertilityday2016.it; an investigative report on the video campaign produced by the Ministry to promote the initiative: Lettera 43. (2016, 1 September). Fertility day : sito e game realizzati da un'agenzia di Milano. www.lettera43.it/cronaca/fertility-day-sito-e-game-realizzati-da-un-agenzia-di-milano_43675258667.htm (This campaign is no longer accessible online because it was withdrawn by the Ministry.)

13 Council of Europe. (2016). *Italy and the European Social Charter*. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ac10d>

14 Istat. (2016). *Poverty in Italy*. www.istat.it/en/archive/189215

15 BBC. (2016, 3 May). Italian court rules food theft 'not a crime' if hungry. *BBC*. www.bbc.com/news/world-europe-36190557

16 Il Sole 24 Ore (2016, 10 February). La dinamica del rapporto debito/Pil in Europa: la corsa di Spagna, Portogallo e Grecia. www.infodata.ilssole24ore.com/2016/02/10/debito-pubblico-in-europa-italia-al-13320-del-pil-peggiore-la-francia-con-14938

17 www.gazzettaufficiale.it/eli/10/2015/06/24/15G00095/sq

18 Sciotto, A. (2016, 23 March). CGIL: arrivano i referendum contro il Jobs Act. *Libertà e Giustizia*. www.libertaegiustizia.it/2016/03/23/cgilarrivano-i-referendum-contro-il-jobs-act-tre-quesiti-sullicenziamenti-appalti-voucher

The main and most controversial obstacle to the growth of the digital economy is the low rate of penetration of broadband infrastructure in Italy. Because of the absence of a cable television industry and the lack of public investment in new-generation telecommunications networks, the country is – among European countries – one of those with the smallest coverage of broadband networks. According to an International Telecommunication Union (ITU) 2014 report,¹⁹ Italy ranked 40th on the list of the countries with the best fixed-line broadband, with only a 22.3% penetration. A little bit better is the penetration of mobile broadband, where Italy ranks 25th in the world, with a penetration of 68%. But this is a very meagre consolation when you consider that Singapore has a broadband penetration (fixed and mobile) of 135%, while Korea, Finland and Australia are near to 100%. In the 2015 ITU report, the situation had even worsened, with Italy sliding down to 44th place.²⁰

The main reason for this situation is that the national telecommunications companies lack capital, and have been badly affected by the economic downturn and by heavy competition on pricing. As a result, no new resources are available to finance heavy long-term investment in infrastructure. For years the government has tried to convince the private sector to invest, but finally, at the beginning of 2016, they gave up and decided to push the electricity company ENEL (still controlled by the state) to invest in this sector. But of course the results will take some time before they become visible, and in the meantime Italy risks sliding further down the world broadband ranking. In the meantime, the upgrading of public sector infrastructure, following an announcement by the government in 2013, has been stopped because of a lack of resources. Many projects, including those connecting schools to the internet, and public initiatives in the poor areas to fight the digital divide and to develop programming skills, have been discussed, but have never raised enough resources to be implemented properly.

The case of the migrants

Migrants and refugees have been arriving in Italy by boat from the northern shores of Africa since 2010 – mainly coming from areas of Libya that are out of

the control of the government and under the control of the so-called Islamic State (ISIS).

The phenomenon first started at the beginning of the “Arab Spring”, with a spontaneous mass migration by Tunisians and Libyans after the revolution. It did not take long for smugglers – profiting from the civil war in Libya and the weakened state structures in Tunisia – to begin trafficking human beings through the Sahara desert and boarding thousands of desperate people on small, unsafe boats to make the crossing to Italy.

Technically speaking, only a few of the thousands of migrants can be considered refugees (the few arriving from dictatorial regimes such as Eritrea or from Somalia, while Syrians usually pass through Turkey). Most of them are – according to EU rules – defined as economic migrants. Their mass arrival in Italy is putting increasing pressure on Italian infrastructure in the southern part of the country, a part that was already in a very precarious state because of the economic crisis and the continuous budget cuts in the public sector.

The official number of migrants arriving in 2015 was 153,842, which was 9% less than in 2014, according to the Ministry of Interior, but the impact of this migration on public perception has – on the contrary – increased enormously: more than an 80% rise in coverage in the printed media, and more than 250% in the electronic media over the previous year.²¹ This disconnect between reality and perception has created a sense of alarm among the population and split the country in two: those ready to respect international treaties and to provide assistance and hospitality to the newcomers (supported by the Catholic Church and directly by Pope Francis), and those who – fomented by populist parties, some of them openly racist such as Northern League, and the newly born party Fratelli d'Italia, created by right-wing dissidents from Berlusconi's party – are organising protests against migrants, and disrupting welcoming plans.

The paradox is that this debate is totally disconnected from statistics. In 2015, for the first time in nearly a century, the total Italian population decreased (according to Istat)²² by 130,061 people. The average age of Italian citizens is now 45 and there is an increase in Italian migration to other EU countries. The only vital part of the

19 Broadband Commission for Digital Development. (2014). *The State of Broadband 2014: Broadband for All*. ITU and UNESCO. www.broadbandcommission.org/documents/reports/bb-annualreport2014.pdf

20 Broadband Commission for Digital Development. (2015). *The State of Broadband 2015: Broadband as a Foundation for Sustainable Development*. ITU and UNESCO. www.broadbandcommission.org/Documents/reports/bb-annualreport2015.pdf

21 Polchi, V. (2016, 7 January). Flussi migratori, 12 mesi di sbarchi in Italia. *La Repubblica*. www.repubblica.it/solidarieta/immigrazione/2016/01/07/news/flussi_migratori_12_mesi_di_sbarchi_in_europa-130787694

22 Istat. (2015, 15 June). National demographic balance. www.istat.it/en/archive/162261

demographics is the number of foreigners, which continues to grow (currently standing at five million, or 8.3% of the population) and contributes 15% to the annual childbirth total, double the rate of Italian natives.

Conclusion

All these debates have had an impact on discussions in the Italian parliament, where a discussion on the digital divide, and the “right” to internet access, took place in 2015. This debate resulted in the Charter on Internet Rights which was approved by parliament in November 2015.²³ The right of each citizen to an internet connection is recognised as one of the new rights of the Italian citizen in the digital age. But the charter – after having been approved and even presented to the Internet Governance Forum in 2015 in Brazil²⁴ – still has to be turned into concrete legislation.

The original idea of the charter, unanimously approved by the lower house of the Italian parliament, was to reach consensus on some basic principles that could be used to develop the equivalent of the Brazilian Marco Civil da Internet (Civil Rights Framework for the Internet) law.²⁵ The new Italian charter includes 14 articles, and in its Article 1 states: “[Regarding the internet, citizens] are guaranteed the fundamental rights recognised to each individual by the Universal Declaration of Human Rights, by the European Union Charter of Fundamental Rights, by the national constitution and by the relevant international declarations.”

The main points of the charter, among others, are: the right of every citizen to access the internet, but without specifying the quality of the access (Article 2); the right to access knowledge (Article 3); net neutrality (Article 4); and that private data belongs to each citizen (Articles 5 and 6). The debate now in Italian civil society is how to get the government to create appropriate legislation that reflects the charter.

Articles 2 and 13 of the charter are particularly relevant to this report. Article 2 on the Right to Internet Access recognises that “[a]ny person shall have the same right to access the Internet on equal terms, using appropriate and up-to-date

technologies that remove all economic and social barriers” and calls on the government to promote “public interventions to overcome all forms of digital divide – based on cultural, infrastructural or economic factors – particularly as regards accessibility by persons with disabilities.”

Article 13 on the Right to Education urges public institutions to promote educational activities through digital means and for digital citizenship, and claims the rights of citizens to be properly informed so that they can be empowered in their daily life and in their contribution to society.

Action steps

In the process of fully realising ESCRs in Italy there are some important milestones ahead. The first one will be the next country review of its commitments to the International Covenant on Civil and Political Rights (ICCPR) at the UN, which is expected in the spring 2017 session, from 6 to 29 March.²⁶ The main achievement that the government will be able to show there will be the law on same-sex civil unions, which will now have to be implemented through detailed regulations and procedures. The next CoE European Social Charter review for Italy is scheduled for 2019. In view of that deadline, the Italian government will, in 2017, have to reply to many questions about the last decisions taken in the review. The CoE is already monitoring Italy on five chapters and is receiving new complaints (including one very recent one from psychoanalysts).²⁷ The new Jobs Act could increase the number of complaints received by the CoE.

For the moment these two processes are not the subject of public debate in the country, whether in traditional media or on the internet. But probably once the deadlines approach, a public debate will open on the net, especially if NGOs and civil society organisations push for it.

The same principle applies to public debate ahead of Italy’s next Universal Periodic Review follow-up reporting at the Human Rights Council, expected in November 2017.²⁸ Many points

23 Full text in Italian: www.camera.it/application/xmanager/projects/leg17/commissione_internet/dichiarazione_dei_diritti_internet_pubblicata.pdf and draft translation into English: https://www.intgovforum.org/cms/wks2015/uploads/proposal_background_paper/dichiarazione_dei_diritti_internet_inglese2.pdf

24 igf2015.intgovforum.org/event/4bzE/italian-chamber-of-deputies-internet-bill-of-rights

25 www.planalto.gov.br/CCIVIL_03/_Ato2011-2014/2014/Lei/L12965.htm

26 According to the calendar of the next CCPR monitoring sessions, available at: tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=Session&Lang=En

27 To consult the most recent complaint against Italy, see: www.coe.int/en/web/turin-european-social-charter/home/-/asset_publisher/Vugk5bodLMWq/content/new-complaint-registered-concerning-italy?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fturin-european-social-charter%2Fhome%3Fp_id%3D101_INSTANCE_Vugk5bodLMWq%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D4

28 <https://www.upr-info.org/en/review/Italy>

concerning ESCRs have been already raised,²⁹ from the treatment of migrants to discrimination against Roma people.

There is a huge debate among NGOs and activist organisations in Italy on two aspects of these processes: how to make the Italian public aware of the fact that Italy is one of the major violators of the principles in the Social Charter and, on the other hand, how to bring the voice of the activists that are vocal on the internet to the fora where these reviews are taking place (i.e. the UN, CoE). This

second problem is the most heated in the debate, because only registered organisations with special status are currently allowed to make remarks and raise questions on or objections to the country's reports. Spontaneous social or internet rights movements are not allowed to do so, unless they collaborate with existing, recognised associations and organisations.

Finally, there is a need for civil society activists to advocate rigorously for the Charter on Internet Rights to be turned into law.

29 See the UPR Database of Recommendations at: www.upr-info.org/database/index.php?limit=0&f_SUR=83&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges =RecoOnly

KENYA

EDUCATION FOR THE NEXT GENERATION: ASSESSING THE IMPACT OF THE INTERNET IN PRIMARY SCHOOLS



KEYWORDS: **education**

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Introduction

Education has for several decades ranked highly among the priorities of successive Kenyan governments.¹ In fact, as a testament of this commitment, the country's 2010 constitution provides for and guarantees the right to education. As the country's estimated population of 42 million people grows, the government needs to find ways of not only enhancing access to education, but also of ensuring a comprehensive and globally competitive education system. Towards this end, in 2003 the Kenyan government announced the introduction of the Universal Free Primary Education Programme,² which has since been implemented with varying degrees of success. Ten years later, the incumbent Jubilee administration announced the Free Laptop Programme for primary school learners.³ Whereas the laptop programme is yet to be implemented, a Digital Literacy Programme is currently being piloted for roll-out in 2017.

Kenya currently has an estimated 37.7 million internet users, with an internet penetration rate of 85.4%, while mobile subscriptions are at 39.7 million – the country has a mobile penetration rate of 90%.⁴ As the statistics suggest, the internet is no longer a tool for the elite, but is now considered a necessity available for everyone. But just how are

schools and students using it? In a country with young learners who are savvier than their teachers, how is our education system realigning and reorienting itself to harness the power of the internet? How can schools address the challenges resulting from the use of the internet, while tapping on the benefits? There is still a lot that needs to be done by various key stakeholders to ensure that Kenya maximises on its internet connectivity and techno-savvy youth to enhance access and quality of education.

Policy, economic and political background

Kenya is one of the 164 states that have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵ Kenya ratified the global instrument on 1 May 1972, but is yet to adopt the Option Protocol to the Convention. Nonetheless, despite ratifying the Covenant more than four decades ago, and demonstrating progress towards the realisation of economic, social and cultural rights (ESCRs), Kenya did not have strong legal protection for and effective strategies towards realising ESCRs until 2010.

The legal protection of ESCRs therefore is a fairly new concept in Kenya's legal framework. These rights were introduced under Kenya's 2010 constitution, which provides the general philosophy and policy and legal framework for rights in its Bill of Rights. Article 43 of the constitution protects the rights to health, housing, freedom from hunger, clean and safe water, social security, and education. Further, Article 53 provides for the right of every child to free and compulsory basic education. The constitution also apportions various responsibilities to implement this right to both the national government⁶ and county governments⁷ in Part 2 of its Sixth Schedule.

The right to education is further reinforced through a number of laws and policies which have

1 BBC. (2008, 11 February). Free secondary school for Kenya. [BBC. news.bbc.co.uk/2/hi/africa/7239577.stm](http://www.bbc.co.uk/2/hi/africa/7239577.stm); Background information, MOEST. www.education.go.ke/index.php/about-us/background-information; Daily Nation. (2012, 31 March). History of education in Kenya. www.nation.co.ke/lifestyle/The-history-of-the-Kenyan-education-system/1190-1377574-d49li7/index.html

2 TUSOME, MOEST. www.education.go.ke/index.php/programmes/tusome; Kenya, P. (2008). *Kenya Free Primary Education: An Assessment on the Impact and Sustainability of Free Primary Education in Migwani Division*. architecture.brookes.ac.uk/research/cendep/dissertations/PaulKenya.pdf

3 Digital Literacy Programme, ICT Authority. www.icta.go.ke/digital-literacy-programme

4 Communications Authority of Kenya. (2016). *Quarterly Sector Statistics Report (April-June 2016)*. ca.go.ke/images/downloads/STATISTICS/SECTOR%20STATISTICS%20REPORT%20Q4%202015-2016.pdf

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

6 Responsible for education policy, standards, curricula, examinations and the granting of university charters, universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions, and sports education.

7 Responsible for pre-primary education, village polytechnics, homecraft centres and childcare facilities.

since 2010 been revised to secure and ensure the realisation of this right. These include the Basic Education Act,⁸ the Children Act,⁹ the Kenya National Examinations Act,¹⁰ the Kenya Institute of Curriculum Development Act,¹¹ the Teachers Service Commission Act,¹² and the Science, Technology and Innovation Act,¹³ among others.

At a policy level, and as articulated in Kenya's development blueprint called Vision 2030,¹⁴ the country hopes to provide globally competitive quality education and training and research to her citizens to support development and enhanced individual well-being. Under its Medium Term Plan 2013-2017,¹⁵ the government has identified information and communications technologies (ICTs) as a national priority and committed to make education the key platform for equipping the nation with ICT skills in order to create dynamic and sustainable economic growth. This demonstrates a keen commitment by the government to realise the right to education in the country.

The Digital Literacy Programme (formerly the Laptop for Schools Programme) emanated from an election promise by the Jubilee government during its election campaign in 2013. The promise was to provide every child joining standard 1 in primary school with a solar-powered laptop within 100 days. The project has been described as "an ego project since the leaders are basically trying to outdo their opponents by showing that they can meet whatever promises they had made to the electorate."¹⁶ Nonetheless, the government committed to sustain the programme for each succeeding year until the day when every child in the country would walk with a satchel and a laptop.¹⁷ The project has encountered teething problems, but despite this, the government has remained determined to implement it given its steadfast investment in the programme.

For example, during the 2016/17 fiscal year, the programme was allocated KES 13.4 billion (roughly USD 134 million).¹⁸

Slow implementation

However, implementation of the project has been slow as there were some challenges that needed to be dealt with. Some of these include the fact that there seems to have been a rushed decision on this project, without all the necessary strategic thinking having been done. For example, the majority of the teachers expected to teach computer literacy are computer illiterate and would first need to be trained; there are schools that are struggling with basics such as classrooms equipped with desks; and some children are still being taught in the open as some schools lack enough classroom space. Other issues include a lack of an adequate or sustainable power supply, security of the laptops, and procurement scandals. But, after three years of waiting, the project pilot finally took off in May 2016.

The process started with the government publishing a call for tenders in September 2015.¹⁹ Apart from supplying laptops for schoolchildren that were "able to withstand rugged operating conditions" and were equipped with "a long-life battery with low power consumption,"²⁰ the call specified that those who won the tenders would also supply projectors, routers and servers. Ten companies were shortlisted.²¹ These companies reflected the need for public-private partnerships, as most of the private companies partnered with local universities in their bids. This could be interpreted to be a response to the fact that, in order to build local capacity, the government specified that it wanted only public institutions that had the capacity through their business arms to assemble the devices locally to be a part of the bid,²² with a promise of tax rebates in return.

Consequently, five universities were shortlisted,²³ with two which partnered in the tender process

8 Provides the framework for the implementation of free and compulsory basic education.

9 Provides the framework for the protection of the rights of children.

10 Provides for the conduct of examinations.

11 Provides the framework for the development and review of education curriculum.

12 Provides for the employment and management of teachers.

13 Provides for the promotion, coordination and regulation of the progress of science, technology and innovation.

14 www.vision2030.go.ke/lib.php?f=vision-2030-popular-version

15 www.jkuat.ac.ke/directorates/dipca/wp-content/uploads/2015/07/Education-and-Training-MTP2.pdf

16 Farah, M. (2015, 28 May) Kenya's one laptop per child policy: a critique. *LinkedIn*. <https://www.linkedin.com/pulse/kenyas-one-laptop-per-child-policy-critique-muhamad-farah>

17 Jubilee Manifesto: Uhuru Kenyatta Speech. www.kenya-today.com/politics/uhuru-kenyatta-manifesto; Jubilee Manifesto. www.kenya-today.com/politics/jubilee-manifesto

18 Highlights of the 2016/17 Budget. www.treasury.go.ke/publications/category/105-budget-2016-2017.html?download=459:budget-highlights-of-the-2016-2017

19 Ochieng, L. (2015, 4 September). Govt invites tenders for supply of laptops again. *Daily Nation*. www.nation.co.ke/business/Govt-invites-tenders-for-supply-of-laptops/996-2858678-w649h3z/index.html

20 *Ibid*.

21 Ongiri, I. (2016, 6 January). Sh17bn laptops tender bid to start on Friday. *Daily Nation*. www.nation.co.ke/news/Sh17bn-laptops-tender-bid-to-start-on-Friday/1056-3022570-gyl5k12/index.html

22 Ochieng, L. (2015, 4 September). *Op. cit*.

23 Oduor, A. (2015, 30 November). State shortlists 10 firms in laptop project. *Standard Digital*. www.standardmedia.co.ke/article/2000184022/state-shortlists-10-firms-in-laptop-project

– the Jomo Kenyatta University of Agriculture and Technology (JKUAT) and Moi University – winning the tenders. Once the selection process was complete, 150 schools were chosen to participate in a country-wide pilot project, with nine of them being special needs schools which cater for pupils with different challenges. It is expected that at least 11,570 primary school class 1 (elementary school grade 1) pupils will receive free laptops²⁴ in the first phase of implementation as the KES 17.7-billion (USD 168-million) laptop project²⁵ rolls out.

It is anticipated that digital content creators and animators will derive a lot of benefits from this project, as the government will leverage partnerships with the private sector in creating and producing educational content which will be available on these devices.²⁶

Colonising devices

It is important to note that even though there was a delay in implementation of the Digital Literacy Programme, many children had embraced technology way before the government plans to provide technology in schools – the country's youth are not sitting around waiting for laptops to arrive in the classrooms.

Instead they have colonised devices that they have ready access to, such as their parents' phones, tablets and laptops. Take for example Jane, a two-year-old child, who is able to navigate phones or tablets and select her favourite applications to explore cartoons or content of interest to her. Young children, even before they start attending school, are able to use applications such as YouTube or Netflix and search for and watch their favourite videos, movies or television shows. Once on a site, they get to explore more sites that have similar content. This is possible even for young children like Jane who cannot read or write, but who only need a video downloaded for them to be able to navigate further based on their recognition skills of, for example, similar cartoons. This has been seen to contribute to building children's cognitive skills.

Older children such as Peter, who is six years old, can navigate Play Store on Android or Apple Store on iOS devices and download his favourite games and play. Further, he can comfortably search for content through Google search or on YouTube and interact with the content.

Children today including those that are younger than two years old have become tech-savvy and yet they have not been taught how to use the devices. It is amazing that they are able to interact with smartphones and swipe and discover new things based on their curiosity. More so, some have made discoveries that their parents, who own the gadgets, are not aware of.²⁷ In fact they are no longer interested in toy phones.

According to Stella,²⁸ Jane's mother, her daughter discarded her toy phones as soon as she discovered the unique features of her mother's smartphone. As a result, Stella has had to buy herself another smartphone and leave her previous device for her daughter's exclusive use.

Nevertheless, for children who may not have access to these devices at home, the school does provide a place to access them. At Olympic Primary School, located in Kenya's largest slum, the local member of parliament Ken Okoth has launched an ICT programme by setting up computer labs in primary schools as a way of jump-starting the interaction of the pupils with technology in his Kibra constituency.²⁹ The school, with a population of more than 500 children, received several computers, a screen projector and a laser jet printer. Okoth believes that embracing ICT skills at a young age will help the students improve their communication, writing, editing and critical thinking skills, and improve their innovation and creativity skills. Further, he believes that the students will be in touch with global trends, becoming relevant and competitive in the job market.

It is evident that technology needs to, and will, play an important role in shaping the future of Kenya's education sector. It is therefore important that for this to become a reality, the relevant stakeholders must understand and fulfil their roles in the implementation process to deliver the benefits to the children.

24 Ngugi, B. (2015, 21 September). Government opens bids for the supply of school laptops again. *Daily Nation*. www.nation.co.ke/business/Govt-invites-tenders-for-supply-of-school-laptops/996-2879098-quuah/index.html

25 Anami, L., & Oduor, A. (2016, 3 May). 11,500 Kenya Standard One pupils to get laptops today. *Standard Digital*. www.standardmedia.co.ke/article/2000200393/11-500-kenya-standard-one-pupils-to-get-laptops-today

26 Okuttah, M. (2015, 9 September). How businesses will gain from e-learning taking off next year. *Business Daily*. www.businessdailyafrica.com/How-businesses-will-gain-from-e-learning/1248928-2864268-atg7vzb/index.html

27 The authors' experience with their own kids, those of relatives and those of friends.

28 Interview with Stella (not her real name as she preferred anonymity), 28 September 2016.

29 Kibra Constituency. (2016, 18 February). Kibra schools embrace ICT programme. <https://kibraconstituency.wordpress.com/2016/02/18/kibra-schools-embrace-ict-programme>

What should the roles of the different players be?

As the country moves towards rolling out the digital learning programme, it is important that all the key stakeholders, whether government, private sector or civil society, understand the crucial roles that they need to play.

The government should put in place measures to ensure that all children have equal access to acceptable and quality education, including e-learning facilities; make educational resources available, which includes ensuring that learning, financial and human resources are equitably distributed across the country; and ensure that there is no discrimination in the education system. Other measures include ensuring that the environment for learning, including when using technology and the internet, is safe and conducive for the development and growth of children; and that the ICT programmes rolled out in schools are adaptable to the needs of the country, including the needs of children with disabilities or those with special needs.

Other than for learning, the government can harness ICTs to develop the capacity of teachers and to generally improve education management, governance and administration.

The private sector has an important role in ensuring the realisation of the right to education. They should, for instance, support the development of content such as e-books and e-learning materials; and provide equipment and develop infrastructure to enable access to the internet, including country-wide broadband connectivity at an affordable cost. In addition, they need to engage with the government through public-private partnerships to develop solutions for the education and ICT sector, support innovation around ICT and education that caters for the needs and priorities of children, and build more schools. Other roles would be the deployment of corporate social responsibility programmes to support education programmes through infrastructure development, bursaries and scholarships for children, the development of content for schools including in local languages, and assisting in building the capacity of teachers and other ICT professionals.

Civil society can play a number of important roles. These include monitoring and evaluating the levels of access, affordability and quality of education and advocating for transparency and accountability in procurement in educational projects. Other roles involve strengthening their work by building inclusive and capable coalitions and engaging at local, regional and global levels on education,

and ensuring their representation in education policy processes in order to include citizen voices in these processes. Civil society should source funds to support educational initiatives on education, advocate for education funding reforms to increase funding for education programmes through diverse means such as debt relief, and build their research and knowledge development capacities to enable them to contribute to education reform.

Conclusions

Through internet connectivity, both students and teachers can benefit from the information super-highway. Where textbooks are not readily available, or information is outdated or unavailable, the internet provides an avenue to access online educational material. Such reference materials can be useful for research for both students and teachers, as well as for benchmarking knowledge levels by comparing outputs from similar education levels. Further, the benefit of using the internet is that it helps build digital literacy skills in the process through regular interaction and exposure.

However, ICTs are not the silver bullet to fix Kenya's challenges in realising the right to education. Whereas adding new and shiny devices might enhance the classroom experience, the goals of the education system, as well as questions around sustainability and relevance, must not be forgotten. The government, in designing the Digital Literacy Programme, must take into account the ever-increasing tech-savviness of two-year-olds and the likely deficiencies of their would-be teachers once these children get their hands on the devices in school. More work needs to be done to bridge the digital divide, not just across different regions in the country, but also between the teachers and their pupils. What is clear, though, is that the proper implementation of ICTs will go a long way in making education available, acceptable, adaptable and accessible in Kenya.

Action steps

There are several ways in which Kenya's Digital Literacy Programme can be strengthened:

- The current institutional practices and arrangements to manage the education sector should be reviewed to ensure that the diverse agencies supporting the Digital Literacy Programme – from procurement, curriculum development, teacher management, to school financing and examination management – are properly coordinated to enhance efficiency, effectiveness and quality of education. Having a strategic plan that

deals with these issues, and provides a guide for implementation and next steps, should be considered.

- The barriers to ICT use need to be identified and tackled. These include cost of devices, capacity, and infrastructure. Policy, legal, financial, administrative and other measures to tackle these barriers need to be put in place in collaboration with relevant stakeholders.
- The current curriculum and the approach to pedagogy need re-examining. For example, existing publishers and authors should develop language and content for the Digital Literacy Programme in forms that are adaptable to different uses and different platforms. Where possible, the content should be open and free to use, without restrictions over copyright.
- The existing telecommunications infrastructure should be improved to ensure national reach of broadband internet. This should include

ensuring that all schools have access to the electricity grid, and where not available, alternative power sources such as solar should be installed. Ongoing ICT capacity-building programmes should be developed for teachers and education managers in order to allow them to take full advantage of technology and therefore improve student learning.

- The government should explore different ways of financing education to ensure that the Digital Literacy Programme is sustainable. This could include encouraging public-private partnerships, or providing tax rebates for private entities supporting the education sector.
- Civil society should advocate for, among others, increased funding for the Digital Literacy Programme, protection of local content, reduction of internet costs, and expansion of internet infrastructure, including through deployment of the Universal Service Fund.

KOREA, REPUBLIC OF

COPYRIGHT AS A BARRIER TO CULTURAL RIGHTS AND THE NECESSITY FOR COPYRIGHT REFORM



KEYWORDS: **commerce, copyright, culture**

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Introduction

The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹ deals with cultural rights in its Article 15, protecting the right of everyone “to take part in cultural life” and “to enjoy the benefits of scientific progress and its applications.” It also protects the right of authors “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production.”

The internet is a valuable tool for ensuring cultural rights by allowing people to easily access information all over the world, collaborate with each other on cultural projects, and share their opinions and creative work. In particular, the internet and digital technology can help ordinary people become creators, while they were just passive consumers of cultural products before the internet was popularised.

To maximise the potential of the internet as an enabler of cultural rights, access to the internet and information is essential. South Korea is one of the countries with the most developed internet infrastructure in the world, with the internet usage rate – based on the number of people aged three years and older who used the internet at least once within the past month – reaching 41.11 million, or 83.6% of the population, according to a 2014 survey on internet usage.² While there remain digital gaps in access to some degree depending on gender, age, income, education, occupation and disabilities, an important factor which affect users’ access to information even in a country which has a developed internet infrastructure like South Korea is the copyright regime. Copyright controls what content can be accessed online, and under which conditions this content can be accessed, used, shared, stored, adapted, translated, etc. This system of control could restrict the personal and non-commercial use of and access to information on the internet,

preventing information from being copied, modified and distributed quickly and easily.

Copyright in South Korea

South Korea ratified the ICESCR on 10 April 1990 without any reservations. While there are no explicit provisions to protect cultural rights in the constitution of South Korea,³ some provisions which deal with freedom of expression (Article 21.1), freedom of learning and the arts (Article 22.1), the rights of authors (Article 22.2) and the right to receive an education are related to cultural rights as contained in Article 15 of the ICESCR.

As one of the means to implement the right of authors, South Korea has a Copyright Act.⁴ The purpose of copyright is to promote development of culture by providing creators with exclusive rights temporarily for 70 years after the death of the author, so that they are given incentive to create cultural works and be rewarded by the market. At the same time, copyright facilitates the dissemination and use of cultural works through fair use that permits limited use of copyrighted material without acquiring permission from the copyright holders (this is set out in section 4, subsection 2 of the Copyright Act). Copyright regimes should keep a balance between exclusive rights and fair use, which is in line with the cultural rights of everyone. Such a balance would differ depending on the economic and social context of each community or country.

However, the Copyright Act of South Korea has failed to reflect internal needs, and has been affected mainly by external factors such as pressure from the United States (US) and international treaties. Major revisions to the Copyright Act since the 1990s were the results of trade negotiations between Korea and the US in 1996, accession to the World Trade Organization (WTO) in 1994, and the Korea-US Free Trade Agreement (KORUS FTA)⁵ concluded in 2007.

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

2 Korea Internet & Security Agency. (2015). *Korea Internet White Paper 2015*. isis.kisa.or.kr/eng/ebook/EngWhitePaper2015.pdf

3 www.law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD%ED%97%8C%EB%B2%95#liBgcolor

4 www.law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EC%A0%80%EC%9E%91%EA%B6%8C%EB%B2%95#liBgcolor

5 Ministry of Trade, Industry and Energy, KORUS FTA, www.fta.go.kr/us (Korean); Office of the United States Trade Representative, U.S.-Korea Free Trade Agreement, www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta (English).



Seoul Maeul Media Center.

Since around 2000, digital copyright agendas have started to be included in the Copyright Act, and the so-called “Korean wave” – the rise in global popularity of South Korean culture abroad – triggered the strengthening of copyright during the 2000s. This included the so-called three-strikes policy⁶ and filtering obligations for a specific category of internet service providers that offer peer-to-peer and web hard services.⁷ These regulations have not even been accepted yet in the international copyright-related treaties. This trend is reflecting the interest of right holders on the one hand, while also reflecting a policy direction by the Korean government to promote the cultural industry rather than considering the cultural rights of ordinary users.

Copyright and the Seoul Maeul Media podcast case

In the past, copyright mattered generally to professional creators because while everyone could be a creator, most of them have no means to distribute their works. Digital technology, including

image- and video-editing programmes and digital devices like digital cameras and smartphones, enabled ordinary people to create their own images and videos. The internet provided a cheap method to disseminate their works all over the world. Now copyright is a matter that not only concerns professional creators but all of us.

In many cases in the digital world, new works are created drawing on the works of others. Digital technology makes it easy to copy and modify parts of existing content and to mix them to create new content. Harvard law professor Lawrence Lessig called it a “remix” or “read-write” culture.⁸ In general, professional creators get licences from rights holders for using their works. This, however, can be burdensome for creators who do not seek to make a profit from their creations, resulting in a constriction of the not-for-profit production of cultural works. The Seoul Maeul Media case illustrates this dilemma well.

“Maeul” means village in Korean. Maeul media is a media cooperative owned by residents in a village and has played a role as a space for communication and dialogue, where residents share creative works and their opinions using different media – including newspapers, webzines, movies and podcasts. In doing so, they restore community

6 The copyright “three-strikes” policy, which is set out in Article 133(2) of the Copyright Act, is the system whereby the minister of culture, sports and tourism can order the suspension of the account of anyone who violates copyright after being notified of allegedly violating copyright three times by the minister.

7 Web hard service refers to a file-sharing service where users can upload files and share them with other users. Many users in South Korea upload movies, music and TV programmes on web hard services, which have raised controversy over copyright violation.

8 Lessig, L. (2005, 28 December). Creatives face a closed Net. *Financial Times*. www.ft.com/cms/s/2/d55dfe52-77d2-11da-9670-0000779e2340.html#axzz4Jf9xgSH

culture. The Maeul Media project was launched in Seoul in 2012 through the Seoul Maeul Media Support Centre,⁹ which is operated by MEDIACT, a non-profit media organisation. The support centre helps citizens establish and operate their maeul media cooperatives by providing training courses, consulting, and supporting the creation and organisation of a maeul media network. There are now over 100 maeul media projects including about 20 maeul media podcasts within Seoul. Maeul media productions in podcast format are uploaded to Podbbang,¹⁰ one of the most popular podcast platforms in South Korea. Users can listen to the podcasts through streaming or by downloading them. Seoul Maeul Radio Dong-Ne-Bang-Ne,¹¹ a live internet radio programme, was launched in October 2015 as a cooperative maeul media project.

In early 2016, maeul media creators ran into difficulties after Podbbang sent notice on 18 December 2015 that it would block podcasts which violate music copyright, by the request of the music copyright society. One of the podcasts under the music category of the podcast site had already been blocked. Many maeul media podcasts often use local or international music in their programmes, in the same way that many commercial radio programmes include music between news stories, discussions and shows. Although their use of songs in their podcasts is for non-commercial purposes, it is still regarded as copyright infringement.

The Seoul Maeul Media Support Centre approached Podbbang and the Korea Music Copyright Association (KOMCA)¹² in an attempt to solve the problem, but did not receive a satisfactory response from them. Podbbang said that it would negotiate with KOMCA with regard to licensing when it comes to its live-streaming service, but that the licensing of podcasts rested with the creators. KOMCA's position was that it would not negotiate with individual creators, but rather with platform providers such as Podbbang, because it needs to secure usage statistics through the platform providers. Both sides have shifted responsibility back and forth, while maeul media creators have expressed the intention to pay royalties if necessary.

What is worse, while there are royalty collection rules for the live streaming and downloading of music, royalty collection rules for podcasts have

yet to be developed.¹³ As a result there are no legal grounds on how much royalty one should pay for using music in one's podcast. Podcasts are regarded as "forwarding" under the Korean Copyright Act,¹⁴ which is in the same category of activity as posting an article in a blog.

As of August 2016, no additional blocking of podcasts had happened, but the current unstable situation is likely to stunt the development of maeul media. The Ministry of Culture, Sports and Tourism needs to come forward to solve the problem by mediating the negotiations between stakeholders so that maeul media creators can devote themselves to production, without worrying about copyright violation. The royalties from the not-for-profit use of music in maeul media projects, and others like them, should be free or low enough for not-for-profit creators to afford them. The Korean Progressive Network Jibonet and IPLeft,¹⁵ another civil society organisation in South Korea, provided legal advice on copyright to the Seoul Maeul Media Support Centre and cooperated with it to try to solve the problem.

Copyright as a barrier to cultural rights

This is not the first time that not-for-profit creations have been threatened by copyright in South Korea. In 2009, a father's blog post with a video clip of his five-year-old daughter singing and dancing to a then popular song called "미쳐서야(I'm Crazy)" was blocked following a request from the relevant collecting society.¹⁶ Later, the post was recognised as fair use by a court, but the case raised social concerns on the indiscreet requests for content take-downs by copyright holders.

The excessive application of online copyright could threaten cultural participation for internet

13 In South Korea, royalty collection rules for the specific use of copyrighted works are decided by the relevant collecting societies with the approval of the Ministry of Culture, Sports and Tourism.

14 According to the Korean Copyright Act, Article 2 (Definitions), the term "public transmission" means sharing works, stage performances, music records, broadcasting or databases (referred to as "works, etc.") by means of radio communication or wire communication so that the public may receive them or have access to them; the term "forwarding" means to provide works, etc. for use so that the members of the public may have access at the time and place of their own choosing; and the term "digital audio transmission" means the transmission of sound in digital form initiated at the request of members of the public for the purpose of having the public receive the transmission simultaneously. It excludes forwarding. See: law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EC%A0%80%EC%9E%91%EA%B6%8C%EB%B2%95#libgcoloro

15 ipleft.or.kr

16 Suh, J. (2012). UCC (User-created Contents) and Fair Use in Korea – In Light of "Son Dam-bi" Decision. *Seoul Law Journal*, 53(3). s-space.snu.ac.kr/bitstream/10371/79375/1/21%20%EC%84%9C%EC%A7%84%ED%98%B8.pdf

9 www.maeulmedia.org

10 www.podbbang.com

11 www.podbbang.com/live/maeulmedia

12 www.komca.or.kr/foreignz/eng/Kot.jsp

users. In 2005, video clips and photos from a then popular TV drama, “Immortal Lee-Soon-Shin”,¹⁷ that were uploaded on a bulletin board run by a community of fans of the drama¹⁸ were deleted by request of the KBS, the broadcasting company which produced the drama. The video clips and photos uploaded onto the bulletin board were just a way of the fans sharing their excitement with each other about the drama series. People usually communicate with each other by talking about movies, TV shows, books and songs which impress them. It is no different when users do this online – it is very natural to use cultural works as the subject of communication and as a way to seek connection with others.

This form of cultural participation is not only a right to be protected, but it also often helps popularise the cultural work. In the above case, the broadcasting company should have realised that the fan community it censored was one of the driving forces behind the drama’s popularity. A good example of this is the song “Gangnam Style” sung by PSY.¹⁹ A large number of music videos parodying Gangnam Style were produced by users just for fun, such as London Style, Pusan Style, Police Style, etc. These in turn increased the popularity of the original hit.

As the ICESCR clearly states, the rights of authors should be protected. However, while a copyright regime is one way to protect the moral and material interests of authors, it is not the only means to protect their rights. Moreover, copyright owners are not always the authors of the works in question. General Comment No.17 (2005) of the Committee on Economic, Social and Cultural Rights points out: “It is... important not to equate intellectual property rights with the human right recognized in article 15, paragraph 1(c).”²⁰ It also states that, as opposed to authors’ rights viewed from the perspective of human rights, “intellectual property regimes primarily protect business and corporate interests and investments.”

Conclusions

The internet can be an enabler of ESCRs, but without reforming the current copyright regime in South Korea so that it is suitable for the digital environment, its potential will not be fully realised. Current copyright regimes should be reformed so that they do not restrict access to information, allow not-for-profit remixing, and enable the free dissemination of and access to these new creative works by users. For that, broadening the concept of “fair use” would be a way to rebalance the current copyright regime, which is skewed towards copyright holders.

However, the potential for copyright reform in South Korea has limitations, because the Korean copyright regime is enforced by international treaties such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)²¹ and bilateral agreements like KORUS FTA. Global copyright regimes became homogenised through the TRIPS Agreement and strengthened through bilateral and multilateral trade agreements. We first need to stop additional copyright-related negotiations in recent trade agreements under discussion, such as the Trans-Pacific Partnership (TPP)²² and Regional Comprehensive Economic Partnership (RCEP), and then promote global recognition for copyright reform.

While admitting the necessity to protect authors’ rights, this does not necessarily have to depend on a copyright regime. There are many other means to protect the rights of authors to benefit from the protection of their moral and material interests, while not restricting the use and dissemination of an author’s works. This could include public grants for artists, crowd-funding for the creation of artistic works, and alternative business models which share profits with creators while allowing some freedom in using those works, such as Magnatune²³ and Jamendo,²⁴ which allow free access to all the music they provide under Creative Commons licensing while sharing profits with musicians by directly working with them.

17 www.kbs.co.kr/drama/leesooshin

18 cafe.naver.com/kbsleesooshin.cafe

19 www.youtube.com/watch?v=9bZkp7q19fo

20 Committee on Economic, Social and Cultural Rights. (2005). General Comment No. 17. tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f17&Lang=en

21 www.wto.org/english/tratop_e/trips_e/t_agmo_e.htm

22 <https://ustr.gov/tpp>

23 <https://magnatune.com>

24 <https://www.jamendo.com>

Action steps

The following are advocacy priorities for civil society in South Korea:

- The Korean government should solve the problem of an absence of royalty collection rules dealing with podcasts by mediating the negotiations between stakeholders. As noted above, this will allow maeul media creators to devote themselves to production without worrying about the violation of copyright. The royalties for not-for-profit use of music like maeul media should be free or low enough so that creators can afford them. To maximise its potential as an enabler of ESCRs, the current copyright regime should be reformed so that it does not restrict access to information, allows remixing, and enables the dissemination of creative works for not-for-profit purposes. Civil society could play a vital role in demanding copyright reform at the global level. It has already done great work in fighting against multilateral trade agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) and in establishing the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.²⁵ This potential needs to be renewed in the field of global copyright monopolies.
- The government should develop a public policy to support artists and cultural creators so that they can make a living and continue their work without depending on copyright regimes for income.
- The internet and digital technology are useful ways to enable the cultural rights of ordinary people, allowing them to create and disseminate their works through the internet and to promote cultural participation. The government should support and encourage this potential.

²⁵ www.wipo.int/treaties/en/ip/marrakesh

KOSOVO

A FUTURE YET TO BE DELIVERED: THE EDUCATION SYSTEM'S FAILURE TO TAKE ADVANTAGE OF WIDESPREAD INTERNET ACCESS



KEYWORDS: **education**

Arianit Dobrosi

Introduction

Kosovo is unique in having widespread internet access yet having an underdeveloped education system.

The country has a high number of students going through formal education: from a population of 1.8 million, about 470,000 or 26% are enrolled in an educational institution.¹ The average age of the population is around 30 years old.

According to a recent survey, at least 76.6% of the Kosovar population uses the internet² and at least 84.81% of households have access to it.³ The number of users with 3G and 4G mobile internet access is almost 780,000.⁴ Contrary to most other countries globally, the urban and rural rate of access is roughly the same. Furthermore, the Kosovar internet is not yet policed by copyright interests or censored by the government. Internet is widely accessible on desktops and on smartphones. As such, it provides a worthy “what if” scenario to study.

Yet despite the general high internet access rate in homes, only 12.41% of the population accesses the internet in schools or universities⁵ and the high rate of access has not translated into wide use of the internet for educational development.⁶

Kosovo is an exemplary case of a developing country with a strong right to education, significant challenges in realising the right to education, and the internet not being used to enable this right. At least not yet. This is the story of lost opportunities.

Background

Kosovo is not a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), although through its Constitution it has embraced the International Covenant on Civil and Political Rights and its Protocols, as well as the Universal Declaration of Human Rights. The right to education is enshrined in the country's modern constitution.⁷

The ICESCR recognises education both as a human right and as an indispensable means of realising other human rights. Article 13 deals with the right to education, while Article 15 deals with the intertwined and closely related right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.

Expenditure on education per pupil is low compared to the region and the European Union (EU), though it is increasing every year. This stems partly from a low GDP base and small government budget set aside for education, and partly because Kosovo has significantly more pupils per total population than other countries. On the other hand, in 2014 about 71.4% of the education budget went to the sector's wages and salaries.

Post-war investment in the education system has gone towards rebuilding school infrastructure destroyed during the war, constructing new schools to address crowded classrooms that are used for up to three teaching shifts, and raising teacher salaries. Two other key projects have been furthering the education of teachers with the goal of all teachers obtaining bachelor degrees, and computer training for teachers. Two ICT-related training programmes were offered during 2011-2015: around 55% of all teachers attended the European Computer Driving

1 Statistics Agency of Kosovo. (2016). *Education Statistics 2015/2016*. ask.rks-gov.net/en/latest-news/127-education-statistics-2015-2016

2 Fazliu, A. (2013). *Internet penetration and usage in Kosovo*. STIKK. stikk.org/fileadmin/user_upload/Internet_penetration_and_usage_in_Kosovo.pdf

3 Regulatory Authority of Telecommunication and Postal Communications. (2016). *Përmbledhje e Indikatorëve Kryesorë të Komunikimeve Elektronike ‘Pasqyrë e Tregut të Komunikimeve Elektronike’ për TM1 2016* (Summary of Key Indicators of the Electronic Communications ‘Market Overview Electronic Communications’ for Q1 2016). arkep-rks.org/repository/docs/Pasqyra%20e%20tregut%20TM1%202016.pdf

4 Ibid.

5 Fazliu, A. (2013). Op. cit.

6 Romania is a similar case. A much larger share of Romanians have ultra-fast internet connections compared to other European countries, yet one third of the country's population has never used the internet. Half of all households have no broadband connection – half of households don't even have a computer. See: kernelmag.dailydot.com/issue-sections/headline-story/16900/romanian-digital-divide

7 Constitution of the Republic of Kosovo, Article 47. www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf

License (ECDL)⁸ programme and about 8% of teachers received e-learning training⁹ that looked to integrate ICTs in the classroom. The Kosovo government also began supplying textbooks to all its public education students in grades 1-9 at a cost of EUR 7 million (USD 7.8 million) annually.¹⁰ With a large number of students and low annual expenditure per student, the policy choices in budget distribution become critical.

The country has low levels of educational attainment. In 2015 only 53.9% of students passed the high school exit exam in their first sitting.¹¹

The role of the internet in education: A policy analysis

A comprehensive government policy that is dedicated to the role of the internet in education does not exist, although the internet's role in education is recognised in a number of related policies.

The Electronic Communication Sector Policy highlights three national priorities in the area: the development of ICT infrastructure, the development of electronic content and services and promoting the use of this content, and increasing the ability of Kosovar citizens to use ICTs. For the last two goals, there is very little to show. The policy also states that the government will consider options for the deployment of broadband internet services in schools and other academic institutions, public health institutions and cultural institutions. The policy sees a particular opportunity in the use of ICT for the preservation of cultural heritage and for the distribution of educational resources.¹²

The policy also states that residents of Kosovo need enhanced digital skills to participate fully in society. It recognises that e-learning is not sufficiently incorporated in education and training policies, and acknowledges the role the internet could play in informal learning. The policy calls for the mainstreaming of e-learning in national policies

for education and training, including the development of curricula, tools for assessing learning outcomes, and the professional development of teachers and trainers.¹³

Another report evaluating Kosovo's educational achievements and failures over the period 2011-2016 concludes that the education system has low access to ICTs, that ICTs are poorly integrated into the curriculum, and the means for teachers and pupils to acquire technology are lacking. The report states that the "integration of ICTs in learning and teaching remains an important priority that needs to be addressed in the next planning cycle."¹⁴

The policy evaluation highlights the importance of demand stimulation, such as developing e-literacy and skills and relevant content, as much as supply-side measures, which traditionally have focused on infrastructure expansion only.

The strategic plan recommends rolling out internet access to 600 educational institutions, the doubling of the number of computers in schools by providing 8,000 new units, promoting the use of information technology in learning by equipping 20,000 students with laptops each year in technical vocational schools and centres of competence, promoting the use of information technology in teaching by piloting a laptop scheme for teachers, including equipping 7,500 teachers of upper and lower secondary school with laptops, and equipping all educational institutions at pre-university level with video projectors, among other upgrades, at a cost of EUR 15 million (USD 16.7 million) over five years.¹⁵ But it is unlikely the system will be able to absorb such an investment.

The Curriculum Framework of 2011 identifies the need to build a knowledge society and the integration of education into the digital era among its five key challenges.

The section "Design of new materials for teaching and learning in support of the development of competencies" includes materials created by teachers for various thematic teaching units, resources from the internet that already exist, the development of an e-learning platform, and an electronic library. However, these are not yet in use, and a survey by the author of actual high school curricula shows that when the internet is mentioned it is merely listed among a long list of available

8 The European Computer Driving Licence (ECDL) is a computer literacy certification programme provided by the ECDL Foundation, a not-for-profit organisation. www.ecdl.com

9 Ministry of Education, Science and Technology of the Republic of Kosovo. (2015). *Evaluation Report: Kosovo Education Strategic Plan 2011-2016*. <https://masht.rks-gov.net/uploads/2016/02/raport-vleresimi-psak-2011-2016-eng-web.pdf>

10 Anadolu Agency. (2015, 25 August). *Nxënësit në Shqipëri, Kosovë dhe Maqedoni përgatiten për Vitin e ri shkollor*. Anadolu Agency. aa.com.tr/sq/arsim/nxenesit-ne-shqiperi-kosove-dhe-maqedoni-pergatiten-per-vitin-e-ri-shkollor/6830

11 masht.rks-gov.net/article/kqshm-shpalli-rezultatet-e-testit-te-matures-kalueshmeria-539-perqind

12 Ministry of Economic Development of the Republic of Kosovo. (2013). *Electronic Communication Sector Policy 2013-2020*. mzhe.rks-gov.net/repository/docs/Electronic_Communication_Sector_Policy_2013-2020.pdf

13 *Ibid.*

14 Ministry of Education, Science and Technology of Republic of Kosovo. (2015). *Op. cit.*

15 Musa, E. (2016, 3 August). *Textbooks in Kosovo Binned or Burned at Cost of Millions*. *Prishtina Insight*. prishtinainsight.com/textbooks-kosovo-binned-burned-cost-millions

options.¹⁶ It is clear that the guidance established by overarching policies is not being translated into expectations for teachers' performance and actionable requirements.

From the side of the donor community, an EU project that supported the Kosovo government in improving the quality and efficiency of education and training services through the integration of ICTs into the teaching and learning process, and which piloted some of the initiatives above, seems to have faded with no noticeable long-lasting effect.¹⁷

Another initiative, funded by USAID and called the Basic Education Programme (BEP), has contributed to various capacity-building programmes, such as the publication of 21 multimedia reading books for first and second grades online.¹⁸ Another of the programme's contributions is a guide on the use of technology to improve the learning of the English language. On the other hand, the Ministry of Education does not have an active process to distribute teaching and learning materials on the web.

In the private sector, trajnimi.com is a learning tool, an early massive open online course (MOOC) developed by Ipko Institute in 2007 for ECDL training at a cost of about EUR 10,000 (USD 11,200), which in 2008 was handed over to the Ministry of Education and has not been updated since. A year after its launch it had 25,000 users.¹⁹

Zgjoj.com is an inspiring initiative established in January 2015 by a retired university professor. The project curates educational content for grades 1-9 using educational videos from across the web and integrates white-board presentations made for students to support the state curriculum.²⁰ Simple English – most of the videos are not translated – is one of the criteria for video selection.²¹

Almooc.com is a privately developed, donor-supported MOOC targeting Albanian language speakers. It covers English, maths, physics, chemistry, ICTs and coding and follows the state curriculum for grades 5-13. The content has been developed drawing on existing curricula for these grades.

Almooc.com has over 52,000 people signed up for its courses.²²

Despite the buying power, the ministry of education does not acquire copyright on the textbooks it provides to students, choosing to pay per printed copy year after year. Owning the copyright would allow the ministry to allow other entities to build upon the books in different format.

Along the same lines, the Kosovo government has no policy to promote free and open source software. It is unclear whether software installed on school computers is properly licensed. The future expansion of computer access in schools is also at risk of being supplied from a single proprietary publisher. The government has already hinted that a repository of educational content will be tied to a proprietary solution being piloted, thereby ensuring lock-in,²³ whereas a freely available class administration system is not being used.²⁴ Furthermore, teachers receiving ECDL training are not instructed on the free software alternatives.

Conclusions

The potential of using the internet to further the right to education has not been realised in Kosovo, despite a number of policies that refer to the use of the internet in education.

The role of the internet in education in the country seems to be low in formal education and higher in informal education. Internet access at school and in the educational process is largely missing.

Kosovo is still in the "read-only" mode, instead of "read-write" mode, which is necessary for true education and development. This might be a result of the education system, which does not encourage student creativity and exploration beyond the rigid curricula, a consumerist media mindset that does not go beyond social interaction and entertainment, and a lack of trained critical thinking. In this regard, a rights-based environment for education to occur – one that encourages, for example, free expression in the classroom – does not exist.

The use of the internet requires time, effort and skill. Kosovo has a passive culture of education that values rote learning and fitting in and does not challenge students to explore and research.

16 Ministry of Education, Science and Technology of the Republic of Kosovo. (2011). *Korniza e Kurrikulës e Arsimit Parauniversitar të Republikës së Kosovës (Curriculum Framework for Pre-university Education in the Republic of Kosovo)*. masht.rks-gov.net/uploads/2015/05/korniza-e-kurrikules11.pdf

17 www.rraks.net/en

18 See the books that were developed on the project website: www.bletapunetore.org

19 Email communication with trajnimi.com project manager Kushtrim Xhakli, 19 August 2016.

20 These are developed by his wife, who is also a teacher.

21 Interview with zgjoj.com founder and project manager Agron Dida, 3 August 2016.

22 Interview with almooc.com founder Ridvan Aliu, 3 August 2016.

23 The Ministry of Education though an established MoU is already piloting computer labs operating Microsoft products, although no tender has been awarded as mandated by law. Website in Albanian: masht.rks-gov.net/article/u-perurua-qendra-inovative-emasht-dhe-filloi-projekti-showcase-classroom

24 The software in question is Moodle, free software being used successfully by the private higher education institutions in Kosovo. The implementation developed for the Kosovo Ministry of Education is here: moodle.rraks.net

Speaking a language of only six million speakers with a low level of general development, as is the case with the majority of the Albanian-speaking population, knowledge of the English language could act as a trampoline to accessing educational content online, including content produced in the developing field of MOOCs.

Furthermore, offline classroom instruction coupled with online work at home could serve as the best way to integrate the two worlds. Instead of investing valuable resources to supply each student with a computer, this part of learning could be relegated to after-school work given that the internet is readily available at most homes in Kosovo, and that remedial interventions can be provided for those who cannot afford it.

If technology amplifies underlying social conditions,²⁵ merely increasing internet access is not likely to be a transformative force for improving access to education. Instead of investing in further infrastructure, Kosovo should focus on content, building ICT skills and knowledge that empowers students and other citizens to take advantage of the internet.

Governments as the duty bearers, besides measuring the level of input such as investment, have a responsibility to provide effective and efficient measures to achieve the right to education, and to evaluate the impact that those measures are having. Before moving to more expensive investments such as bridging the digital gap in internet access for minority social groups yet to be connected, Kosovo should tweak its current efforts and processes to gain maximum advantage from the internet. In this way future plans to connect the unconnected will be more considered.

Action steps

The following action steps should be encouraged:

- Schools and universities should encourage students to sign up for MOOC classes and provide formally recognised academic credits for those who do so, as a way to compensate for what the education system cannot offer them.
- Educational resources must be available in print and in electronic form under open licensing schemes to allow others to build on the content that has been produced through public funds.
- Teachers, supported by funding, as well as students, should be encouraged to build content using dedicated wikis or established publishing platforms such as Wikipedia and other Wikimedia sister projects. This will enrich the educational commons in the Albanian language, as well as help to translate the available content that is licensed for sharing.
- Offline classwork and online content must be integrated in the curricula, though not necessarily in the classroom. As discussed above, the most efficient way to deliver online curricula is at home.
- Quality instruction of the English language must be provided and a culture of independence and active, ongoing learning developed among students.
- Free software should be used in schools and any cost savings should be dedicated to buying hardware where necessary.

²⁵ For a discussion on how technology merely amplifies the existing human condition, see Kentaro Toyama's *Geek Heresy: Rescuing Social Change from the Cult of Technology*.

LEBANON

CROWDFUNDING RIGHTS



KEYWORDS: **economy**

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Introduction

Lebanon is a small, lower-income country with a dysfunctional government that struggles to provide even basic services. Yet the Lebanese diaspora is large – roughly two to three times larger than Lebanon’s population – and relatively rich. Online crowdsourcing can help the Lebanese people promote economic and social rights. It allows Lebanon’s expatriates to participate and it empowers ordinary Lebanese to trust that their money is going towards causes they believe in.

Policy and political background

Lebanon has had a tumultuous recent history. The civil war from 1975 to 1991 ended with an uneasy truce between the three major religious factions. The Israeli occupation only ended in 2000 and the Syrian military presence in 2005. The civil war-era warlords and political parties continue to dominate Lebanese politics. Regional instability does not help, with a Syrian civil war next door, a hostile neighbour to the south, and millions of refugees seeking shelter within Lebanon’s borders.

As a result, Lebanon’s government is dysfunctional and weak. Lebanon has not had a president for several years, leaving the government in a precarious situation. Today Lebanon ranks among the worst 50 countries when it comes to corruption.¹ The government is unable to provide basic services. For several months in 2015, there were no trash collection services in Beirut. Power outages are an all-too-common occurrence. Internet speed is frustratingly slow. Traffic is horrendous on the country’s one main coastal artery, with no plans for improving transit infrastructure. Refugees are in a desperate situation and living in squalid camps.

Lebanon signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1972. But since then the country has suffered a traumatic civil war and its policies and

legal framework have undergone an overhaul. To say the least, the modern Lebanese government could do better abiding by the Covenant and may want to revisit the original text.

Because so few Lebanese trust government officials – either because they are viewed as corrupt or inept – they often try to solve problems informally among their communities. The Lebanese people are known for their entrepreneurial creativity.

With so much institutional dysfunction, Lebanese people have been leaving their country in high numbers. This has led to a large diaspora. There are more Lebanese living outside of Lebanon (eight to 14 million) than within (four million). They are still engaged with Lebanese politics, visit often and earn far more money outside of Lebanon than would be possible had they stayed. Expatriate remittances are one fifth of Lebanese GDP.²

Shifting the dynamics of power

Crowdsourcing can give Lebanese a way around official government dysfunction and corruption. It also shifts the power dynamics—not just to wealthy Lebanese abroad—but to ordinary Lebanese citizens who can put their own hard-earned money towards causes they believe in rather than through government channels or those offered by big financial institutions. Crowdfunding can instill important liberal values like individual initiative, transparency, accountability and entrepreneurship.

Two examples have demonstrated the importance and promise of crowdfunding in Lebanon: Zoomaal (an online crowdfunding platform) and the 2015 local municipal elections.

Zoomaal

Created in 2012, Zoomaal³ is a Lebanese company, although it is technically incorporated in the United States because Lebanese banks would not process credit cards for fear of money laundering or that the money would support terrorist causes. Zoomaal has become a leading crowdfunding platform in the Arab world. Since 2012, Arab entrepreneurs

¹ Transparency International. Corruption by country/territory: Lebanon. www.transparency.org/country#LBN

² Perry, T. (2009, 8 June). FACTBOX: Facts on Lebanon’s Economy. *Reuters*. www.reuters.com/article/us-lebanon-election-economy-sb-idUSTRE5570SJ20090608.

³ www.zoomaal.com

and activists have collected USD 1.7 million for 140 projects. Each project received, on average, USD 12,000 in support.

Zoomaal's impact has been largest in Lebanon. The tiny country is home to one third of the projects that have resulted from Zoomaal crowdfunding, accounting for more than half of the total money processed by the platform. Each Lebanese project received, on average, nearly USD 20,000, with several projects receiving up to USD 100,000.

Many of the projects occupy spaces where the Lebanese government has been inactive. For example, money has been used to fund cultural events like the Lebanese Film Festival⁴ and free outdoor festivals, and artists like Mashrou' Leila⁵ and Tania Saleh⁶ have received funding, as have eco-friendly activities like rooftop gardening, creating bicycling maps and recycling guides.

Zoomaal also allows for vetting of projects in a democratic process. Lebanese people – whether living in Lebanon or abroad – can contribute to ideas they deem most worthy. And entrepreneurs can use it as a sounding board to try out new ideas and see what resonates.

Although Zoomaal is an online platform that can be used to fund projects anywhere in Lebanon, whether rich or poor regions, the vast majority (90%) of projects are based in the relatively wealthy capital Beirut. Unfortunately, it appears that when it comes to advancing economic and social rights, the internet and crowdfunding may be empowering those who are already empowered. This may come as no surprise. Roughly one-quarter of Lebanese society does not have access to the internet, most of whom are likely from the lower socioeconomic class.⁷ Upper- and middle-class Lebanese who have access to the internet are more likely to support causes and cultural activities that they identify with.

This is also true for gender inequality. Lebanese women are very active on Zoomaal. They have actually started more crowdfunding projects compared to men or NGOs (see Table 1), yet their projects generally raise less than half as much money as those initiated by men (see Table 2). This could be because men have larger access to financial networks or ordinary Lebanese do not yet trust women to run successful projects.

Nevertheless, Zoomaal has been especially active engaging women. In collaboration with Hivos,

an international NGO based in the Netherlands, Zoomaal launched match-funding campaigns for women entrepreneurs.⁸ Roughly 20 projects were involved, nearly USD 67,000 has been raised, and seven projects ended up being fully funded. One is for a video series on Syrian women who display leadership and peace-building skills. Another is for mentoring young women to help them achieve their career and education goals. These kinds of initiatives could help bridge the gender gap.

Municipal elections

Crowdfunding has also begun to affect Lebanese politics. In the most recent municipal elections in 2015, Lebanese civil society put together a very strong campaign and used crowdfunding not only to raise funds to finance their campaign, but also to engage ordinary Lebanese people, allowing them a stronger sense of ownership of political change.

Beirut Madinati⁹ was a newly formed political party made up of ordinary Lebanese citizens, which contested the elections for the first time in 2015, in a field full of old political parties and factions. Beirut Madinati represented civil society against the establishment. Most of its candidates were not traditional life-long politicians. Instead they were doctors, architects or artists, they were equally male and female, and they included the young and old. The party's campaign platform promised to enhance ESCRs for the Lebanese people – making Beirut's urban environment more inclusive and livable and, for all social groups, improving waste management, economic mobility and rights to adequate shelter.

Beirut Madinati would probably not have been able to field a campaign without raising money online through a platform called Generosity.¹⁰ Half of all the money collected to fund its 2015 campaign (roughly USD 200,000) was raised using the platform. More than 500 Lebanese contributed online with an average contribution of close to USD 400.

Crowdfunding is strengthening democratic norms. This can be seen most clearly through improving transparency. Beirut Madinati shared how it spent the money raised for the campaign on its website. In a sign that these transparency norms may be spreading to other political parties, the left-leaning MMfi Dawla¹¹ also shared online how

4 www.lebanesefilmfestival.org

5 www.mashrouleila.com

6 www.taniasaleh.com

7 World Bank. Internet users (per 100 people): Lebanon. data. worldbank.org/indicator/IT.NET.USER.P2?locations=LB

8 zoomaal.com/challenge/takethelead

9 www.beirutmadinati.com

10 <https://www.generosity.com/community-fundraising/beirut-madinati-campaign--3>

11 www.mmfidawla.com

TABLE 1.

Number of projects on Zoomaal started by women, men and NGOs (2013-2016)

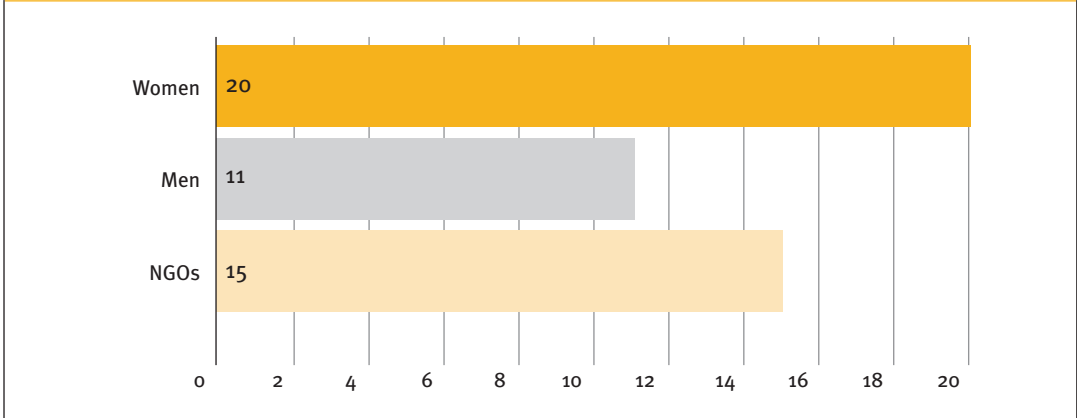
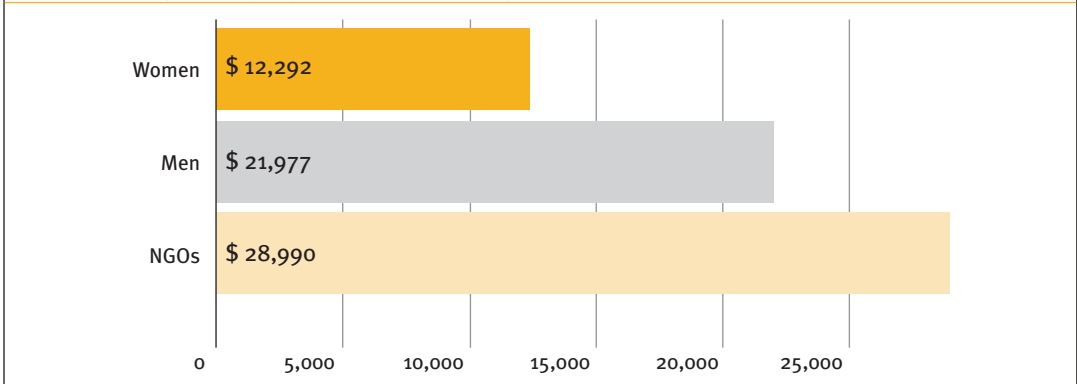


TABLE 2.

Average money raised per project on Zoomaal by women, men and NGOs (2013-2016)



it is spending its money. More and more NGOs are doing the same. None of the mainstream political parties currently does this, preferring to keep how they obtain their money and where it goes in the shadows.

Crowdfunding is engaging ordinary Lebanese in the election process, making it more likely that Lebanese people will participate in democratic processes. By donating to individual causes, they in turn demand more transparency and accountability from their politicians. They will not tolerate corruption or failing to deliver on election promises. Misuse of public funds and corruption threaten available resources that could go toward realising ESCRs.

Crowdfunding also helps build a new type of political leadership – which, in a country that has had the same leaders for three decades, could be groundbreaking. The new leadership can be built around whoever has a better plan or whoever can inspire Lebanese people at home or in the diaspora

to donate money. This means that Lebanese politics no longer has to be dependent on leaders who already have enough money obtained through corrupt practices or who are bankrolled by foreign states that use money as a way to obtain influence and buy politicians.

Conclusion

Through crowdfunding, the internet can enhance ESCRs in real, tangible ways. Lebanon has long been blighted by an underperforming government structure, in the midst of an entrepreneurial population and a large, wealthy diaspora. Crowdfunding creates new opportunities for Lebanese to work around the government dysfunction. It also promotes democratic norms and processes – from empowering individuals to instilling accountability among politicians. Yet as this report shows, there are still inequalities in how crowdfunding is used and which projects get funded.

Action steps

The following action steps are recommended:

- Policy makers should encourage crowdfunding platforms. This means finding regulatory workarounds allowing Lebanese banks to service these platforms. These should address any concerns about money laundering and terrorism.
- NGOs should engage with crowdfunding platforms not only to raise money but to ensure that disadvantaged groups (like women, refugees, low-income individuals, or people living in rural areas) are benefiting as much from crowdfunding as possible. As Hivos showed, match-funding campaigns are a great tool for empowering disadvantaged groups, and are also as an incentive for crowdfunding platforms to spend extra time and effort to reach out to those groups.
- The private sector can use crowdfunding as a smart way to do corporate social responsibility projects and partner with NGOs and active members of Lebanese society. Contributing to a project through donations or match-funding has a very low overhead cost and can only deliver a positive message about the company to a wider online audience. In the age of digital advertising and social media, this new approach to corporate social responsibility can be as valuable as traditional approaches.

MACEDONIA

THE FIGHT FOR OPEN EDUCATIONAL RESOURCES IN MACEDONIA



KEYWORDS: **education, OER**

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Introduction

Over the past several years, the Open Educational Resources Alliance (OER Alliance),¹ an initiative of Metamorphosis Foundation and comprised of activists, scholars and educators, has been advocating for open access to textbooks for the students in Macedonian primary and secondary schools.

Internet access is widespread in Macedonia. The internet is used by 69% of adults, including 99% of respondents aged 18-24 who participated in a Metamorphosis poll in June 2016. While most children in Macedonia have some kind of internet access, at home or at school, the lack of educational content in their native languages impedes their right to free education – enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – and affects their right to participate in cultural life and to contribute to scientific development, as per Article 15.

Since 2007 the state has spent tens of millions of dollars of taxpayers' money to equip schools with hardware infrastructure,² building on initial efforts by USAID and other donors, in a programme called "A Computer for Every Child".³ It supplied workstations and internet access to primary and secondary schools, but the lack of locally relevant e-content has limited the impact of this project, failing to "revolutionise" the education system.

Because textbooks are government property paid for with taxpayers' funds and distributed to children by schools in hard copy, in 2009 Metamorphosis officially asked the government to provide them free in digital form, according to the standards of open access. In this way they would at least

partially fill the contents gap by providing open educational resources (OERs).

Over the years, a growing number of voices joined this call, resulting in the OER Alliance which was formed in 2013. It advocates for a systemic solution to the textbook problem, given that the government's attempt at providing e-textbooks had been plagued by inconsistencies, fragmentation and randomness, failing to fulfil the needs of the students. On one hand, the OER Alliance unites creators of content, pushing for the availability of educational materials published under Creative Commons licences via a resource repository (www.oer.mk), and on the other, it strives for legal changes that would make the necessary reforms obligatory for the state actors.

Policy and political background

The Constitution of the Republic of Macedonia⁴ protects economic, social and cultural rights for all people in the country, in particular the right to mandatory and free primary education (Article 44 of the constitution). Article 47 refers to basic elements that create the "environment" for establishing normal and functional educational processes, guaranteeing the freedom to create (in science and art and other disciplines) and obliging the state to "stimulate, assist and protect" science, art and culture, including through scientific and technological development and education. The laws on primary⁵ and secondary education⁶ further frame education as a free public good and in the public interest. Secondary education is also mandatory by law.

The Law on Textbooks for Primary and Secondary Education (or Textbook Law)⁷ governs all aspects

1 The initiative is supported by the Information Program of the Open Society Foundations. <https://www.opensocietyfoundations.org>

2 Besides distributing laptops to children, thin-client networks were set up with local LANs in classrooms.

3 Government of the Republic of Macedonia. (n/d). A computer for every child. vlada.mk/node/310?language=en-gb; Ločev, V., & Sotirovska, N. N. (2010). *Controversies about the government project "A Computer for Every Child"*. SCOOP. i-scoop.org/fileadmin/download_files/computers-Vladimir_Locev.pdf

4 www.ustavensud.mk/dominio/WEBSUD.nsf/Strani/Legal%20Acts%20-%20Constitution?OpenDocument

5 Law on Primary Education in the Official Gazette of the Republic of Macedonia No. 103/08, 33/10, 116/10, 156/10, 18/11, 42/11, 51/11, 6/12, 100/12, 24/13, 41/14, 116/14, 135/14 and 10/15.

6 Law on Secondary Education in the Official Gazette of the Republic of Macedonia No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/02, 40/03, 42/03, 67/04, 55/05, 113/05, 35/06, 30/07, 49/07, 81/08, 92/08, 33/10, 116/2010, 156/10, 18/11, 42/11, 51/11, 6/12, 100/12, 24/13, 41/14, 116/14, 135/14 and 10/15.

7 Law on Textbooks for Primary and Secondary Education in the Official Gazette of the Republic of Macedonia, No. 98/2008, 99/2009, 83/2010, 36/2011, 135/2011, 46/2012, 24/2013, 120/2013 and 29/2014.

of developing and disseminating school textbooks, including the transfer of copyright to the state by signed agreement between the ministry and the author. However, this law does not explicitly deal with publishing the textbooks online in a form compatible with open access standards.

The results were half-hearted and ineffectual. When the government inaugurated its e-textbook portal⁸ in 2009, it contained only a portion of all the textbooks used by the schools.⁹ Many of the textbooks published during the following years have not been added to the portal, and the ministry cites copyright protection as a reason for not making them available online. Moreover, some of the available e-books use formats incompatible with various devices used by kids. For instance, in some cases, PDF-dumps of the pre-press versions were used, creating enormous, unloadable files, directly adversely affecting the usability of the texts.

The political context deeply affects the problem, as the government, which has been in power for over 10 years, seems to have vested interests in controlling the textbook business. A high level of political corruption has been identified by NGOs and the European Union implicating officials in syphoning public money to cronies and receiving kickbacks. The political will to examine the problems plaguing the educational system is lacking, as such an examination would lead to the accountability of the profiteers.

Therefore, even the rather benign initiative to provide systematic general access to e-textbooks by adding appropriate open access provisions in the Textbook Law has not gained support from the ruling coalition of parties that control the executive and legislative branches of the government.

Macedonia's backsliding from democracy and state capture by the ruling parties over the last decade led to the start of the "official" political crisis in early 2015, which further paralysed decision making within the state institutions. The institutions act as outlets of the ruling parties and state officials within them have to consult the micromanaging party leadership on all matters, and show only superficial interest in civil society initiatives.

The resources needed to create a functioning open e-textbooks library are readily available within existing state institutions, because textbooks are already procured and owned by the state using state funds. Providing functioning e-textbooks would provide numerous economic benefits, starting with

reducing the wear and tear of hard copy textbooks, which in case of damage need to be replaced, using either state funds or paid for by parents in the form of fines at the end of the school year.

Building an alliance of open education content creators as a basis to improve the Textbook Law

The rights holders affected by the lack of a systematic approach to e-textbook production and distribution are foremost the primary and secondary school children, whose right to education is affected. Also directly affected are their parents and teachers, first due to their concern for the well-being of the kids, but also as providers of support, and in the case of teachers, resources and educational services.

By law, textbook production in Macedonia is the responsibility of the government, through the Ministry of Education and Science and its subsidiary institutions. They shape the curricula, select content and secure copyright (through public procurement, from private publishers), print the textbooks (through public procurement of services from printing companies), and distribute them to public school students. Students effectively "borrow" them for the duration of the school year and return them at the end. If the books are damaged, the parents have to pay for them. In the next school year, sufficiently undamaged books are given to the next generation of students.

The private sector is involved in the form of publishers and printers, through processes of public procurement. Macedonian law requires commercial publishers and printers to bid for the production and printing of textbooks. The tender awarded to a publisher is the main financial transaction for publishing a textbook, and the Ministry of Education pays the publisher in instalments. The procurement of printing services is conducted in a similar manner, as the state pays printers who bid via public tenders.

The availability of e-textbooks online as OERs is a prerequisite for increasing the quality of education in the classrooms, and also when it comes to home studies – in many schools, and especially in lower grades, kids only bring textbooks home over the weekend. This is a reflection of the need to reduce the risk of damage to the hard copy books. The lack of e-textbooks forces parents who would like to oversee their children's studies at home to either buy copies of textbooks or make photocopies.

The lack of educational materials in native languages which are freely available online affects the preservation of local cultures, which are foremost

8 www.e-ucebnici.mon.gov.mk

9 Ministry of Information Society and Administration. (2009). E-Textbook Portal. www.mio.gov.mk/?q=node/2636

expressed through language. Children with access to the internet seek out content to interact with, and when lacking options they refer to the most widely available common denominator. YouTube videos of various quality, especially gaming tutorials, have become the dominant force in informal education, relentlessly used by kids in their free time, shaping their ways of thinking and characters. A distant second are local language versions of Wikipedia, used primarily as a source of content to plagiarise for homework. While none of the local languages used in Macedonia can be considered “endangered”, anecdotal evidence suggests that children’s knowledge of their native and other local languages is affected by the prevalence of English early in their lives through constant exposure to English online. It affects the acquisition of good English, too, as they are mostly in contact with slang, and do not learn a standard version of English appropriate for the educational process.

In the absence of state-provided OERs, which ideally would include a range of supplementary teaching materials, teachers dedicated to providing higher quality education are forced to work longer hours and invest their private resources in developing additional digital educational materials. Some of the teachers that are part of the OER movement in Macedonia use blogs to share their lectures, making them available for students to access them no matter where they are. For instance, natural science teacher Aida Petrovska uses her blog¹⁰ to share her lectures, useful exercises, presentations and tests, and incorporates video tutorials among other content into her blog, in order to facilitate learning.

The Metamorphosis Foundation launched the OER initiative in 2012¹¹ with the goal of contributing to the development of critical thinking and to encourage democracy in Macedonia through the constructive use of new technologies as tools for increasing the quantity and quality of educational, scientific and academic content.

The project specifically aimed to raise the awareness and build the capacity of teachers for creating and using open educational resources. More than 580 individuals and 20 institutions and organisations have signed the OER Declaration¹² and joined the OER Alliance. The Alliance uses the www.oer.mk website as a resource centre where rights holders can find all the information they need

about OERs, news and events related to OERs, as well as upload OERs and download OERs created by other users. The resource centre currently contains about 410 resources.

The Alliance also developed an OER strategy in order to define its plan of work. In October 2015, as part of lobbying and advocacy activities, it produced a document called “Analysis of the Legal Framework on Education and the Possibilities of Including OER”.¹³ This analysis is motivated by years of work in the field of OERs and recommendations received from the working group composed of members of the OER Alliance.

As part of its efforts to motivate rights holders, in 2014 Metamorphosis established an annual Best OER Teacher competition that enables the promotion of grassroots best practice experiences, and community involvement through competition, engagement and voting.

Conclusions

One major conclusion to be drawn from our experience of fighting for regulation on OERs in Macedonia is that internet access by itself cannot magically solve society’s problems, or even the specific problems facing sectors such as education, where information and knowledge are exchanged – the underlying problems persist.

In order to achieve sustainable change that would allow the right to free and high quality education to be realised, the reforms must go far beyond providing internet infrastructure. First is the political will for true reforms. Then the sector needs a vision based on awareness of the potential of OERs that can be translated into a strategy for organisational change. This strategy needs to involve change in management structures, institutional hierarchies, and modes of production, distribution and services. In the education sector, this is directly related to the deep reforms needed in the school curriculum, which should catalyse new ways to produce educational content and use new technologies.

The lack of impact of the Computer for Every Child programme is a prime example of the fact that simply adding computers and internet to an outdated curriculum does not result in a modern teaching practice and curriculum – it just results in an outdated curriculum with computers and internet.

10 aidafizika-aida.blogspot.mk

11 The Alliance itself was formed a year later.

12 Alliance for Open Educational Resources. (2013). Macedonia OER Declaration. oer.mk/en/sign/index.php/pages/declaration

13 Babunski, K. (2015). *Analysis of the legal framework on education and the possibilities of including open educational resources*. Skopje: Metamorphosis Foundation. metamorphosis.org.mk/en/izdanija_arhiva/analysis-of-the-legal-framework-on-education-and-the-possibilities-of-including-open-educational-resources

The basic need for the right to education, science and culture is reflected in the use by kids with online access of informal educational resources produced abroad. The need for these resources to be in local languages is especially important in countries where English is not the native language.

Civil society in Macedonia, represented by Metamorphosis and the OER Alliance, has been advocating for new policies as a precursor of change. As the lack of political will prevents state institutions from initiating reforms that would ensure the protection of ESCRs through OERs, civil society functions as a catalyst for change, bridging the gaps between different stakeholders and serving as a nexus uniting the scattered efforts and initiatives of teachers and content creators. However, policy change that will result in the progressive regulation of school publishing and e-textbooks is necessary to ensure sustainability.

Action steps

The use of the internet to provide access to OERs is pivotal in realising the right to better education in Macedonia.

Further lobbying and advocacy for OERs to be accepted in policy and legislation still needs to take place. This kind of regulation is necessary to force members of the public education system to comply with OER standards. Our expert analysis serves as a basis for shaping and focusing future advocacy efforts so that they include OERs in the legal provisions regulating education in Macedonia.

Metamorphosis and the OER Alliance will continue to advocate for the revision of the Textbook Law as well as the Law on Copyright and Related Rights.¹⁴ At the moment we are lobbying to gain access and present the OER initiative and recommendations in parliament and other state institutions. We hope that we will achieve this as soon as the current political crisis gets resolved. This year the country is dominated by early election campaigns (elections have been scheduled and postponed several times).

Metamorphosis also plans to continue the Best OER Teacher competition, which has been successful for the past two years in motivating teachers to create, contribute and share resources. This activity enhances the visibility of the overall open education community.

¹⁴ Law on Copyrights and Related Rights, in the Official Gazette of the Republic of Macedonia, No. 115/10, 140/10 and 51/11.

MALDIVES

SOCIOECONOMIC RIGHTS AND THE INTERNET IN THE MALDIVES



KEYWORDS: gender, overpopulation, inequality, congestion, socioeconomic rights

Maldivian Network to Empower Women (MNEW)

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www.mnew.org

Introduction

The internet has brought many changes to the Maldives, where the communications infrastructure is considered one of the most advanced in the region.¹ Yet despite the government's commitment to economic, social and cultural rights (ESCRs) on paper – and its apparent success in meeting a number of the 2015 Millennium Development Goals – there is little evidence that the internet is being used effectively to meet the rights of the people in a country facing poverty and class divides.

This report considers the deepening socioeconomic crisis in the island state and suggests ways in which the internet can be used to enable the ESCRs of the country's citizens. It also implicitly asks the question: If a government disregards fundamental civil and political rights, can it be committed to the full realisation of ESCRs?

Policy, economic and political background

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by the Maldives in 2006.² The right to an adequate standard of living, as stipulated in Article 11 of the Covenant, is captured in Chapter II, Article 23 of the Maldives constitution.³

The Maldives met five of the eight 2015 Millennium Development Goals (MDGs)⁴ ahead of the agreed

timeline and has been labelled as an “MDG plus” country, showing potential to go beyond the agreed MDG targets. However, the country lags behind on MDG 3, Promote gender equality and empower women; MDG 7, Ensure environmental sustainability; and MDG 8, Develop a global partnership for development.⁵

At the UN climate meeting in Paris on 22 April 2016, Maldives was the 97th signatory to the 2030 Sustainable Development Goals (SDGs).⁶

Meanwhile, the Maldives is believed to be the first country in the world to cut off internet access to its citizens.⁷ This happened in 2004, when then-president Maumoon Abdul Gayoom shut down the internet in the wake of protests against his ruling regime.⁸ Media freedom improved in the country following the end of Gayoom's 30-year rule. However, in 2008, physical attacks on journalists escalated after former president Mohamed Nasheed left office.⁹ The internet was instrumental in reporting these attacks and in coordinating demonstrations to protest the attacks.

The country's constitution states that a non-Muslim cannot be a citizen of the Maldives¹⁰ – it is also illegal for any other religion apart from Islam to be practiced in the Maldives. There has been an ongoing religious revival in the Maldives led by so-called Revolutionary Islamists, which has also been facilitated by the internet and social media.¹¹ Today, national borders are crossed with ease, terrorist and violent

1 Noor-Drugan, N. (2015, 17 December). Huawei & Ooredoo partner on Maldives subsea telecoms cable. *Wire and Cable News*. wireandcablenews.com/wireandcablenews/news/free/2015/12/4557701

2 Ministry of Foreign Affairs. (2014, 8 June). “We must celebrate the successes and plan for the road ahead in consolidating democracy” says Minister Dunya Maumoon. foreign.gov.mv/v2/en/media-center/news/article/852

3 Article 23. Every citizen [has] the following rights pursuant to this Constitution, and the State undertakes to achieve the progressive realisation of these rights by reasonable measures within its ability and resources: (a) Adequate and nutritious food and clean water; (b) Clothing and housing; (c) Good standards of health care, physical and mental; (d) A healthy and ecologically balanced environment. www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf

4 Asian Development Bank. (2014). Interim Country Partnership Strategy 2014-2015. www.finance.gov.mv/v2/uploadedcontent/posts/intpub/Post1386-2014.pdf

5 United Nations Development Programme. (2014). Maldives Human Development Report 2014. www.mv.undp.org/content/maldives/en/home/library/poverty/maldives_human_development_report_2014.html

6 www.un.org/sustainabledevelopment/blog/2016/04/parisagreementsignatures

7 York, J. (2012, 16 July). This Week in Internet Censorship: Netizens Sentenced in Oman, Malaysia, and Bahrain; Maldivian Blogger Attacked; New Human Rights Watch Report on Iraqi Cybercrime Bill. *Electronic Frontier Foundation*. <https://www.eff.org/deeplinks/2012/07/week-internet-censorship>

8 Reporters Without Borders. (2004, 13 August). President Gayoom cuts off Internet links with outside world. <https://rsf.org/en/news/president-gayoom-cuts-internet-links-outside-world>

9 Reporters Without Borders. (2009, 30 July). A series of incidents revives concern about press freedom. <https://rsf.org/en/news/series-incidents-revives-concern-about-press-freedom>

10 www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf

11 Naseem, A. (2015, 13 May). Leaving ‘paradise’ for Jihad: Maldivian fighters in Syria, and the Internet. *VOX-Pol*. voxpol.eu/leaving-paradise-for-jihad-maldivian-fighters-in-syria-and-the-internet

extremist organisations operating overseas are able to easily infiltrate and spread their influence into the Maldives, and the internet helps them do this.¹²

President Abdulla Yameen, who came into power in 2013, announced that he would enforce Sharia law.¹³ Under Sharia law, the death penalty can apply to children involved in murder. Both the United Nations and the European Union have condemned this.¹⁴

The Maldivians who are the most affected by the Maldives interpretation of Sharia law are women and girls. In 2013, a 15-year-old girl who was abused by her stepfather for a number of years was taken to court for fornication and sentenced to 100 lashes. An online petition was launched and received two million signatures. The sentence was overturned by the high court.¹⁵ Between 2005 and 2011, 85% of people flogged were women; and several of the floggings were against women who had been sexually abused.¹⁶

The country has a large number of institutions and NGOs working on human rights issues such as the rights of children, women and people with disabilities, reflecting immediate concerns in the country. However, in personal communication, Ahmed Thotal, senior projects coordinator for Transparency Maldives and former Maldives Human Rights Commission member, confirmed there no institutions in the Maldives specifically working on ESCRs.¹⁷

Thotal explained that there are huge gaps when it comes to gender equality, as well as social and economic equity, in projects implemented by the government. Most of the developmental programmes in Maldives are not aligned with the international bill of human rights and its principles.

The uneven role of ICTs in enabling ESCRs in the Maldives

It has long been considered paramount that the Maldives needs high-quality communications. In 2004 a tsunami hit the islands, with low-lying islands, including some of the major resorts, completely

submerged by the tsunami. Infrastructural damage can still be seen at some of the resorts and many Maldivian citizens are still displaced. A state of national disaster was declared and a special task force was set up to provide aid and supplies. Rescue efforts were hampered by a loss of communication capabilities over the 1,000 islands that make up the nation.

Since then, cooperation with the private sector has boosted the availability of information and communications technologies (ICTs). Dhiraagu,¹⁸ the main telecommunications operator – part-owned by the government, and having been criticised in the early stages of infrastructure roll-out for its high price structure while operating as a monopoly – has played an important part in building networks and delivering broadband and telephone services across the islands. There are currently two broadband providers in Maldives and a licence for a third has just been announced.¹⁹

The country now prides itself on having built one of the most advanced telecommunications systems in the region, even though internet access costs are among the most expensive in South Asia.²⁰ In 2008, some 20,000 people had access to the internet. Eight years later this figure stands at over 260,000²¹ (out of a current estimated population of 372,000). According to the government, “during 2014, internet subscriptions increased by 74% compared to 2013.”²²

The government also has plans to connect 20 atolls to the capital Malé through a local area network. According to a report by the International Telecommunication Union (ITU),²³ a large percentage of government staff has access to the internet. However, the socioeconomic challenges that the Maldives faces are severe, and despite the extensive roll-out of the internet, time will tell if it meets its objectives.

Malé is a good example of the socioeconomic challenges faced in the country. The 2014 census shows that 38% of people living in the Maldives – or 154,000 people – reside in the capital, Malé.²⁴ The Maldives is one of the most densely populated countries in the world,²⁵ and Malé is in the top ten

12 Office of the President. (2016). State Policy: Terrorism and Violent Extremism. www.presidencymaldives.gov.mv/Documents/4560_ee6e0576-8_.pdf

13 AsiaNews. (2014, 23 May). Under Sharia, the Maldives set to impose the death penalty on 10-year-old children. *AsiaNews.it*. www.asianews.it/news-en/Under-Sharia,-the-Maldives-set-to-impose-the-death-penalty-on-10-year-old-children-31157.html

14 Ibid.

15 minivannewsarchive.com/politics/justice-%E2%80%9Cstill-out-of-reach-%E2%80%9D-for-maldivian-women-girls-avaaz-org-63175

16 Lubna, H. (2016, 20 March). Islam, patriarchal discourses and gender-based violence in the Maldives. *Maldives Independent*. maldivesindependent.com/feature-comment/islam-patriachal-discourses-and-gender-based-violence-in-the-maldives-122905

17 Interviewed for this report in September 2016.

18 www.dhiraagu.com.mv

19 www.budde.com.au/Research/Maldives-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses.html

20 www.adb.org/publications/basic-statistics-2016

21 www.cam.gov.mv/Statistics.htm

22 planning.gov.mv/nbs/wp-content/uploads/2015/10/Statistical-Pocketbook-of-Maldives2015.pdf

23 ITU. (2011). Maldives: Moving up the development ladder. *ITU News*. www.itu.int/net/itunews/issues/2011/06/pdf/201106_22.pdf

24 statisticsmaldives.gov.mv/nbs/wp-content/uploads/2015/10/Census-Summary-Tables1.pdf

25 statisticstimes.com/population/countries-by-population-density.php

of the most densely populated cities on the planet.²⁶ As an indication of its growth, the neighbouring islands of Villimalé and Hulhumalé are being developed as part of the capital.²⁷

This overpopulation in Malé has resulted in people being deprived of an adequate standard of living and the right to food and housing, with 15% of the population²⁸ living in unhealthy, unhygienic conditions. Environmental hazards, degradation and pollution are other major issues starting to emerge. This requires the attention of policy makers. However, the Maldives has no legislative framework to address these challenges.

Malé has 26,739 households, 40% of the total number of households in the whole of the Maldives. The average household size in Malé is 5.5 people.²⁹ Islanders migrate to Malé to find better work opportunities and educate their children. Contributing to this migration is the low-quality basic infrastructure in the outer islands as well as the present government's policy of centralisation.³⁰

Many people who have lived in Malé all their lives own a property and are knocking down one-story houses and building apartment blocks of 10 to 12 storeys. The people migrating from the outer islands have to rent from these private landlords. Because of this a class divide is becoming apparent, with people in Malé getting richer and those from the outer islands getting poorer.

Colombo, Sri Lanka is 1.15 hours away by airplane. The cost of living there is 52% cheaper than in Malé, where the price of food is very high due to the fact that over 80% of products have to be imported into the Maldives. A number of the islands are designated as agriculture farms, but due to swells and sea rising, the soil has become unusable through seawater contamination.

A large percentage of the male population in the Maldives works on resorts, and wives are left at home to look after children and the household. Women are the primary carers and responsible for the family's health and welfare. The Maldives has one of the highest divorce rates in the world, although divorce carries no stigma. Half of the

households in the Maldives are headed by women (42% of households).³¹ The combined influences of South Asian heritage and Islamic traditions have played a part in conditioning social behaviour towards women. These have had a negative impact on the role of women in society, creating cultural barriers, limited opportunities, and restricting the choices available to them,³² including access to the internet.³³ However, the Gender Equality Act that the president ratified on 16 August 2016 may go some way towards countering this situation.³⁴

All of the above represent key areas of socioeconomic rights where the internet could be used as an enabler of these rights. However, statistics suggest this is not the case. According to a 2013 report from the UN Broadband Commission, women are 21% less likely to own a mobile phone than men.³⁵ The best infrastructure and funding initiatives also amount to nothing if the end user is unable to use a device. Reports suggest that literacy and technological ability are usually determined by social status and gender, with the poorer and less-literate 15% of Maldivians finding mobile platforms complex. Many people are also unaware of what is available on the internet, and how to access and use what is there. This is however changing. According to the 2014 census, the literacy rate in the Maldives is 97.7%. There is also an increase in the number of Maldivians being awarded higher education degrees.³⁶

Nevertheless, the internet and mobile technologies have great potential to bring vital improvements to the lives of the most vulnerable populations. For example:

- Health care delivery through remote consultations: The previous president advocated setting

26 Ministry of Environment and Energy. (n/d). PEMPHIS Environmental Newsletter.

27 Zahir, M. (2011, 21 April). Population explosion; a major environmental issue in Malé. *Ecocare Maldives*. ecocare.mv/population-explosion-a-major-environmental-issue-in-male%E2%80%99

28 www.adb.org/publications/basic-statistics-2016

29 statisticsmaldives.gov.mv/nbs/wp-content/uploads/2015/10/Census-Summary-Tables1.pdf

30 Zahir, M. (2011, 21 April). Op. cit.

31 National Bureau of Statistics. (2014). 2014 Population and Housing Census. statisticsmaldives.gov.mv/census-2014 These figures include households where the male breadwinner is working and residing away from home.

32 Quinn, I. (2011). *Women in Public Life in the Maldives*. UNDP Maldives. www.undp.org/content/dam/maldives/docs/Democratic%20Governance/Women_in_Public_Life_Report.pdf

33 Martinez Soliman, M. (2013, 10 January). The Internet Gender Gap. *UNDP Maldives*. www.mv.undp.org/content/maldives/en/home/ourperspective/ourperspectivearticles/2013/01/10/the-internet-gender-gap-magdy-martinez-soliman.html

34 Office of the President. (2016, 23 August). President ratifies Bill on Gender Equality. www.presidencymaldives.gov.mv/Index.aspx?lid=11&dcid=17139

35 UNDP. (2013, 21 September). UN Broadband Commission releases first global report on 'broadband and gender': 200 million fewer women online. www.undp.org/content/undp/en/home/presscenter/pressreleases/2013/09/21/un-broadband-commission-releases-first-global-report-on-broadband-and-gender-200-million-fewer-women-online.html

36 National Bureau of Statistics. (2014). Op. cit.

up e-health systems for remote islands.³⁷ In order to see a specialist doctor, outer islanders have to travel for a day by boat to the Indira Gandhi Memorial Hospital (IGMH) in Malé, and the cost can be quite substantial.

- Education and learning through online resources. The outer islands have very few colleges, and students taking higher education need to relocate to Malé or travel to other countries.³⁸
- Participation in decision-making processes by enhancing access to public information: Under President Nasheed a decentralisation programme³⁹ was enacted giving more power to the island councils to govern independently. After he resigned, the decentralisation programme was rescinded and all the powers returned to Malé.

Conclusion

The internet has brought many changes, some positive, some negative, to the country. The most important change has been the democratisation of information – the use of the internet and of social media to break the state’s stranglehold on the news media. As of June 2016, the country had 270,000 Facebook users, or a 68.7% penetration.⁴⁰ In March 2016, fixed broadband subscribers stood at 23,803 (or 29% of households), while mobile broadband subscribers stood at 236,252 (or 28% of mobile users).⁴¹ However, the extent to which the internet has been useful as an enabler of ESCRs is unclear.

The Maldives internet community is a vibrant space which for the last five years or so has witnessed a wide range of topics discussed online: religion, politics, women’s rights, sexuality, and drug abuse have been debated on the internet in greater depth than in the conventional media.⁴² As more people are accessing the internet, Maldivians are becoming aware of the conditions they live in and are voicing their concerns on social media.

In addition, many Maldivians are migrating overseas so they can voice their concerns using the internet without fear of reprisal from the government. Even the government has realised the impact

of social media and is starting to use it to promote its own political agenda.

To hold public officials accountable and to reduce corruption, public participation is essential. It creates a community that is well informed on policy and decision making in their local and national governments – a community that can work together and understand how to address local issues to reach solutions.⁴³ The internet is a critical component of this participation, and a key way for Maldivians to articulate their socioeconomic needs.

Action steps

The following action steps are suggested for the Maldives:

- The Maldivian government needs to put programmes, policies and structures in place that can lead to internet-based initiatives to target the vulnerable in society and aid human development. These need to be done in partnership with local entrepreneurs and NGOs already on the ground. Without this interaction, the potential for internet technologies to enable ESCRs will remain just that, a potential.⁴⁴
- The government has to be transparent and committed to good quality information that can be easily accessed by Maldivians. Information needs to be in formats easily understood and publicly available through mobile platforms and websites. People have to be made aware that this information is available and taught how to use the information.⁴⁵
- The quality of public service delivery can be enhanced by having a national database of socioeconomic data. In order to more effectively understand socioeconomic problems, track progress and analyse policy impacts, both qualitative and quantitative data are required.
- To enable ESCRs, projects using the internet need to be developed. For example, for Maldivians to be able to enjoy their right to adequate housing, a monitoring system could be established. This monitoring system could gauge if housing programmes are effectively implemented.⁴⁶

37 Ministry of Health. (2016). Maldives Health Profile 2016. www.health.gov.mv/publications/50_Maldives_Health_Profile_2016_D1%203rd%20May.pdf

38 Zahir, M. (2011, 21 April). Op. cit.

39 UNICEF. (2013). *Study on the Decentralization Process in the Maldives*. www.unicef.org/maldives/2013_Decentralization_Study_Final.pdf

40 www.internetworldstats.com/asia.htm#mv

41 www.cam.gov.mv/Statistics.htm

42 dissentmaldives.com. (2009, 15 March). Maldives president blocks websites and cracks down on protests. *Maldives Dissent*. maldivesdissent.blogspot.com/2009/03/crackdown-begins-in-ernest.html

43 Transparency Maldives. (2014, 5 June). Island residents battle against climate change: Case Study. transparency.mv/2014/page/3

44 Human Rights Commission of the Maldives. (2008). *Rapid Assessment of the Housing Situation in the Maldives*. www.hrcm.org.mv/Publications/otherreports/HousingAssessmentReportEnglish.pdf

45 Ibid.

46 Ibid.

MOROCCO

RETHINKING GENDER AND EDUCATION IN THE DIGITAL AGE¹



KEYWORDS: **gender, education, science and technology**

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Introduction

The world today is characterised by the emergence of an information society which represents a major challenge for all countries. In particular, developing countries face many obstacles in their transition to an information society considering their comparatively low technological and scientific level. Many argue that the demands of this transition cannot be met without properly considering the role of information and communications technologies (ICTs) in education, and especially how to empower women in this context.

The linkages between gender, education and ICTs should be the cornerstone of a digital strategy. The use of ICTs to facilitate women's access to education is essential to the transformation towards an information society. Their inclusion in technical studies is of equal importance, and the internet is a critical enabler of both these needs. As the Inter-Parliamentary Union and UNESCO declared in 1996, the internet "should be designated a development tool of 'public utility,'" adding, "It is precisely in the developing countries (...) that the Internet can render its greatest service."²

The key questions that could be asked are: What are the measures undertaken by Morocco to promote women's education and their orientation to science and technology? What is the impact of Morocco's 2013 digital plan? And what is innovative about the country's 2020 digital strategic agenda?

Policy and political background

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed by Morocco on 19 January 1977, and ratified on 3 May 1979. Related treaties and conventions have also been ratified, such as the Convention on the Elimination of all Forms of Discrimination against Women, ratified in 1993.

Morocco's commitment to human rights is also found in its 2011 constitution, which states in the preamble: "The Kingdom of Morocco, an active member of international organisations, undertakes to subscribe to the principles, rights and obligations of their respective charters and conventions, and reaffirms its commitment to human rights that are universally recognised."³

In particular, articles 19 to 40 of the constitution are concerned with fundamental freedoms and rights, and article 164 deals with parity and the struggle against all forms of discrimination.

Since independence, ESCRs have been a key policy goal for Morocco's governments – and ICTs have been seen as a key way to enable these rights, as reflected in the country's national strategy for an information society and the digital economy. This has meant changes at many levels: in policies, laws, and even cultural practices. Currently, one challenge faced by the government is how to invest in ICTs in a way that enables ESCRs and empowers women so that gender equality can be achieved.

Impact and limits of Digital Morocco

The country's 2009-2013 digital plan, called Digital Morocco 2013, recognises the importance of education in the development of the country's information society. It draws the link between education and the digital economy and highlights the need for the engagement of all actors, giving a significant role to the private sector and universities. These objectives are reflected in the king of Morocco's speech to the nation on the occasion of Throne Day on 30 July 2008:

At the same time, we call on the government to adopt a new strategy dedicated to the industry and service sectors and the development of new technologies. This strategy should focus on the optimal use of the opportunities brought by globalisation in terms of investment flows. Further consolidating the Moroccan private sector and encouraging value-added industrial investment, this strategy should be intended to open the way for the Moroccan economy to be able to invest in new industrial niches using

¹ This map has been provided by the author, and is an exception to APC's use of maps of states and territories recognised by the UN.

² Inter-Parliamentary Union & UNESCO. (1996). *The Parliamentary Vision for Education, Culture and Communication on the Eve of the 21st Century*. www.ipu.org/splz-e/unescog96.htm

³ www.wipo.int/wipolex/en/details.jsp?id=13535

innovative technologies and to create promising markets for its products and services. We have as much ambition as determination to ensure the integration of Morocco, its companies and universities, in the global knowledge economy.⁴

This strategy considers ICTs as a key tool for human and economic development⁵ and essential to enabling ESCRs for all. The goal of this strategy was the use of ICT as a cornerstone for human and economic development to ensure a good technological level for Morocco in North Africa. Gender equality was also a noticeable part of this plan, and was a feature of legal, institutional and financial changes necessary to implement the strategy.

The plan was accompanied by two key measures: the first ensuring the availability of quality human resource skills able to satisfy the sector's needs; the second one dealing with online security of data and personal safety (or "digital trust").⁶

Moroccan legislators have introduced several legal texts in an attempt to deal with the challenges relating to cybercrime, the protection of personal information, and copyright, including:

- Law No. 07-03 supplementing the Criminal Code regarding offences related to automated data processing systems.
- Law No. 53-05 on the electronic exchange of legal information.
- Law No. 09-08 on the protection of individuals with regard to the processing of personal data.
- Law No. 34-05 amending and supplementing Law No. 2.00 relating to copyright and allied rights.
- Decree on the interconnection of telecommunications networks.
- Decree on general conditions of operation for public telecommunications networks.

Digital Morocco 2013 also involved creating a technology innovation fund.⁷

The impact of the plan on the empowerment of women seems evident. According to 2010 statistics from the Ministry of Higher Education, Scientific Research and Executive Training, 15,287 female students had enrolled for a bachelor's degree

compared to 14,474 male students. This shifts noticeably at the master's degree level where, of a total of 3,071 students enrolled, 1,251 were female. Similarly, fewer women than men enrolled in PhD degree programmes.⁸

This gap can be explained by the family responsibilities that women have after marriage, gender stereotypes that limit women's participation in technological fields, and other cultural and social reasons.

However, according to the ministry, women are moving more into scientific and technological specialties. Of 263 master's and PhD students in science and technology, 121 were women. (The number of women enrolled at the master's and PhD level exceeds 50% in other specialties such as medicine, dentistry and pharmacology.)⁹

Digital Morocco has also had a positive impact on women's access to business. In terms of innovation, the plan supported women entrepreneurs through its programme called "Infitah for Her" (Open for Her). This programme encourages the use of ICTs by women entrepreneurs, especially those who have very small enterprises, in order to increase efficiency and improve productivity.

However, despite these achievements, the financial and human resources devoted to this sector are still insufficient in addressing the disparities in women's access to education, and their engagement in the scientific and technical fields, compared to men. In particular, there is a need to rethink education policy in order to ensure equal access for men and women to the scientific and technical specialties.

Moreover, it is difficult to attribute the evident empowerment of women to the 2013 plan alone. For example, six years ago the Ministry of Higher Education, Scientific Research and Executive Training launched a project called INJAZ¹⁰ with the goal to ensure easy and cheaper access to ICT equipment for students. According to the ministry, this programme

4 This is not an official translation. The original text is in Arabic and it was officially translated into French.

5 Ministère de l'Industrie, du Commerce et des Nouvelles Technologies. (2009). Maroc Numeric 2013 : Stratégie nationale pour la société de l'information et l'économie numérique 2009-2013. https://ccdcoe.org/sites/default/files/strategy/Maroc_CyberSecurity_2013_FR.pdf

6 Ibid.

7 Ibid.

8 Ministère de l'Enseignement Supérieur, de la Recherche Scientifique et de la Formation des Cadres. (2015). Effectifs des diplômés selon le domaine d'étude et l'établissement universitaire 2009-2010. www.enssup.gov.ma/fr/Statistiques/2171-effectifs-des-dipl%C3%B4m%C3%A9s-selon-le-domaine-d%E2%80%99%C3%A9tude-et-l%E2%80%99%C3%A9tablissement-universitaire

9 Ibid.

10 Ministère de l'Enseignement Supérieur, de la Recherche Scientifique et de la Formation des cadres. (2016). Lancement de la 6ème édition du programme INJAZ. www.enssup.gov.ma/fr/Actualite/3152-%D8%A5%D8%B7%D9%84%D8%A7%D9%82-%D8%A7%D9%84%D8%AF%D9%88%D8%B1%D8%A9-%D8%A7%D9%84%D8%B3%D8%A7%D8%AF%D8%B3%D8%A9-%D9%84%D8%A8%D8%B1%D9%86%D8%A7%D9%85%D8%AC-%D8%A5%D9%86%D8%AC%D8%A7%D8%B2

aims to improve the quality of education and skills development of students in order to facilitate their integration into the job market.¹¹

The programme offers students high-speed internet access for a year and a laptop or tablet, covering 85% of the cost of the internet access and the hardware. The programme benefited 64,000 students in 2016.¹²

This is just one of several programmes that have emerged in the education sector prior to the digital plan.

Others include:

- Supporting engineering students with computers and other technological needs.
- A programme called “GENIE” (Genius) focused on primary and secondary schools with the aim of ensuring that pupils have access to ICTs from an early age.
- A programme called Nafida@ (Window@) which aims to facilitate teachers’ access to ICTs (laptops and internet) and which was launched in September 2005.¹³

All these actions and programmes have had a positive impact on women’s access to education and their empowerment generally.

Next step: 2015-2020 strategic agenda

In order to face the challenges imposed by globalisation, the Moroccan government set up a new digital strategic agenda for 2015-2020. This strategy considers ICTs and education as a cornerstone of technological development. It also considers universities as an important actor in the digitisation process.

The Moroccan government is convinced of the importance of research and development and the use of ICTs to maximise knowledge and scientific productivity. The strategy is organised into three areas of work which include supporting businesses, knowledge about good practices concerning international standards, and networking.¹⁴ Besides this, the strategy aims to strengthen digital innovation through the use of ICTs to meet Morocco’s socioeconomic development needs by 2020.¹⁵

¹¹ Ibid.

¹² Ibid.

¹³ Ministère de l’Industrie, du Commerce et des Nouvelles Technologies. (2009). Op. cit.

¹⁴ Ministère de l’Industrie, du Commerce, de l’Investissement et des Nouvelles Technologies. (2014). Plan stratégique 2015-2020 : Maroc Numeric Cluster. www.mediafire.com/download/xk5mpt7jgee99k/Plan+Strat%C3%A9gique+MNC+2020.pdf

¹⁵ Ibid.

In this context, on 13 June 2016 the Ministry of Higher Education, Scientific Research and Executive Training launched an online platform for university students, involving public-private partnerships, with the aim of enhancing research and development.

We note that gender is not explicitly listed as a goal in the strategy, but it is a cross-cutting issue. The strategy effectively allows women easier access to information, knowledge and expertise. It democratises access to the internet by reducing equipment costs, which enables women’s economic empowerment and equality when it comes to accessing their ESCRs generally.

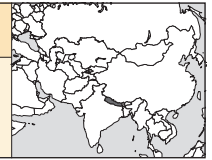
Actions contained in the strategic agenda will strengthen cooperation between Moroccan women and others, such as those in the Euro-Mediterranean region. Several project partnerships with European universities are now managed by women researchers in Moroccan universities. In this context we also note that the exchange of experiences and good practices between women’s associations in Morocco and other countries, especially European ones, has had a positive impact on women’s political participation and access to decision-making positions in this country.

Conclusion and action steps

Significant progress has been made in enhancing women’s access to education, especially in the field of science and technology, in this way strengthening their access to ESCRs.

Both Digital Morocco 2013 and the 2015-2020 strategic agenda are very ambitious. They touch several key areas and have reduced the digital divide between Morocco and its economic partners in the North such as the European Union and United States. Nevertheless, a considerable gap remains in overcoming disparities between men and women due to social and cultural reasons. Therefore it is necessary to rethink gender, education and ICTs and take these three pillars more strongly into consideration in the next digital agenda to ensure that these social and cultural reasons are addressed

Both digital agendas focus on the private sector, universities and government as principal actors. It is, however, necessary to rethink the important value that civil society organisations, especially women’s associations, can offer. A new digital strategy should integrate all Moroccan actors, even men and women as individuals, to face the challenges posed by an interconnected world.



KEYWORDS: internet access, health, natural disasters, safety checker

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Introduction

A mega-earthquake struck Nepal on a Saturday morning 25 April 2015, claiming 8,786 lives across several districts in the country. There were over 22,300 injuries. Many villages were completely flattened. The disaster left the Nepalese people mentally and emotionally drained.¹

After the earthquake, Facebook’s Safety Check tool² kicked in. A little blue-and-white notification asked: “Are you safe?” Facebook’s Safety Check is just one of several tools developed both by service providers and government. A number of these help persons affected by disasters post their safety statuses online. This serves as a record of displaced persons and helps family members and friends trace them. This report offers a personal reflection on the usefulness of safety-check tools in a country like Nepal.

Background

Nepal is a landlocked country of over 28 million people³ in Southeast Asia, and constitutionally a federal democratic republic. Its neighbouring countries are China to the north and India to the east, west and south. In this peaceful and holy place, on 25 April 2015, at exactly 11:56 a.m. local time, the earthquake struck. It had a magnitude of 7.6 on the Richter scale, with an epicentre in Barpak in the Gorkha district. It lasted for approximately 55 seconds. This was Nepal’s biggest natural disaster in 80 years and was followed by around 500

aftershocks with a magnitude greater than 4. Four of these aftershocks were greater than magnitude 6, including one measuring 6.8 that took place 17 days after the first big earthquake.⁴ The economic losses from the earthquake were estimated at USD 10 billion by the US Geological Survey.⁵

The internet is increasingly becoming an important enabler of economic, social and cultural rights (ESCRs). Fundamental to the realisation of many ESCRs is the right to access information, in which the internet has a critical role to play. Information is also central to any relief effort during a natural disaster, and can be formulated as a right. For example, the UN’s Inter-Agency Standing Committee has formulated Operational Guidelines on Human Rights and Natural Disasters.⁶ Among these are the requirement that: “All communities affected by the disaster should be entitled to easily accessible information concerning the nature of the disaster they’re facing, possible mitigation measures that can be taken, early warning information, and information about ongoing humanitarian assistance.”⁷

The newly drafted Constitution of Nepal (2015), in its Article 27, endorses the right to information, allowing every citizen to have the right to seek facts and information on any problems of concern to her or him. Article 51 F (5) calls for the development and expansion of communications infrastructure in Nepal, making it easier and simpler for the general public to use, while also maximising its use for national development. It speaks about developing an integrated national identity management information system. This would include all kinds of information and statistics relating to citizens, and would be used to more effectively deliver services by the state in line with national development planning.

1 Hayes, G. (2015). The April-May 2015 Nepal Earthquake Sequence. earthquake.usgs.gov/learn/topics/Nepal_Slides.pdf

2 Summers, N. (2014, 16 October). Facebook “Safety Check” helps you tell friends and family you’re safe during natural disasters. *The Next Web*. thenextweb.com/facebook/2014/10/16/facebook-safety-check-helps-tell-friends-family-youre-safe-natural-disaster/#gref

3 National Population and Housing Census 2011, Central Bureau of Statistics.

4 Government of Nepal. (2015). *Nepal Earthquake 2015: Post Disaster Needs Assessment*.

5 Hayes, G. (2015). Op. cit.

6 Inter-Agency Standing Committee. (2006). *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*. https://www.brookings.edu/wp-content/uploads/2016/06/11_natural_disasters.pdf

7 Ferris, E. (2010, 3 March). Natural Disasters, Conflict, and Human Rights: Tracing the Connections. *Brookings*. <https://www.brookings.edu/on-the-record/natural-disasters-conflict-and-human-rights-tracing-the-connections>

Yet only 19.9% of the people in Nepal are internet users.⁸ Among 75 districts, 66 have 3G coverage. This means that the country's internet access is still not at a point where safety-check tools can serve as a resource for most people during natural disasters.

"I felt a sense of welcome relief in a time of deep crisis"

Facebook's Safety Check is just one of several similar tools available. After Hurricane Katrina hit the United States, multiple websites were created that included safety-check tools and databases to help search for people.⁹ Twitter was also used in New Zealand to reach those displaced by the Christchurch earthquake, while Google's Person Finder tool was used after the earthquake in Haiti in 2010 with the purpose of reuniting people who had been separated during the disaster. Similarly, a safety checker was developed in Japan following the devastating Tohoku Earthquake in 2011. It allowed users to call or text each other over the internet.¹⁰

Facebook's tool is the social-networking site's application that is activated whenever the user appears to be located in an area hit by a natural disaster. An internet user can then mark "I am safe" or "I am not". A user may also mark their friends or family as safe. I personally found it a useful application, offering a welcome relief in a time of deep crisis. During the earthquake, I had 917 Facebook friends, among them 735 friends who used Safety Check and marked themselves as "safe", in turn asking their friends to share their safety status. I felt an intense happiness when notifications told me that a friend was safe. My personal experience is that the safety-check tool was important during the disaster.

However, these sorts of tools depend on public collaboration, and on sincere engagement. One challenge is misinformation. For example, a number of Facebook users in the United State and around Europe were using the application to mark themselves as "safe" following the Nepal earthquakes. The only problem was they were not in Nepal. The Facebook tool misidentified them as being in the

disaster-affected area. These types of posts garnered harsh criticism from social media users.

Another "dark side" of relying on safety-check tools is that when there is a collapse of communications infrastructure, users can easily panic when they hear nothing about the safety statuses of friends and family. In this way the tools can achieve the complete opposite of what they are intended to achieve.

Moreover, in a country like Nepal, the low level of internet access is a challenge. This is particularly important for poor people who do not have internet access and who are often disproportionately affected by natural disasters. I was able to access the tool using mobile data – a relatively expensive option. Safety-check tools offered by the likes of Facebook have their limitations, and authorities need to keep this in mind when selecting communication channels to help those affected by disasters.

In summary, some of the key limitations to the tool were:

- A lack of access to the internet, whether through the collapse of a communications system, or due to there being no internet access in an affected area.
- A collapse of other essential infrastructure such as the electricity grid: During a natural disaster such as a hurricane or an earthquake, electric power may fail, impacting on service providers who may not have the necessary battery backup, and on individuals' ability to recharge their laptops and phones.
- People who do not use social media: Older generations or marginalised communities may not be as familiar with social media as younger generations. People also need to be relatively computer literate to use new applications offered by service providers.
- Rumours: False information and rumours can spread quickly over social media and there is no way to verify them easily.
- Unrealised potential: Some governments do not yet see the potential of social media in disaster management and also do not have proper information programmes in place to cope with such disasters. They have yet to understand this information as a right for those affected by the disaster.
- Unrealistic expectations: It is important not to have unrealistic expectations regarding what the internet can achieve in times of crisis. It can only go so far, and its limitations as well as its potential need to be recognised.

8 Internet World Stats. Internet usage in Asia. www.internetworldstats.com/stats3.htm

9 Olivarez-Giles, N. (2011, 2 April). Google Person Finder: a tool born of disaster, from Hurricane Katrina to Japan's quake, tsunami. (2011). *Los Angeles Times*. latimesblogs.latimes.com/technology/2011/04/google-person-finder-started-after-haiti-hurricane-katrina-seen-advancement-in-japan-earthquake-tsunami.html

10 Ibid.

Conclusion

In the case of the Nepal earthquake, it is important to realise that this was a citizen-led process of sharing information about the earthquake. Despite policies safeguarding access to information, nobody in government took responsibility in providing citizens with crucial information at the time. Yet the need for communication is heightened during a disaster, and is most critical both for those people in the affected areas and for their relatives, friends, and families who were anxious for news. Many people, both inside the country and internationally, were worried, and looking for updates on earthquake. Timely information about the safety of family and friends was the foremost need at that time. While it is positive that this information was shared between citizens, ideally safety checking tools should be offered as a public service and in this regard need to be developed in consultation and collaboration with the disaster preparedness and response community.

Action steps

There is a need for a multistakeholder, robust and wide-ranging discussion on the importance of the internet as an enabler of ESCRs, and in particular, on how the internet can be used during natural disasters. This discussion needs to gather diverse experiences around the same table, including those of the people likely to be affected most by natural disasters, and the disaster response authorities and services.

Developers of safety-check tools need to be involved in this discussion. Their tools need to be further developed, but in consultation with those most affected by natural disasters. Their information needs, levels of access to technology, and skills need to be taken into account. There is a body of research on how people affected by natural disasters behave, and the challenges they immediately face. This research needs to inform policy planning, and the further development of safety-check apps by service providers.

The specific needs of women during natural disasters require forward-thinking policy planning. Research has shown that women are the most affected by natural disasters,¹¹ and the potential role of the internet in mitigating this needs to be understood. The limitations of safety-check tools in Nepal, given the level of internet access, need to be recognised. While authorities can use social media to share important information with the public, offline forms of assistance and communication remain crucial. During the disaster, mobile data was effective. This suggests that it is the most robust communications network. Regarding the challenges faced by other internet service providers, such as a lack of battery back-up systems, these need to be attended to in order to secure the communications network during disaster. This requires government planning, and infrastructure risk analysis.

¹¹ "Natural disasters exacerbate existing gender inequalities and pre-existing vulnerabilities. The majority of those who die in natural disasters are women. Women also tend to have less access to essential resources for preparedness, mitigation, and rehabilitation." Ferris, E. (2010, 3 March). Op. cit.

NIGERIA

SAVING MINORITY LANGUAGES IN NIGERIA



KEYWORDS: minorities, language, culture

Fantsuam Foundation

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Introduction

Fantsuam Foundation lives and works among minority ethnic groups in northern Nigeria. Nigeria has over 500 languages¹ with three local languages dominant: Hausa, Igbo and Yoruba. This status tends to confer some socio-political advantages on the native speakers of these languages. Some minority languages are not yet in print, while some others are only found in religious books. Others are already near extinction.

A few years ago, Fantsuam Foundation started to document the minority languages of the southern Kaduna communities of northern Nigeria. This was the first attempt at publishing these languages online. The project's aim was to promote the rights of people speaking minority languages to participate in cultural life as provisioned in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²

The issue of languages in education is also relevant in this context. For example, Shaver argues that “every person has the right to education for literacy and the right to freely choose the reading material they prefer” and that this right is already implicit in international law and derives its legitimacy in the well-known rights such as education, science, culture and freedom of expression.³ However, such a right can hardly be exercised in the current digital world if some languages are yet to be documented and digitised. This is the situation for many minority languages in Nigeria.

Internet access in Nigeria

The provision of broadband infrastructure to create an enabling environment for development can support the implementation of ESCRs in many ways, including in the documentation, preservation and development of indigenous minority languages of Nigeria. By June 2016, Nigeria's broadband penetration was only 14%;⁴ but despite this low penetration, there are about 93 million internet users in Nigeria.⁵ Therefore, the internet can have a positive effect on meeting some of Nigeria's ESCR obligations.

With an increasing interest in addressing the inequity in broadband penetration, civil society continues to play a significant role. This includes the Alliance for Affordable Internet (A4AI),⁶ which brings together stakeholders from civil society and the public and private sectors to promote affordable internet access. Nigeria's civil society was also in the team that crafted Nigeria's broadband plan in 2013,⁷ with the goal of achieving 30% connectivity by 2017.

The level of internet access available to communities who speak marginalised languages is not reported on in Nigeria's access statistics.⁸ However, if we consider the sizes of the population groups that speak endangered languages, and that many of these groups live in rural areas and cannot speak English, we can guess that internet access is low. Up to 400 minority Nigerian languages are considered endangered, with 152 of them at risk of extinction.⁹ Basa-Kontagora had only 10 known speakers way back in 1987, while the number of speakers of the

1 Blench, R. (2012). *An Atlas of Nigerian Languages*. www.rogerblench.info/Language/Africa/Nigeria/Atlas%20of%20Nigerian%20Languages%20ed%20III.pdf

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

3 Shaver, L. (2015). The Right to Read. *Columbia Journal of Transnational Law*, 54(1), 1-58. jtl.columbia.edu/the-right-to-read/ssrn.com/abstract=2467635

4 Adepetun, A. (2016, 26 July). Nigeria's broadband penetration now 14%. *The Guardian*. guardian.ng/business-services/nigerias-broadband-penetration-now-14

5 Nigerian Communications Commission. (2016). Monthly Subscriber Data. ncc.gov.ng/index.php?option=com_content&view=article&id=125&Itemid=73

6 Johnson, O. (2016, 22 July). Africa's Future in a Connected World. *Alliance for Affordable Internet*. a4ai.org/africas-future-in-a-connected-world

7 Nigeria's National Broadband Plan 2013-2018. www.researchictafrica.net/countries/nigeria/Nigeria_National_Broadband_Plan_2013-2018.pdf

8 Nigerian Communications Commission. (2016). Subscriber Statistics. www.ncc.gov.ng/index.php?option=com_content&view=article&id=125&Itemid=73

9 NAN. (2014, 26 February). 'More than 400 Nigerian indigenous languages are endangered'. *Vanguard*. www.vanguardngr.com/2014/02/400-nigerian-indigenous-languages-endangered

Labir language in the state of Bauchi has dropped from over 13,000 speakers to just about 500.¹⁰

While there is “consensus around the idea that access to the internet allows or facilitates countless processes of expression and communication, thus enabling the realisation of human rights,”¹¹ whether or not access is a human right is still under debate. Nevertheless, its enabling role in supporting the cultural rights of speakers of minority languages and thereby fostering inclusive governance and equitable development is not in doubt. It is in this area that the Nigerian government can place more emphasis, as it will enable it to vicariously meet some of its ESCR obligations as they relate to minority languages.

Linguistic diversity in Nigeria

Nigeria has a large linguistic diversity: while Hausa, Igbo and Yoruba are spoken by up to 54% of the population,¹² 20% of the population speaks 390 languages, and over 300 minority languages are spoken by 7% of the people.¹³

The Nigerian minister of information and culture recently stated that 80% of Nigerians between the ages of two and 18 had difficulty speaking their mother tongues.¹⁴ It therefore appears that the intergenerational transmission of Nigerian languages is not happening; and this is even more so with minority languages.

The three major languages in Nigeria are regionally based and by their sheer numbers have promoted the displacement of the minority languages in the spheres of economic and political influence. This situation is illustrated in the case of Babur/Bura, a minority language in north-eastern Nigeria. Bukar Usman¹⁵ attributes this situation to military conquest that is usually followed by imposition of the victors' language and also to the numerical superiority of a particular language which allows it to be imposed on the development of various key policies (socioeconomic policies, in

education, etc.). The minority language speakers, in an attempt to promote their own careers and take part in the historical advantage and opportunities created for speakers of the major languages,¹⁶ often have to migrate to the language of power, leading their own language into disuse and sometimes extinction.¹⁷

However, the irony is that the younger generation of the major language tribes are speaking less of their mother tongues because their parents prefer to speak English in the house rather than the native language.¹⁸ As a result of the country's colonisation by Britain, English has been the official language of communication in Nigeria.

Fantsuam Foundation's project

In this context, Fantsuam Foundation launched the Zitt Localization Project.¹⁹ Nearly 80% of Nigeria's 500 languages are spoken in the “Middle Belt”, home to minority communities sandwiched in between larger ethnic groups in the country.

Hausa, an Afro-Asiatic, Chadic language, is the lingua franca of northern Nigeria, and this holds true all over the state of Kaduna, where over 50 languages are spoken. However, in the southern areas, Benue-Congo languages, particularly those of the Plateau variety, are the mother tongues spoken by indigenous people. Despite a lack of sufficient data, the languages of southern Kaduna are undoubtedly endangered, understudied minority languages that have fewer than one million native speakers. Meanwhile, indigenous tribes in the Kafanchan area cannot access our organisation's computers and internet services due to the language barrier. The fact that these populations cannot read or write in English creates a great barrier for them, despite the fact that they are custodians of a rich oral culture of knowledge and skills.

The Zitt Localization Project was the first attempt to digitally document some of these languages. The languages selected for localisation were Fantsuam (Kafanchan), Gong (Kagoma), Gworok (Kagoro), Hyam (Jaba), Jju (Bajju), Koro, Tsam (Chawai) and

10 Endangered Languages of Nigeria. Nairaland Forum. www.nairaland.com/1842351/endangered-languages-nigeria-others

11 Lara, J. C. (2015). *Internet access and economic, social and cultural rights*. Association for Progressive Communications. https://www.apc.org/en/system/files/APC_ESCR_Access_Juan%20Carlos%20Lara_September2015%20%281%29.pdf

12 Agheyisi, R. N. (1984). Minor languages in the Nigerian context: Prospects and problems. *Word*, 35(3).

13 Jibril, M. (1991). Minority Languages and Lingua Francas in Nigerian Education. In E. N. Emenanjo (Ed.), *Multilingualism, Minority Languages and Language Policy in Nigeria*. Agbor: Central Books.

14 Okeke, C. (2015, 27 November). Indigenous Languages on Brink of Extinction. *Leadership*. leadership.ng/business/478303/indigenous-languages-brink-extinction

15 Usman, B. (2014). *Language Disappearance and Cultural Diversity in Biu Emirate*. Abuja: Klamidas Communications.

16 Mustapha, A. R. (2003). Ethnic minority groups in Nigeria: Current Situation and Major Problems. Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities, Ninth Session, 12-16 May.

17 Moses J. M. (2014, 22 August). Are Nigeria's indigenous languages going extinct? *Peoples Daily*. www.peoplesdailyng.com/are-nigerias-indigenous-languages-going-extinct/; see also: Bassey, B. (2015, 18 November). Dead Nigerian Languages: 10 local mother tongues, you will never get to hear. *Pulse.ng*. pulse.ng/arts_culture/dead-nigerian-languages-10-local-mother-tongues-you-will-never-get-to-hear-id4369768.html

18 Leadership. (2015, 3 December). Before Our Languages Go Extinct. *Leadership*. leadership.ng/opinions/480071/languages-go-extinct

19 zitt.sourceforge.net/zitt.php?su=eng&ib=4

Tyap (Kataf). A glossary of the commonest 100 words and expressions in each of these languages is being compiled.

Besides preserving indigenous knowledge and culture, Fantsuam believes that access to relevant information on the internet in the appropriate format and local language is one of the keys to achieving the Millennium Development Goal (MDG) of poverty reduction in Nigeria.²⁰

Government's role

Nigeria formally ratified the ICESCR on 29 July 1993.²¹ However, it is interesting that, until now, Nigeria is not listed among the following African countries that have provided updates on issues arising from the implementation of ESCRs in their countries: Namibia, Kenya, Burkina Faso, Uganda, Sudan, Gabon, Egypt, Togo, Rwanda, Tanzania, Ethiopia, Congo, Equatorial Guinea, Cameroon, Democratic Republic of Congo, Chad and Angola. Considering the series of socio-political challenges that Nigeria has faced in the past 16 years, it is unlikely that there could be no issues arising from the implementation of the covenant. It seems more likely that the implementation of the covenant may be in abeyance, hence the absence of any report updates from Nigeria.²² There are no public records of any efforts to raise awareness about citizens' rights to ESCRs in the country, including among key stakeholders such as the judiciary, public services, or the private sector.

It must be placed on record that the government has some interest in the nation's languages as evidenced in the establishment of three parastatals under the Ministry of Education that deal with language issues: the National Institute of Nigerian Languages, the Nigerian French Language Village and the National Arabic Language Village. However, the recognition accorded two foreign languages – Arabic and French, with English as the official language – does not show a government that gives attention to its own minority languages. The prominence given to the three colonial languages in a country that has already lost some of its indigenous languages, and with several others on the endangered list, does not leave much room for optimism

for the fate of minority languages in Nigeria. It is therefore safe to state that so far, Nigeria has not made much progress in the promotion of its minority languages as part of its fulfilment of its ESCR obligations.

The apparent inaction on the implementation of the ICESCR in Nigeria may be linked to the availability of resources, implied in the concept of “progressive realisation”. Progressive realisation is basically a “recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. (...) It thus imposes an obligation to move as expeditiously and effectively as possible.”²³ However, an argument based on a lack of resources may not be tenable for Nigeria, one of the previous highest earners of oil revenue in the world. Nevertheless, the dedication of three parastatals to the issue of languages (albeit two of these promoting colonially inherited languages) may indicate a move in the right direction.

Conclusions

The Fantsuam Foundation efforts at the localisation of five minority languages had a major flaw: it did not have adequate buy-in from stakeholders in a position of social and economic power, including community leaders and mothers, who arguably play a strong role in developing primary languages in children. There was also not enough awareness of the impact of the family as a unit, and the influence that the family space has on languages. These are critical for the intergenerational transmission of a minority language. We found that the elitism and power associated with the major languages sometimes make parents prefer to use these languages as the first language of communication with their children.

Several suggestions on how to promote the intergenerational transmission of indigenous languages include encouraging parents to minimise the use of the English language within home settings, making the local language their children's first language, and making the study of indigenous languages compulsory in the nations' schools.

It is interesting that government initiatives may have underestimated or overlooked the role of the internet in fostering the survival and revival of Nigeria's minority and major languages, especially with

20 Leonard, T. (2005, 7 March). Knowledge Fades As African Languages Die. *Associated Press*. truth-out.org/archive/component/k2/item/52823-knowledge-fades-as-african-languages-die

21 Ratification, Reporting & Documentation for Nigeria. tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx

22 www.ohchr.org/Documents/HRBodies/CESCR/OHCHR_Map_ICESCR.pdf; see also: www.ohchr.org/Documents/Issues/HRIndicators/MetadataRatificationStatus.pdf

23 Committee on Economic, Social and Cultural Rights (CESCR). (1990). General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) (E/1991/23). www.refworld.org/docid/4538838e10.html

regard to the younger generation. In spite of Nigeria's low internet penetration,²⁴ this generation has taken to the internet and social media more readily than their parents. The advent of the 3G phone has made internet access even more available to the youth.

However, given the fact that the custodians of Nigeria's minority languages are adults, a challenge is presented: the literacy level of many adults in Nigeria is still low²⁵ and the potential role of the internet serving as a useful medium for sharing minority languages is limited. Because of this, civil society or government interventions are necessary. These interventions should be aimed at improving the literacy levels of the older generations and documenting the oral use of their languages, while providing basic internet infrastructure that will make access affordable. For illiterate adults, affordable internet access that has appropriate audiovisual content could facilitate the online proliferation of minority languages.

Action steps

The following advocacy steps are suggested for civil society:

- There is an urgent need to raise awareness of the status of Nigerian languages. It is interesting that the focus on minority languages has also revealed that the major languages may be in danger of attrition because some parents insist on using English as the preferred language of communication within the family; this happens even in families that belong to the major languages groups.
- Both the minority and major languages can benefit from concerted efforts by government to provide an internet backbone that reaches out to remote and rural communities in order to offer affordable internet access to these communities.
- Relevant content, especially content that can be accessed offline that promotes minority languages, should be developed. Efforts like the Fantsuam localisation project can be replicated or extended to other minority languages.
- Civil society should continue its advocacy for equitable distribution of broadband nationwide.

24 Adediran, Y. A., Opadiji, J. F., Faruk, N., & Bello, O. W. (2016). On Issues and Challenges of Rural Telecommunications Access in Nigeria. *African Journal of Education, Science and Technology*, 3(2) www.coou.edu.ng/journals/ajest/vol_3_iss_2/on_issues_and_challenges_of_rural_telecom.pdf; see also: Africa Telecom & IT. (2013, 8 July). Nigerian rural areas targeted for broadband service. www.africatelecomit.com/nigerian-rural-areas-targeted-for-broadband-service

25 NAN. (2014, 27 July). UNESCO tasks Nigerian govt. on adult illiteracy, out-of-school children. *Premium Times*. www.premiumtimesng.com/news/more-news/165668-unesco-tasks-nigerian-govt-on-adult-illiteracy-out-of-school-children.html; see also World Bank, Adult literacy rate, population 15+ years, both sexes (%). data.worldbank.org/indicator/SE.ADT.LITR.ZS



KEYWORDS: **labour**

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Introduction

Technological evolution and the increase in the use of the internet worldwide have tested many of the well-known ways of offering services to consumers and have also revolutionised the labour sector. Ways of working that were unimaginable in the past are possible today due to the alternatives and advantages offered by information and communications technologies (ICTs). A clear example of this is telework.

This innovative form of work represents a “win-win” situation for the employer and employee. It serves to reduce costs, and optimise and decentralise operations. Telework potentially contributes to a better life/work balance for workers, offering an improved quality of life for citizens.¹ It can benefit the environment – for example, by reducing the number of cars on the road – and offers the opportunity for marginalised groups such as people with disabilities to be gainfully employed. However, in many countries, this innovative, alternative work arrangement does not have a proper legal framework regulating it, which can lead to employment practices that violate the fundamental rights of teleworkers.

Panama has become a services-oriented economy² over recent years due to its strategic location. It is now a hub for global business operations and regional headquarters for multinationals. There are strong indications that telework is on the increase and that this trend will continue.³

During a recent workshop that we ran on telework in Panama, we discovered that around 46 companies are employing teleworkers. Most of these enterprises, such as Dell Panama, Sitel and PCCW Teleservices, among others, do business related to customer services and telecommunications.

The strength of Panama’s telecommunications infrastructure is one of the main reasons why these businesses turn to telework as an option. Panama has a solid broadband infrastructure, and the number of internet users is rising steadily: in 2010 the country had around 265,825 users; by 2015 the number had increased to 316,170.⁴

However, a question arises: Is Panama legally prepared for this new form of work? Can it guarantee the proper protection of employee rights? In this report, we analyse the legal status of teleworkers in Panama, and recommend steps that we believe our country has to take into account in order to deal with the challenges related to the social and economic development of teleworkers, and in order to ensure the proper protection of labour rights and related rights contained in domestic and international instruments.

Current legal status of telework in Panama

Panama ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977⁵ and has also ratified around 78 conventions related to international labour rights.⁶

Panama has no specific laws regulating telework. The Labour Code of 1971⁷ contained two articles dedicated to “home-based work”, articles which could be read as partly referring to telework. However, Law No.1 of March 1986⁸ repealed those two articles because the legislator believed that there is no legal difference between workers. Therefore, in Panama the Labour Code should be applied to all workers in the same manner, taking into account specialisations or the kind of work being done.⁹

Given this legislative gap, teleworkers are considered normal employees falling under labour law, and the framework of engagement between

1 Davies, R. (2013). *Work-life balance: Measures to help reconcile work, private and family life*. Library of the European Parliament. [www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130549/LDM_BRI\(2013\)130549_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130549/LDM_BRI(2013)130549_REV1_EN.pdf)

2 www.worldbank.org/en/country/panama/overview

3 Information obtained in the workshop Telework: Application and regulation in Panama, organised by IPANDETEC, Panama City, Panama, 20 September 2016.

4 Telecomunicaciones/ASEP. (2014). *Indicadores de Internet*. www.asep.gob.pa/images/telecomunicaciones/Estadisticas/Estadisticas/indicadores_de_internet_2014.pdf

5 Ley No. 13 de 27 de octubre de 1976 (G.O. No. 18.336 de 11 de Noviembre 1977).

6 www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102792

7 www.mitradel.gob.pa/portal/page/portal/PGMITRADEL/código-detrabajo.pdf

8 Ley No.1 de 1986. <https://docs.panama.justia.com/federales/leyes/1-de-1986-mar-17-1986.pdf>

9 Collado, A. (n/d). *Derecho Laboral IV*. www.monografias.com/trabajos65/laboral-iv-panama/laboral-iv-panamaz.shtml#ixzz4LRuCYII

teleworkers and employers is defined by the contract between the two, or the terms of service contract. This is when the problem arises. How do you define the rights of a teleworker and the duties of an employer when in countries like Panama the definition of an employee is quite general and in some ways based on obsolete ideas of what work means – an office or location where there is a hierarchy, and immediate oversight and control?¹⁰

The ICESCR affirms the obligation of states parties to assure individuals the right not to be deprived of work unfairly. This definition emphasises the importance of work for personal development as well as for social and economic inclusion.¹¹ The regulation of telework will help expand labour market opportunities, but in a way that the rights of workers are guaranteed.

The lack of a clear definition for telework

While preparing this article we noticed that there is not enough reliable data produced by government institutions in Panama to determine the actual number of teleworkers in the country or data that can support arguments regarding the benefits or costs associated with telework.

This could be due to several factors, including the lack of a clear definition of telework in Panama and disinterest among the authorities to quantify the sector, given other social priorities in the country.

A general definition of telework is essential for the sector to be regulated. A definition will allow different types of telework, categories of teleworkers, and their respective rights and obligations such as minimum remuneration and standards for occupational safety and health to be defined. A definition will also enable lawmakers to distinguish telework from other forms of similar work, such as home-based work.

The two concepts are normally confused, but they are slightly different. “Remote work”, a concept commonly used in companies, is a benefit that the companies grant to their employees, allowing them to work from a location other than the office; however, their presence at the office is generally required. They have to comply with the same rules and obligations as the office-based employees. Remote work also refers to work done while travelling on business.

Teleworkers, however, are contracted to work outside of the office environment. They perform the job using information technologies that allow them

to have access to systems available in the office, such as specific software programmes and databases, and can even use the printers which are located in the offices. Therefore, the use of technology and communications are crucial.

In this regard, the international community has been working on a definition of telework, even though there is no consensus on its definition. There are some agreements and guidelines such as the European Framework Agreement on Telework signed in 2002¹² that could help legislators identify the main elements and characteristics of telework and develop a definition. This agreement, which was signed by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederations of Europe (UNICE), the European Union of Crafts and Small and Medium-Sized Enterprises (UEAPME), and the Centre of Enterprises with Public Participation (ECPE) states that teleworkers should enjoy the same working standards as employees working in an office – which means that the employer is responsible for the protection of their occupational health and safety, that the workload and performance standards are equivalent, and that the training and career development are comparable, among others.

Telework offers countless benefits, but at what cost?

As mentioned, telework potentially offers a wide range of benefits to workers and companies alike. However, currently the relationship with telework employees in Panama is defined by the employer. Normally, under this type of contract, the teleworker does not have company employment benefits, a situation which also rewards the company with lower administrative costs. This means that the teleworker has to assume the risks and costs as an independent professional services supplier, while at the same time be subordinate to company rules and supervision.

Without a proper legal framework, a company’s policy in contracting teleworkers can generate a series of challenges that could outweigh the benefits. These are some of them:

Isolation and lack of relationship building

Everyday interaction and informal communication among co-workers help to develop ideas and help employees work together more efficiently and effectively. The lack of day-to-day interaction may gradually isolate teleworkers from a professional as well as a social point of view, and can affect their career development.

10 According to Panama’s Labour Code. www.mitradel.gob.pa/portal/page/portal/PGMITRADEL/código-detrabajo.pdf

11 Comité de Derechos Económicos, Sociales y Culturales. Observaciones Generales. https://conf-dts1.unog.ch/1%20SPA/Tradutek/Derechos_hum_Base/CESCR/oo_1_obs_grales_Cte%20Dchos%20Ec%20Soc%20Cult.html

12 www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Ac10131

A report by the European Foundation on the health and safety issues facing teleworkers in the European Union found that in several countries such as Ireland, telework often leads to a lack of both formal and informal contact and that teleworkers spend very long periods of time working alone. In some countries like Portugal and the Netherlands, teleworkers are required to make periodic visits to the company offices.¹³

The relative isolation can also create difficulties for teleworkers fulfilling their work duties, especially if they experience difficulties in communication with managers and co-workers, and in getting responses to their work queries on time.

No distinction between work time, family life and leisure

Teleworkers have to manage their own time. There is a tendency to work longer hours when you work outside of an office, a situation that can generate family conflict due to multiple roles and commitments. This is especially a challenge for women. These types of situations produce stress and can lead to the development of health problems.¹⁴

Safety and health

There are some health risks that could be related to telework, including the stress caused by overlapping home and work commitments, and depression caused by the isolation. The European Foundation report found that in the United Kingdom (UK), social isolation is generally regarded as the largest potential problem facing teleworkers. Isolation and loneliness are work stresses faced by teleworkers, and should be considered alongside other work stresses as factors that can have harmful psychological effects, impacting both on the teleworker and the organisation if not taken seriously. There is a worrying gap in legislation in Panama recognising these phenomena.¹⁵

Lower remuneration

Teleworkers' salaries are generally lower compared to comparable work done by other employees. Overtime is typically not financially rewarded. Research carried out in the UK showed that computer professionals employed as teleworkers earned between 19% and 29% less than onsite workers performing

similar activities, and that overtime compensation is not usually paid to the teleworkers.¹⁶

Fewer possibilities for promotion than office workers

The career advancement of teleworkers can be jeopardised. The lack of face-to-face supervision and communication with management can impact negatively on the possibilities of promotion.¹⁷ An article in TIME Magazine refers to a study published in the MIT Sloan Management Review, which showed that bosses are heavily influenced by "passive face time", the mere presence of someone's face in the office on a regular basis.¹⁸ Performance, therefore, is not the sole issue taken into account for a promotion. There are other elements like leadership skills and being a good team player that normally cannot be measured when you are a teleworker.

Conclusions

In this report we have tried to suggest that telework can offer a work alternative that gives flexibility and a series of benefits to the teleworker.

Telework promotes inclusiveness because it can be an effective alternative for people with disabilities, people who have to care for a family member at home, breast-feeding mothers or those taking care of children, people living in rural areas, and qualified professionals living in another country, among others. However, there are also various issues that must be considered, and it is necessary to analyse both the advantages and the challenges of teleworking before opting for this form of work.

There is a long way to go before we have appropriate regulation of telework in Panama.

Some countries in the region such as Chile, Colombia and Argentina, among others, have been working on developing policies and regulations. In the specific case of Colombia, telework has a strong legal framework that includes guidelines and legal procedures both for the public and private sector.¹⁹ Telework in Colombia is regulated through Law 1221 of 2008. The law offers a clear definition in Article 2: "Telework is a form of work which consists of the performance of remunerated activities or provision of services to

13 Huuhtanen, P. (1997). *The Health and Safety Issues for Teleworkers in the European Union*. European Foundation. https://pendientedemigracion.ucm.es/info/seas/estres_lab/informes/Informe%20europeo%20Health%20&%20Safety%20Issues%20for%20Teleworkers.pdf

14 Tremblay, D., Paquet, R., & Najem, E. (2006). Telework: A way to balance work and family or an increase in work-family conflict? *Canadian Journal of Communication*, 31(3). www.cjc-online.ca/index.php/journal/article/view/1721/1840

15 Ibid.

16 Di Martino, V., & Wirth, L. (1990). Telework: A new way of working and living. *International Labour Review*, 129(5). www.oit.org/public/english/support/itcom/downloads/pdf/distance.pdf

17 Illegems, V., & Verbeke, A. (2004). Telework: What Does It Mean for Management? *Long Range Planning*, 37(4). https://www.researchgate.net/publication/222695036_Telework_What_Does_It_Mean_for_Management

18 Luckerson, V. (2012, 17 July). Work From Home and You Might Miss a Raise. *TIME Magazine*. <https://business.time.com/2012/07/17/work-from-home-and-you-might-miss-a-raise-2>

19 www.teletrabajo.gov.co

third parties using information and communication technologies (ICT) for contact between the worker and the company, without requiring the physical presence of the worker in a specific workplace.”²⁰ In Chile, the government modified the Labour Code through Law No. 19.759 in 2001 with the aim of incorporating new labour contract requirements for alternative forms of work such as telework.²¹

There are also some regional initiatives regarding telework. The Economic Commission for Latin America and the Caribbean (ECLAC) contributes to the implementation of the Millennium Development Goals by pursuing a series of short-term action plans with concrete qualitative and quantitative goals.²² In the first Regional Action Plan on the Information Society in Latin America and the Caribbean (eLAC2007), 13 working groups were created with regional experts from various sectors to research and develop joint initiatives related to specific eLAC goals. One is the Working Group on Telework, which is coordinated by Argentina and now bases its work on the Digital Agenda for Latin America and the Caribbean (eLAC2018) that was adopted during the Fifth Ministerial Conference on the Information Society in Latin America and the Caribbean in 2015.²³ The working group has been working on issues such as the regulation of telework in the public and private sectors, and on exchanging good practices. In 2008, the working group presented a study on legislation and norms related to telework in the region.²⁴

Panama can also learn from international organisations that are working on the issue of telework, such as the Sectoral Policies Department in the International Labour Organization, which has organised events such as the Global Dialogue Forum on the Challenges and Opportunities of Teleworking for Workers and Employers in the ICTS and Financial Services Sectors.²⁵ The United Nations Conference on Trade and

Development (UNCTAD)²⁶ offer its state members technical assistance and cooperation to research, design and implement policies related to its work – in this case, telework is related to its work on e-commerce.²⁷

We believe that our country can benefit from these initiatives as a first step. While the government has an important role to play, companies also have an obligation to develop good-practice guidelines before offering telework as an option.

Action steps

The following are advocacy priorities for civil society:

- The Ministry of Labour and Social Welfare has to create a working group on telework or establish a commission in charge of the sector. As a first step it should conduct a survey that allows for the collection of reliable data about the actual occurrence of this form of work in Panama.
- It is necessary to develop a working definition of telework that allows regulators to determine what constitutes telework so that a proper legal framework can be developed. This legal framework should establish clear rights and obligations, as well as regulations related to safety and health at work, reasonable working hours, provisions for maternity leave, and sanctions for those companies that do not comply with the regulations.
- Companies need to develop programmes and policies that allow them to establish reasonable working conditions. It is important to establish appropriate work arrangements (such as practical work objectives, duties and schedules, consideration of technology needs, etc.). Policies regarding job promotion and training also have to be taken into account.
- Any telework arrangement should take into account the family conflicts that this form of work can generate, and all policies should be gender-fair and include provisions for people with disabilities.
- Panama has to take into account and learn from the experiences of other countries both regionally and globally and use those regulations as a basis and example to develop domestic law. Panama also needs to engage with global organisations such as the ILO and UNCTAD on how to develop appropriate legislation.

20 Ley 1221 de 2008. www.mintic.gov.co/portal/604/articles-3703_documento.pdf

21 Morales Varas, G., & Romanik Foncea, K. (2011). *Una mirada a la figura del teletrabajo*. Dirección del Trabajo. https://estudios.sernam.cl/documentos/?eMjEYOTQ1Nw==Informe_de_Actualidad_Laboral_Nº1_-_Una_mirada_a_la_figura_del_teletrabajo

22 Peres, W., & Hilbert, M. (2010). *Information Societies in Latin America and the Caribbean: Development of Technologies and Technologies for Development*. Santiago: ECLAC. www.cepal.org/publicaciones/xml/3/43803/Libro_Cepal_98.pdf

23 Quinta Conferencia Ministerial sobre la Sociedad de la Información de América Latina y el Caribe. (2015). *Agenda Digital para América Latina y el Caribe*. repositorio.cepal.org/bitstream/handle/11362/38886/51500758_es.pdf?sequence=1&isAllowed=5

24 Boiarov, S. (2008). *Meta 5 eLAC2007: Informe sobre legislación y normativa vinculada al teletrabajo en América Latina y el Caribe*. Documento de Grupo de Trabajo eLAC2007. www.cepal.org/socinfo/noticias/noticias/2/32222/GdT_eLAC_meta_5.pdf

25 www.ilo.org/sector/activities/sectoral-meetings/WCMS_477666/lang--en/index.htm

26 UNCTAD. (2012). *A Guide to UNCTAD Technical Cooperation*. United Nations. www.unctad.org/en/PublicationsLibrary/dom20092rev1_en.pdf

27 UNCTAD. (2002, 17 November). Opportunities rising for women in e-commerce (press release). www.unctad.org/en/pages/PressReleaseArchive.aspx?ReferenceDocId=2927

PERU

GIVING A VOICE TO INDIGENOUS PEOPLE



KEYWORDS: indigenous population, culture, language

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Introduction

The Peruvian state recognises and protects the right to cultural identity as one of the fundamental rights established by the constitution. In this way it recognises the cultural diversity of citizens cohabiting in its territory.

Language is a cultural artefact, since it not only enables a community or people to communicate with each other, but is also a vehicle for culture, traditions and worldviews. The use of the language and the recognition of its value are then fundamental for exercising the right to identity, and the right to be in a diverse country.

The linguistic reality of Peru is extremely diverse: there are 47 indigenous or native languages which are spoken by 4,045,713 people, or 14.76% of the Peruvian population.¹ However, according to Gerardo García, a language specialist at the Department of Indigenous Languages of the Ministry of Culture,² “three are in danger because they are not transmitted to children, and 18 are in critical danger because they are only spoken by older adults.” This situation is exacerbated by racism and discrimination in Peruvian society, which is evidenced by research showing, for example, that the groups believed to be most vulnerable to racist attacks are indigenous groups (63% of respondents felt this way),³ and that the rights to cultural identity of peasant and indigenous communities are not being respected (42% of respondents felt

this way).⁴ This discrimination is supported by the misconception that there is a hierarchical relationship between languages, with some having a higher status than others.

The fact that most of the services offered by public or private institutions are not multilingual or are only multilingual in a very limited way impacts negatively on an already adverse context, perpetuating structural social exclusion through linguistic discrimination. The above situation poses challenges when it comes to the protection of and respect for the cultural identity of individuals.

Political and social background

The Peruvian government has signed most of the international human rights treaties and is a member state of the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, Peru has not signed the optional protocol to the covenant of 2013.⁵

In 1993 the Peruvian Congress approved Convention 169 of the International Labour Organization (ILO) on Indigenous and Tribal Peoples in Independent Countries.⁶ This international legal instrument obligates signatory states to undertake to develop policies and actions to protect the group rights of indigenous peoples. This includes consulting these groups on matters important to them, the development of their cultural identity, and bilingual education, among others. However, in Peru, these measures were just on paper and did not result in concrete actions.

In 2009 a conflict erupted between indigenous organisations and the Peruvian government, motivated by a series of regulatory measures indirectly affecting their territorial rights and their right to be

1 INEI. (2009). Resultados definitivos de las comunidades indígenas - Censos Nacionales 2007: XI de población y VI de vivienda.

2 Interview conducted for this report. According to the Ministry of Culture, over the last four centuries at least 35 languages have disappeared. See: centroderecursos.cultura.pe/es/FAQ/%C2%BFcu%C3%A1ntas-lenguas-ind%C3%ADgenas-se-hablan-en-el-per%C3%BA

3 According to a 2014 poll conducted by Ipsos Peru. See: elcomercio.pe/lima/ciudad/90-considera-que-si-hay-racismo-peru-noticia-1716249

4 Universidad ESAN. (2013). Encuesta para medir la opinión de la población peruana en relación con los derechos humanos. Ministerio de Justicia y Derechos Humanos. observatorioderechoshumanos.minjus.gob.pe/jmla25/index.php/publicaciones/cat_view/14-publicaciones/178-minjus/223-encuesta-nacional-en-materia-de-derechos-humanos

5 indicators.ohchr.org/

6 www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

consulted, in violation of the 1993 ILO convention. This triggered a confrontation – called the *Baguazo* – that left 33 people dead, including civilians and police.⁷

The *Baguazo* marked a milestone in the political and public agenda, as it called into question the way the government dealt with and respected the rights of indigenous peoples. Since then it has become a priority to implement ILO Convention 169 through legislative development, such as the enactment of Law No. 29735, which regulates the use, preservation, development, recovery, promotion and dissemination of indigenous languages in Peru. This resulted in a significant step towards the positive recognition of linguistic diversity by the Peruvian state.

Making indigenous languages visible

The promotion of a citizenship that recognises, respects and engages in a dialogue with people of different cultures, languages and worldviews without stigma or discrimination is one of the biggest challenges that faces the state and society as a whole. While this is a complex question and involves a long-term process to solve, it is clear there is a need to generate initiatives that question and highlight cultural and linguistic diversity.

According to Agustín Panizo,⁸ the director of the Department of Indigenous Languages of the Ministry of Culture, the *Baguazo* was the result of a long history of struggle by indigenous peoples' organisations that had been fighting for their cultural rights and trying to bring about social change.

Indigenous organisations have launched different advocacy initiatives; however, many of these have been limited due to low budgets, weak political representation, and a society where linguistic discrimination persists.

In recent years there have been a number of specific initiatives using information and communications technologies (ICTs) that aim to make the linguistic diversity of Peru visible globally.

The first is a public sector initiative called “Mapa Sonoro Estadístico de las Lenguas Indígenas u Originarias”⁹ (Statistical Sound Map of Indigenous Languages) which was launched in 2015. This is a virtual platform that allows the user to get a bird's eye view of the linguistic reality in Peru using a map which allows you to find information about

which people speak the country's 47 indigenous languages and how these languages sound. This tool is complemented by information on the number of speakers of these languages, and includes contact details for interpreters or translators certified by the Ministry of Culture.

Panizo said that the collection of information had been difficult, especially developing the audio component: “It took over a year to find the audio of indigenous languages for the sound map and they even had to ask foreign researchers and academics for audio from field work conducted in Peru.”

The platform aims to reach a diverse audience including school students who have the need to know about or interest in linguistic diversity, and public service managers, among others, who need to hire interpreters for a job. The platform also helps public servants make decisions based on the cultural diversity in their areas of intervention. In this way it becomes a tool for public management.

However, the platform needs to be promoted more. The use of Mapa Sonoro has not been very substantial: it has only received 5,000 visits since 11 March 2015 when it was launched.

Radio Ucumara¹⁰ is part of the Amazon Institute of Social Promotion (IPSA) of the Vicariate of Iquitos. It broadcasts from Nauta, within the buffer zone of the Pacaya-Samiria National Reserve, where the Kukama indigenous people live. The station promotes local culture, including the ancestral wisdom of the people, their understanding of socio-environmental problems, and their reflections on life and their relationship with nature. The work with the memory of communities is critical to Radio Ucumara as this allows people to understand the indigenous situation from the perspective of indigenous people.

In 2012 the station began a project called “Memory and Revitalisation of the Kukama Language” that seeks to respond to the problem of identity and social and racial exclusion that Kukama people in Nauta deal with. Its strategy targets two generations: the elderly, who speak the Kukama language, and children, whose mother tongue is Spanish. According to Leonardo Torres, the director of Radio Ucumara, to let Kukama die as a language is to let part of their culture and worldview die. As part of the project, they decided to make a music video involving local children. However, getting children to participate was the first hurdle, because the children did not want to sing in Kukama. The result was that those who appear in the video are the children of radio staff.¹¹

7 larepublica.pe/politica/5305-baguazo-radiografia-de-un-conflicto-sin-culpables-en-su-sexto-aniversario

8 Interview conducted for this report.

9 www.mapasonoro.cultura.pe

10 radio-ucumara.blogspot.pe

11 Leonardo Torres, director of Radio Ucumara.

Kumbarikiria, a video filmed with the support of the organisation Create Your Voice,¹² shows Kukama boys and girls overcoming fear to speak and sing in their ancestral language, learning to understand their grandparents and mixing traditional and modern rhythms. The song tells the story of a buzzard – a bird that is despised – and therefore is a good metaphor for the Kukama language. This video not only attracted the interest of local children but has received much attention at the local, regional, national and international level. The video has been viewed more than half a million times¹³ and generated a series of media reports.¹⁴ In addition, the video encouraged children to attend a Kukama school, created visibility for the radio station, and sparked interest in the Kukama language among the general public.

Conclusions

As the Protocol of San Salvador states, the right to participate in cultural and artistic life “includes the right to act freely, to choose your identity, to express yourself in your own language, and to develop and share your knowledge and cultural expressions.”¹⁵

In this regard, before considering how successful the initiatives that were promoted by civil society and the state have been in strengthening the protection of this right, it should be noted that there is a need for structural changes,¹⁶ processes and actions to guarantee the protected rights (for example, intercultural perspectives need to be included in public policies).

It is clear that both the sound map of indigenous languages and the *Kumbarikiria* video aim to create awareness and recognition of linguistic diversity

among the general public. This awareness is educational for people who do not realise the extent of linguistic diversity in the country. The sound map also has the potential to be a useful tool for public services.¹⁷

In both these cases the internet was used as a practical tool to create this awareness and visibility of indigenous languages and to encourage the public to value and protect the country’s cultural heritage.

Moreover, these initiatives help to create a favourable social context for linguistically diverse communities, which in turn has a positive knock-on effect on their welfare as citizens.

The sound map and the video are effective tools for visibility. However, they end up being very limited if they do not lead to the creation of spaces in which processes of dialogue and mutual recognition occur. There is then the challenge of developing more inclusive strategies in which speakers of indigenous languages are spokespersons and partners in these strategies; if not, the *Mapa Sonoro* will remain a repository of information that is infrequently consulted and *Kumbarikiria* only an emotional video to watch and share – and the goal of recovering and valuing our country’s languages will not be reached.

Action steps

The following action steps are suggested for Peru:

- Develop a communication strategy to broaden the use of the *Mapa Sonoro* by the general public, civil servants and schools. It is equally important to promote the participation of indigenous communities in the *Mapa Sonoro*.
- Support non-governmental initiatives such as *Kumbarikiria* through funding and skills sharing.
- In particular, it is extremely important that the state increase the budget for promoting initiatives like the ones discussed above. They encourage the positive recognition of cultural and linguistic diversity as a way to combat stigma and existing linguistic discrimination.

12 createyourvoice.org

13 The video is on YouTube and various other platforms, including news sites. The following four sites have a combined total of 500,000 visits (the latter is the “official” site and the least visited of all): https://www.youtube.com/watch?v=O3C-18Nf_Aw, <https://www.youtube.com/watch?v=owTwO58qTNk>, <https://www.youtube.com/watch?v=xovO57uePo>, <https://www.youtube.com/watch?v=Fx4UFVuO7II>

14 For example, Montgomery, D. (2015, 1 July). What Amazon River rap sounds like. *Washington Post*. <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/07/01/what-does-amazon-river-see-also-https://www.youtube.com/watch?v=8nQ8HaOxbDc> www.univision.com/noticias/noticias-de-latinoamerica/kumbarikira-la-cancion-con-la-que-ninos-de-peru-buscan-rescatar-la-lengua-kukama, www.actualidadambiental.pe/?p=19824, larepublica.pe/21-09-2014/al-rescate-de-la-lengua-kukama,

15 Secretaría Ejecutiva para el Desarrollo Integral. (2013). *Indicadores de Progreso para Medición de Derechos Contemplados en el Protocolo de San Salvador. (Segundo Agrupamiento de derechos)*.

16 Such as the Prior Consultation Law and the Law on Indigenous Languages.

17 It should be noted that the 2017 National Census will be the first to incorporate an ethno-linguistic variable.

PHILIPPINES

HEALTH INFORMATION EXCHANGE: A TECHNOLOGY-DRIVEN APPROACH TO HEALTH PROMOTION



KEYWORDS: **health**

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Introduction

The duty to ensure the right to health lies primarily with the state – and information and communications technologies (ICTs) offer an effective way to enable this right. In the Philippines, the government has established the Philippine Health Information Exchange (PHIE),¹ which enables the exchange of patient information between healthcare providers and facilities. It is aligned with the National eHealth Vision,² which aims to promote access to healthcare services and health information to create a more responsive health system.

Despite its purported benefits, the PHIE is not without its critics. Among the issues raised are its sustainability and supposed incompatibility with data privacy. Its failure to address data ownership and the government's ability to host the system have also been questioned.

Right to health and the internet

Despite significant improvements in recent years, the Philippine healthcare system remains plagued with problems that affect its effectiveness: lack of healthcare personnel, inadequacy of health facilities, and inaccessibility of healthcare services.³ While the country welcomes at least 20,000 new health professionals every year,⁴ the healthcare worker-to-patient ratio is far from ideal, owing to the migration of healthcare workers abroad in search of better opportunities. Hospital beds are

insufficient given the total patient population.⁵ Worse, 60% of hospitals are privately owned and operated.⁶ In 2013, the average cost of treatment in a private facility was five times higher than that of its public counterpart.

The Philippines formally linked to the internet backbone in 1994. Today, despite having one of the slowest (yet quite expensive) connections in the world,⁷ the internet is surprisingly popular in the country – 46% of the population are considered active internet users, with annual growth pegged at 7%.⁸ These past four years alone, internet access increased by over 500%.⁹ Filipinos spend an average of 5.2 hours online every day (3.2 hours, when using a mobile device).¹⁰ By law, internet access is considered a mere value-added service that is largely unregulated.¹¹ This is attributed mainly to limited state resources and capacity, and the regulatory capture by two dominant market players that own most of the domestic internet infrastructure, and dictate the cost and quality of internet connectivity.¹²

The interdependence of health and technology has long been established. The technological evolution has allowed the digital processing of health information, bringing substantial changes in the

1 www.dost.gov.ph/knowledge-resources/news/44-2015-news/668-moa-signing-for-dost-s-phil-health-info-exchange

2 Department of Health. (2013). Philippine eHealth Strategic Framework and Plan 2013-2017. www.uhmis.doh.gov.ph/downloads/forms/229-philippines-ehealth-strategic-framework-and-plan-2013-2017.html

3 Bernal, B. (2013, 22 July). #SONA2013: The State of Public Healthcare in the Philippines. *Rappler*. www.rappler.com/nation/special-coverage/sona/2013/34446-public-healthcare-philippines

4 Geronimo, J. (2014, 13 February). Where are the health workers? *Rappler*. www.rappler.com/nation/50267-health-workforce-crisis

5 There were 1,800 public and private hospitals in the country with a total bed capacity of 77,000 patients in 2014, and the total population was almost 100 million. Source: Dagoooc, E. M. (2014, 5 September). PHL needs to address hospital bed shortage. *The Freeman*. www.philstar.com/cebu-business/2014/09/05/1365613/phl-needs-address-hospital-bed-shortage

6 Herrera, M. E., Roman, F., & Alarilla, M. C. (2010). *Overview of the health sector reform in the Philippines and possible opportunities for public-private partnerships*. Asian Institute of Management. www.aim.edu/files/download/131

7 Gonzalez, Y. (2015, 19 May). PH Internet 2nd slowest in Asia, one of the most expensive. *Inquirer.technology.inquirer.net/42293/ph-internet-2nd-slowest-in-asia-one-of-the-most-expensive*

8 Kemp, S. (2016, 27 January). Digital in 2016. *We Are Social*. wearesocial.com/uk/special-reports/digital-in-2016

9 Revensencio, J. (2015, 5 April). Philippines: A Digital Lifestyle Capital in the Making? *The World Post*. www.huffingtonpost.com/jonharezencio/philippines-a-digital-lif_1_b_7199924.html

10 Kemp, S. (2016, 27 January). Op. cit.

11 Sec. 3 (h) of Republic Act 7925 defines a value-added service provider as "an entity which, relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers."

12 Mirandilla-Santos, M. G. (2016). *Philippine Broadband: A Policy Brief*. www.investphilippines.info/arangkada/wp-content/uploads/2016/02/BROADBAND-POLICY-BRIEF-as-printed.pdf

healthcare sector.¹³ Electronic medical records (EMRs) now make it possible to generate large datasets¹⁴ that help medical practitioners give more accurate diagnoses and treatments.¹⁵ Data collection has also improved, while minimising errors and inconsistencies.¹⁶ The internet, in particular, now allows instant sharing of medical information among health service providers,¹⁷ and encourages patient participation in healthcare by making research easier.¹⁸

For the Philippine government, the implementation of telemedicine in underserved and vulnerable communities and the mobile reporting of health data¹⁹ are but a few of its recent technology-driven health projects. Information networks have been established to provide more effective healthcare, and promote medical training, education and research.²⁰ The collection of health information is no longer seen as a mere bureaucratic activity,²¹ with the government now recognising the advantages of an efficient health information system.

Nonetheless, problems still beset the systems currently in place. Paper-based data recording and the hierarchical flow of reporting lead to delays in the submission of reports, which, in turn, exposes data to errors and mishandling, and degrades its quality and usability. Optimal use of health information is still rare, with many records ending up unused and archived. Meanwhile, issues like data manipulation by healthcare workers, system compatibility between agencies, and data portability also persist.

Policy and political background

The Philippines is a signatory to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²² Its 1987 constitution makes it state policy to protect and promote the right to health,²³ including the adoption of a comprehensive approach to health development,²⁴ the development of skills and capacity, and research.²⁵ This is reiterated in various statutes such as the Responsible Parenthood and Reproductive Health Act,²⁶ the National Health Insurance Act,²⁷ and the Rare Diseases Act.²⁸

Innovative government programmes have ushered in dramatic improvements in the health sector.²⁹ The construction of specialist hospitals³⁰ and the implementation of a conditional cash transfer (CCT) programme³¹ are two oft-cited examples.³² Health-related laws have also played an integral role. The recent Aquino regime, for instance, recognised public health as a key measure of good governance³³ and pushed for the reproductive health law. The Health Department's budget was also increased to afford medical facility upgrades and the construction of health clinics.³⁴

13 Marquez, P. (2012, 16 July). Health information systems in developing countries: Star Wars or reality? *World Bank*. worldbank.org/health/health-information-systems-in-developing-countries-star-wars-or-reality; see also: World Bank. (2014). *Strategic issues and reform agenda: Georgia Public Expenditure Review, Volume 1*. documents.worldbank.org/curated/en/779561468275119198/Strategic-issues-and-reform-agenda

14 Carces, S. (2013). Electronic health records: Beyond the digitization of medical files. *Clinics*, 68(8), 1077-1078. www.ncbi.nlm.nih.gov/pmc/articles/PMC3752637

15 The Possible Team. (2015, 10 March). Digitizing healthcare: Why having an electronic medical record matters. *Possible*. www.possiblehealth.org/blog/electronic-medical-record

16 Ibid.

17 Ibid.

18 Carces, S. (2013). Op. cit.

19 Using the Health Emergency Management Staff's Surveillance in Post Extreme Emergencies and Disaster (SPEED) system. www.wpro.who.int/philippines/areas/emergencies_disasters/continuation_eha_page/en/

20 Department of Health. (2013). Op. cit.

21 Marcelo, A., & Cañero, J. (2010). Health Information Systems. *Acta Medica Philippina*, 44(4). www.actamedicaphilippina.com.ph/sites/default/files/fulltexts/vol44no4-25-29-HealthInformationSystems.indd.pdf

22 The country signed the treaty on 16 December 1966 and ratified it on 7 June 1974.

23 Art. II, §15.

24 Art. XIII, §11.

25 Art. XIII, §12.

26 An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health, Rep. Act No. 10354 (21 December 2012).

27 An Act Amending Republic Act No. 7875, Otherwise Known as The "National Health Insurance Act Of 1995", as Amended, and for Other Purposes, Rep. Act 10606 (19 June 2013).

28 An Act Promulgating a Comprehensive Policy in Addressing the Needs of Persons with Rare Disease, Republic Act No. 10747 (3 March 2016).

29 McKittrick, D. (2009, 4 August). Cory Aquino: President of the Philippines who brought democracy to the islands. *Independent*. www.independent.co.uk/news/obituaries/cory-aquino-president-of-the-philippines-who-brought-democracy-to-the-islands-1766970.html

30 Samonte, J. (2015, 24 February). Infrastructures built during Marcos' time. *Hoppler*. www.hoppler.com.ph/blog/design-and-architecture/infrastructures-built-during-marcos-time

31 CCT, also known as the Pantawid Pamilyang Pilipino Program (4Ps), is a human development strategy of the national government to help the poorest of the poor improve their health and nutrition and the education of children aged 0-18 by giving them conditional cash grants. www.gov.ph/programs/conditional-cash-transfer

32 Department of Social Welfare and Development. (2009). Conditional Cash Transfer (CCT) Philippines - Improving the human capital of the poor (Pantawid Pamilyang Pilipino Program or 4Ps). unpan1.un.org/intradoc/groups/public/documents/ungc/unpano40549.pdf

33 senate.gov.ph/press_release/2009/1128_aquino1.asp

34 Rappler.com (2015, December 22). Aquino signs P3,002-trillion national budget for 2016. *Rappler*. www.rappler.com/nation/116749-aquino-signs-national-budget-2016

Unfortunately, the present administration seems too preoccupied with its war on crime, particularly the illegal drug trade.³⁵ While it has acknowledged the urgency of providing health facilities and subsidies to the poor, public health does not appear to be a major concern, least of all when it comes to the rehabilitation of drug addicts.³⁶

The Information Exchange System

The PHIE subscribes to the vision of having comprehensive but secure access to health information that will result in improved decision making in patient care.³⁷ The PHIE includes decision making in safeguards for individual privacy.³⁸ It recognises the need for a nationwide system of identifying patients, particularly those with highly communicable diseases and special health conditions. It uses a protected platform that allows electronic access and exchange of health data between healthcare providers, health information organisations, and government agencies.³⁹ The standardisation of data formats, codes, and terminologies ensures interoperability. Finally, it avoids repetitive data collection, improves data quality, monitors the efficiency of data flow, and reduces operational costs.⁴⁰

How it works

A patient's consultation with a healthcare provider is the locus of data collection. When registering with the facility, the patient is informed of the PHIE and asked to agree to participate.⁴¹ During processing, information is recorded as an EMR and sent to the PHIE, where it becomes available to all participating healthcare providers. The patient's consent form contains, among others: (a) an opt-out clause, (b) a list of information to be gathered, (c) the date and

time, (d) contact information, and (e) a provision on the protection of identity. The EMR is constantly updated to ensure accuracy. An amendment may be requested, subject to certain protocols.

When information on communicable diseases is recorded, health authorities are immediately notified. If necessary, a healthcare provider will refer a patient to another provider more capable of addressing his or her medical needs.

Key actors

To facilitate its implementation, a tripartite agreement was reached between the Department of Science and Technology (DOST), the Department of Health (DOH), and the Philippine Health Insurance Corporation (PHIC).⁴²

They were joined by the Commission on Higher Education (CHED) and the University of the Philippines – Manila, with the five institutions making up the core implementation team.⁴³ They are expected to provide overall direction, technical guidance, and the resources necessary to maintain the system. Coordination with other stakeholders is mandatory to ensure continuous development, quality assurance, and an effective monitoring and evaluation system. The team also reviews and approves all requirements for the PHIE's operations, and provides capacity-building activities. The PHIC, in particular, was tasked to replicate its database, in order to serve as the PHIE's baseline database.

There is also a National eHealth Governance Steering Committee, which is co-chaired by the DOH and DOST. It is expected to harmonise and advance the implementation and development of e-health applications and services in the country through the Technical Working Group (TWG) on eHealth and the eHealth Program Management Office (PMO).⁴⁴ It also provides, among others, direction and guidance for the finalisation and implementation of the Philippine eHealth Strategic Framework Plan.⁴⁵ Meanwhile, the TWG has three specialised sub-committees – Privacy Experts, Standards Experts, and Risk Management and IT Experts – which provide tactical input on the specific subjects they specialise in.⁴⁶ Through these groups, civil society,

35 Diaz, J. (2016, 21 August). Duterte cuts health budget by P31 B. *Philippine Star*. www.philstar.com/headlines/2016/08/21/1615704/duterte-cuts-health-budget-p31-b

36 Cerda, J. (2016, 12 May). Duterte's transition team bares 8-point economic plan. *Philippine Star*. www.philstar.com/headlines/2016/05/12/1582504/dutertes-transition-team-bares-8-point-economic-plan; see also: Ansis, J. (2016, 12 February). What is your presidential candidate's platform of government? *CNN Philippines*. www.cnnphilippines.com/news/2016/02/12/presidential-candidates-platform-of-government-elections.html

37 Philippine Health Insurance Corporation. (2015). National eHealth Program Briefer.

38 Department of Health, Department of Science and Technology and Philippine Health Insurance Corporation. (2016). Joint Administrative Order No. 2016-001. www.ehealth.doh.gov.ph/index.php/transparency/annual-accomplishment-report/fiscal-year-2015/104-jointao2016001

39 Ibid.

40 Philippine Health Insurance Corporation. (2015). eHealth – PHIE (Public) 03092015.

41 Department of Health, Department of Science and Technology and Philippine Health Insurance Corporation. (2016). Op. cit.

42 Ibid.

43 Ibid.

44 Department of Health and Department of Science and Technology. (2013). Joint DOH-DOST Department Memorandum No. 2013-0200. www.ehealth.doh.gov.ph/index.php/component/jdownloads/summary/4-department-memorandum/9-joint-doh-dost-dm-2013-0200-creation-of-joint-doh-dost-national-governance-steering-committee-and-technical-working-group-on-ehealth

45 Ibid.

46 Department of Health, Department of Science and Technology and Philippine Health Insurance Corporation. (2016). Op. cit.

academia and the private sector contribute towards the development of regulations and standards that guide the PHIE. The eHealth PMO, on the other hand, provides the overall management of the planning and implementation of the PHIE and ensures continuous engagement and collaboration between the proponents.⁴⁷

Finally, healthcare providers, software developers, and EMR and health information service providers are expected to: (a) comply with the requirements and operational mechanisms of the PHIE; (b) ensure the integrity, security and confidentiality of data; (c) report issues, concerns, and/or problems; and (d) provide inputs to further improve the system.⁴⁸ Participating healthcare providers, in particular, must exercise a range of functions, including: (a) limiting the use of the system to treatment and care coordination; (b) securing the patient's consent to participation in the system; (c) correcting or editing information in the system; and (d) providing patients with information regarding PHIE protocols and their rights as information owners.⁴⁹

Issues and concerns

Several issues have been raised in the course of the PHIE's development:⁵⁰

- **Possible data privacy violations:** The system requires the PHIC to process its members' health information for purposes outside its primary mandate. It currently does not seek consent for purposes such as research or data sharing. PHIE proponents argue, however, that the PHIC's participation is consistent with its declared principles⁵¹ and functions.⁵² The Corporation recognises the need to align with other government health programmes and the overall policy direction of the government regarding health services, while adapting to emerging trends. At any rate, the PHIE requires that consent be obtained from patients prior to the processing of their health information.
- **Data custodianship and accountability:** For some, ownership over information processed by the PHIE and accountability in the event of data loss or breach are grave concerns. They point to the PHIE being a non-legal entity as enabling the evasion of potential liabilities. The ownership of health data is a point of debate among PHIE supporters. However, the status of data ownership beyond the PHIE's lifetime has already been clarified – provided the data used is made anonymous or aggregated, it may be stored and used for public health purposes. Accountability is also ensured given the joint responsibility of the agencies in the system's operations, including data security. The criminal prosecution of individuals in the event of a breach is always possible when warranted. The PHIE's lack of legal personality has also been dismissed as a non-issue since the PHIC and participating healthcare providers ultimately bear the burden of obtaining patients' consent, as required by law.
- **Government hosting capacity:** With DOST already providing multiple services to other government agencies, its ability (and to a lesser extent, the PHIC's) to take on the weight of hosting a major project like the PHIE has been called into question. It is worth noting, however, that providing physical and technical security measures to other government institutions forms part of the department's primary mandate. It is therefore logical that it be asked to provide hosting service to the PHIE. In any event, there has yet to be an analysis of the DOST's hosting capacity *vis-à-vis* the PHIE.
- **Sustainability:** The tripartite agreement central to PHIE operations is effective only for three years, raising doubts as regards the system's longevity. News of the current administration substantially reducing the state's budget for health⁵³ only served to heighten fears. A major shift in state priorities – one that veers away from health and social welfare – is certain to impact on the system and its future. Proponents disagree and point out that the PHIE is a long-term programme whose lifetime can always be extended through contract renewal. Distress over a potential shift in state policy, however, has been more difficult to quell.

47 Ibid.

48 Ibid.

49 Ibid.

50 Philippine Health Insurance Corporation. (2015). Primer and Potential Issues of the PHIE and Comments re: Privacy Guidelines.

51 An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose, Rep. Act No. 7875, § 2, (10 February 2004).

52 An Act Amending Republic Act No. 7875, Otherwise Known as the "National Health Insurance Act Of 1995", as Amended, and for Other Purposes, Rep. Act 10606, § 16, (19 June 2013).

53 Diaz, J. (2016, 21 August). Op. cit.

Conclusion

The internet and information technology have become indispensable to public and private actors seeking to uphold and promote the right to health and other ESCRs. Nonetheless, sans appropriate safeguards and proper planning, their potential to inhibit the realisation or full enjoyment of these rights is also ever present.

With the PHIE, the Philippine government is firmly on track towards achieving its primary objective and the realisation of its e-health aspirations. However, it would do well to maintain its commitment by securing the necessary resources required by the system. It should also install security protocols and infrastructure against possible malfunctions and security breaches and resolve all lingering issues if it is to bring itself closer towards affording Filipinos the full enjoyment of their right to health.

For those advocating for the PHIE, they must remain vigilant and ensure the evolution of the system into a more effective and secure data exchange mechanism.

Action steps

On that note, the following recommendations are made to ensure the responsible implementation of the PHIE:

- The system must undergo gradual implementation. The current pace and approach must be sustained to ensure that all necessary components are in place, significantly decreasing the risk of unwarranted exposure of sensitive health information in the event of loss or a breach.
- The technical and managerial capacity of the different implementing agencies must be enhanced.
- Clear organisational structures and guidelines for an efficient implementation of the system must be developed and constantly updated.
- For proponents and implementers alike, there should be greater responsibility geared towards the proper balancing of all human rights involved (e.g. health, information and privacy).

POLAND

E-GOVERNMENT IN THE WELFARE STATE: HUMAN RIGHTS IMPLICATIONS OF THE DIGITALISATION OF SOCIAL POLICY IN POLAND



KEYWORDS: e-government, e-health, social assistance

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Introduction

For many years the Polish authorities have been developing large-scale IT projects, and digitising various areas of public administration. These activities were part of realising the e-government concept in Poland. In broader terms, e-government means the public sector's use of information and communications technologies (ICTs) with the aim of improving information and service delivery, encouraging citizen participation in the decision-making process, and making government more accountable, transparent and effective.¹

One of the many sectors where big digital projects were carried out was welfare policy. In Poland – as in many countries – this area is associated with numerous problems (described below). There was an assumption that new technologies would have a favourable effect on the availability of certain services and help to improve the functioning of the administration dealing with social policy. However, there are many concerns as to whether the practical implementation of e-government could achieve those aims.

Below we will present two examples of the e-government project conducted by the Polish Ministry of Family, Labour and Social Policy (*Ministerstwo Rodziny Pracy i Polityki Społecznej*, MRPiPS). These cases will help to describe the relations between social rights (the right to social assistance and right to work) with the sphere of e-government (which includes both online and offline tools). In addition, we observe that through processing personal information, these systems show the interdependence and interrelation between socioeconomic rights and the rights to privacy and data protection.

Policy background: E-government and social policy

The development of e-government in Poland meets many barriers. It is worth noting that Poles – compared to other Europeans – use e-services less. This is especially noticeable in the area of social assistance (10 times less usage).² This is due to many factors. Polish citizens still prefer to take care of administrative matters by visiting offices. Statistics indicate that the most important reasons for not using e-services³ in Poland were (among others) the concerns about protection and security of personal data (6%), lack of knowledge and skills (4%), the problem with the e-signature (2%), and limitations associated with access to websites (1%).⁴

Other issues affecting the use of e-government solutions are bad management, inadequate use of European Union funds, and corruption.⁵ These last two are the core of the political dispute related to the concept of e-government in Poland.

The digitalisation of social policy was designed to be one of the important solutions to many problems that appear in this area. It is beyond this report to describe them precisely. However, we will try to signal those which are the most serious and set the discussion in this area.

One of them is the growing group of people living in extreme poverty.⁶ The issue of poverty is unfortunately not accompanied by effective and commonly accessible forms of assistance and social security. What is also alarming is the small number of people who are granted assistance – at least 40% of extremely poor people do not receive the financial assistance to which they are entitled

2 Ibid., 121.

3 In this case understood as submitting completed forms using websites of public authorities.

4 Eurostat. (2015). *Reasons for not submitting completed forms to public authorities' websites*. www.ec.europa.eu/eurostat/web/products-datasets/-/isoc_ciegi_rtx

5 Popiolek, M. (2013). E-government in Poland – selected issues. *Journal of Education Culture and Society*, 2, 402; Ministry of Administration and Digitization. (2012). *Państwo 2.0. Nowy standard dla e-administracji*, 63-64.

6 The Polish Committee of the European Anti-Poverty Network. (2016). *Position concerning the implementation of ICESCR in Poland*. www.tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/POL/INT_CESCR_ICO_POL_23032_E.doc

1 Śledziewska, K., Levai, A., & Zięba, D. (2016). Use of E-Government in Poland in Comparison to Other European Union Member States. *Information Systems in Management*, 5(1), 120.

(due to lack of competencies, knowledge and administrative problems). Social welfare institutions are also underfunded and function in bad organisational conditions. There are also numerous problems connected with the labour market and employment policy: the growing number of people unemployed for a long time and the low share of women in the labour market. For many years Polish authorities also undertook insufficient activities as regards family policy.

Human rights standards

In the context of our two cases we focused on human rights such as the right to social assistance, the right to work, freedom from discrimination and the right to data protection. All of these rights are included in the Polish constitution and various international agreements to which Poland is a party. It is also worth noting that each of these rights is accompanied by a series of specific guarantees stated in statutory laws.⁷

Poland is a state-party of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 9 of the ICESCR establishes the right to social security and social insurance. Meanwhile, Article 6 Section 1 obliges governments to fully execute the right of a human to work, i.e. through ensuring programmes of technical and vocational consulting and training. The realisation of these two rights should be done progressively while using the maximum of available resources. For measuring the level of fulfilment of obligations relating to these rights, criteria like availability, adequacy or affordability should be taken into account.⁸

When performing in practice the right to work and right to social assistance, states also abide by the principle of non-discrimination (which has a status of core obligation).⁹ The ICESCR allows the application of differential treatment as long as such measures lead to an improvement of an unwanted situation, are of a temporary nature, and are consistent with the principle of necessity and proportionality. It is also worth mentioning that according to the ICESCR standards, the rules determining who can obtain certain forms of assistance

should be justified, proportionate and transparent. Limitations of access to such resources should be based on precise legal provisions and grounds that are reasonable and subject to due process.¹⁰

The Emp@thy project

The Emp@thy (in Polish *Emp@tia*) project was one of the major IT projects carried out by the MRPiPS.¹¹ The project started in 2009, and was completed in 2014. The implementation of new IT tools required amendments to the legislation on social assistance – especially in the context of the collection and processing of personal data.

The main objective of this project was to improve the social assistance administration by introducing new technological solutions. It was designed primarily to speed up decisions by officials, unify administrative standards, and ultimately increase the availability of social assistance services. The project also provided more reliable and accurate information about citizens benefiting from the support. Another goal was associated with the rationalisation of the management of public funds – computerisation is expected to bring significant savings in handling the administrative burden.¹²

Digitalisation of social assistance in Poland consisted of a series of activities involving products of various types (both online and offline). Among them were:

- Central database of beneficiaries – the database collecting information on citizens benefiting from social support and the members of their families. Information from the central register is used to verify the data of people applying for family benefits, alimony funds or social assistance.
- Integration platform – a tool for data exchange between public databases, e.g. social insurance, labour offices, tax offices. Thanks to this tool, when applying for social assistance, citizens do not have to obtain various certificates from other administration offices. The data are verified through an online system. This system is also used to detect welfare fraud through analysing data and tracking any inconsistencies.

7 For example, Act on Personal Data Protection (1997), Act on the Promotion of Employment (2004), Anti-Discrimination Act (2010).

8 Committee on Economic, Social and Cultural Rights. (2008). General Comment No. 19: The right to social security (art. 9), E/C.12/GC/19, para. 10-27. tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f%20GC%2f19&Lang=en

9 Ibid., para. 59; Committee on Economic, Social and Cultural Rights. (2006). *General comment No. 18: The right to work*, E/C.12/GC/18, para. 31. tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en

10 Committee on Economic, Social and Cultural Rights. (2008). Op. cit., para. 24.

11 General information about the project is available at: www.empatia.mrpips.gov.pl

12 MRPiPS. (2014). *Brochure about Empathy project – Czym jest empatia*.

- Analysis and reporting platform – knowledge base of the entire system. It allows the collection of statistical information from the entire area of social security. The platform is designed to help make strategic decisions regarding the distribution of funds allocated for assistance to the communities where it is needed. Another possibility is to detect abuses by people attempting to obtain services in an unauthorised manner.
- Information and service portal or simply Emp@thy portal – consists of two sections, one for citizens and the other for officials. The first one is primarily to provide information on the welfare system (the amount of benefits, the rules for granting them, the addresses to local offices). Another feature is the ability to submit an application for social assistance benefits via the web (e-form). The office will also notify citizens of their decision online. To submit an online application, citizens should log in using an e-signature or via the ePUAP platform.¹³ The second section of the portal is aimed at government officials. For example, it allows them to generate statistical data (such as the types of social services most popular in a specific area and demographic data about citizens receiving assistance) and contains information about the interpretation of the rules of the welfare system.

When the project was finally put into use it caused quite a controversy. A series of media articles critical of the project came out in March 2014. They described the project as “an Internet portal for the homeless”.¹⁴ It was argued that the government had spent a huge amount of money on a useless IT solution. Many of these reports, unfortunately, duplicated the harmful stereotypes about the poor and their digital exclusion. Speaking out in the media, even social workers indicated that the requests submitted via the internet might be treated as suspicious, because poor people are assumed not to have access to new technologies.

Implementation of Emp@thy also caused a reaction from public institutions. The Supreme Audit

Office (*Najwyższa Izba Kontroli*, NIK) noted a number of irregularities during the development of the projects’ functions (related to the management of public funds and the fulfilment of the goals).¹⁵ The project was also under investigation by the Central Anti-Corruption Bureau.¹⁶

In addition to these problems, various objections strictly related to human rights appeared. From the perspective of the right to social assistance, digitalisation was developed to ensure citizens better information on available services, improve contact with the administration, and increase accessibility of benefits. Unfortunately, the project hardly meets all these objectives.

The Emp@thy portal provides information about welfare benefits in a very unapproachable and bureaucratic manner. Very often it simply duplicates legislative language. Unfortunately, the portal does not allow people to ask questions and contact the administration directly. The data also show limited interest among portal users.¹⁷ As of November 2015 there were over 468,000 visits to the portal, but in 47% of the cases, users only went to the main page and did not use other functionalities. According to research, 70% of people receiving help through local social assistance offices know about the Emp@thy portal, but 62% of them could not indicate what sort of information or services they could receive through this tool.¹⁸

Other problems are related to the e-form, which allows the submission of a request for assistance through the internet. There are a number of restrictions in this area, related mostly to the authentication procedure. To submit an application this way, citizens need a specific e-profile on the ePUAP platform. However, only a small percentage of Poles use any of these authentication tools. The portal also only allows the submission of limited types of applications, which do not cover the whole spectrum of the social policy area. As a result, citizens submitted a very small number of applications through the portal (in 2014-2016 only 683).¹⁹

¹³ The Electronic Platform for Public Administration Services (ePUAP) was designed and developed to allow public institutions to make their electronic services available to the public. More about the platform is available here: www.epuap.gov.pl

¹⁴ See, for example, Zieliński, R. (2014, 25 March). Powstał portal dla osób bezdomnych. Skorzystają te, które mają laptopy, *Dziennik Gazeta Prawna*. www.gazetaprawna.pl/artykuly/786190,portal-dla-osob-bezdomnych-z-laptopami.html

¹⁵ NIK. (2016). *Realizacja i wdrażanie projektu emp@tia – platforma komunikacyjna obszaru zabezpieczenia społecznego*. www.nik.gov.pl/plik/id,11506,vp,13856.pdf

¹⁶ Skłodowski, T. (2015, 11 May). “Empatia” pod lupą CBA i prokuratury. Nieprawidłowości przy przetargu na portal Ministerstwa Pracy? *Polska Times*. www.polskatimes.pl/artykul/3857455,empatia-pod-lupa-cba-i-prokuratury-nieprawidlowosci-przy-przetargu-na-portal-ministerstwa-pracy,id,t.html

¹⁷ NIK. (2016). Op. cit., 73.

¹⁸ Ibid., 76.

¹⁹ Ibid., 74.

Moreover, the audit by NIK showed that officials do not have the appropriate skills and knowledge about the new IT system. One of the most disturbing examples of this situation was that some local social assistance offices had not opened or did not even know about the special mailbox where e-forms from citizens would appear.²⁰

On the other hand, there is a potential risk of digital exclusion while developing e-government services, especially when the administration starts to rely more on e-forms than direct contact with the officials. This is not yet an issue in Poland. However, we could easily imagine that it could be one, affecting those groups who do not have access to the internet or do not have the skills to use the internet. In Poland these are vulnerable groups such as elderly people, people from poorer regions or less educated people.²¹

To some extent, one of the Emp@thy project's successes might be the online verification of citizens' data from other offices. This mechanism makes the application procedure easier for citizens, and allows them to save some time (e.g. they are not obliged to show various certificates from other offices). Inspections also show that only 16% of local offices still do not use this possibility, so it has become rather popular.²² However, in this area objections may appear related to the right to privacy. Concerns regarding the processing of personal data have arisen over the Emp@thy project.²³ These were mainly due to the creation of new public databases that centralised a lot of personal data – including sensitive data. The new central registers contain information not only about the people receiving benefits, but also about members of their families (more than four million people). The retention period was set for a very long time – ten years after the person stopped receiving benefits.

Other reservations were related to the rather lax rules for the exchange of information on citizens between social assistance and other authorities (e.g. tax offices). While such a mechanism is beneficial to citizens, the exchange rules should be precise and guarantee the confidentiality and

safety of personal data. But what is even more disturbing is that NIK's inspection demonstrated that for more than one year the databases created under the Emp@thy project functioned without any legal grounds.²⁴ The right to data protection and the right to privacy can only be limited under specific conditions. The lack of legal grounds for the public administration to process private data is a clear violation of these standards.

Another issue is the welfare fraud tracking component. In accordance with international standards of protection of the right to social assistance, rules for granting and limiting social assistance should be as transparent as possible. The automatic detection of fraud may undermine this principle. Official documentation explains that welfare fraud detection is primarily used to "search for non-compliance".²⁵ But what non-compliance means was not described precisely. When the system generates information about inconsistencies, the official who is responsible for the case should clarify the matter. A problem may, however, arise when on the basis of an inconsistency being detected, the benefit is withdrawn without precise explanation. When so little is known about how the system works, the possibility to challenge the information about non-compliance can be difficult. However, to better assess the risks associated with the automatic fraud-detection system, more information should be collected on the practical use of this mechanism. Inspections conducted by NIK only show that this mechanism was hardly used to detect any kind of fraud (0.7% of all local social assistance offices indicate the practical usefulness of this tool).²⁶ So there may be legitimate doubts as to whether this mechanism is necessary in the daily work of social assistance offices.

Profiling the unemployed

In May 2014, the Polish government introduced a reform of the functioning of local labour offices (these are public entities responsible for providing benefits and active labour market programmes for the unemployed).²⁷ One of its significant elements was to implement profiling of assistance for the unemployed. This was an example of the new

20 Ibid., 76-77.

21 Ministry of Infrastructure and Development. (2014). Digital Poland for 2014-2020, 10. www.polskacyfrowa.gov.pl/media/10410/POPC_eng_1632015.pdf

22 NIK. (2016). Op. cit., 68.

23 They were raised by the Inspector General of Data Protection and the Panoptykon Foundation. For more information see Panoptykon Foundation. (2014, 13 October). *Pomoc (czy policja) społeczna?* <https://panoptykon.org/wiadomosc/pomoc-czy-policja-spoleczna>

24 NIK. (2016). Op. cit., 54.

25 MRPiPS. (2014). *Powykonawcza dokumentacja podsystemu CBB – architektura logiczna, architektura techniczna oraz wymagania funkcjonalne i niefunkcjonalne.*

26 NIK. (2016). Op. cit., 84.

27 MRPiPS. (2013). *Uzasadnienie projektu ustawy o zmianie ustawy o promocji zatrudnienia i instrumentach rynku pracy.* www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?nr=1949

generation of services which lead to greater individualisation through the use of new IT solutions. The MRPIPS also specified that the main reasons for the introduction of profiling were to counteract unemployment more effectively, increase the efficiency of labour offices and guarantee public services of a higher quality.

In practice, profiling involves dividing all unemployed people into three categories, taking into account their individual characteristics. Assignment to a given category determines the type of assistance that a particular person can receive (e.g. job placement, vocational training, apprenticeship, activation allowance). Categorisation is based on data collected during a computer-based interview with the unemployed person, which follows a guide prepared by the MRPIPS for its employees. A total of 24 different dimensions (like gender, age, education, disability, degree of disability) are reported in the electronic database and each of them is assigned a score (0 to 8). An algorithm determines the result of the profiling process. Labour office employees can change the results of the categorisation in exceptional circumstances. Unemployed people can only request to have their profile done again if their life situation has changed since the profile was established.²⁸

During the legislative process regarding the reform of labour offices and throughout the implementation process, profiling was criticised from a human rights perspective. The Inspector General for Personal Data Protection (*Generalny Inspektor Ochrony Danych Osobowych*, GIODO)²⁹ and the Ombudsman³⁰ filed reservations as to the compliance of the new solutions with the Polish constitution. It has been stated that the regulations on profiling are not precise enough. Also, there have been claims as to the lack of adequate guarantees for the protection of the right of privacy and personal data (i.e. there being no transparent, legally regulated procedure enabling a change of the assigned profile). Critical arguments on profiling have also

been presented by Panoptikon Foundation.³¹ The organisation raised arguments related to the protection of privacy, the non-discrimination principle and the right to work and social protection.

Research conducted in 2015 (after new provisions came into force) has shown many problems related to the profiling mechanism.³² First, it was proven that there is a systematic problem with transparency. The existing law fails to specify what the determination of categories looks like. The criteria according to which a certain profile of assistance is attributed to a person remain unknown to the unemployed throughout the whole process of profiling. They remain unclear even to the staff involved in this process. The unemployed are also deprived of the right to obtain information about the logic behind profiling; in particular they cannot verify how certain features affected the profile of assistance that was attributed to them. Lack of transparency in this area violates international standards of providing public services.

Another problem is related to the principle of equal treatment. Allocation to a given profile is determined on the basis of features such as age, gender or disability. In practice it may be the case that the situation of specific unemployed individuals is differentiated on the basis of the criteria listed above, which may be considered discriminatory practice. In the context of the ICESCR this would mean a breach of one of the minimum core obligations related to the right to work. The research concludes that the Polish system may actually result in limiting access to specified active labour market programmes for disadvantaged groups among the unemployed. In such cases, profiling does not fulfil the role of a measure of affirmative action accounting for specific needs of people who have difficulties finding employment.

Equally problematic is the automatisisation of the decision-making process in the profiling mechanism. The creators of the new system proceeded from the assumption that a computer will work better than a human and that decisions taken in an automated manner will be more objective.

28 MRPIPS. (2014). *Profilowanie pomocy dla osób bezrobotnych. Podręcznik dla pracowników powiatowych urzędów pracy*. www.panoptikon.org/sites/default/files/podrecznik_profilowania.pdf

29 GIODO. (2013). *Uwagi dotyczące projektu nowelizacji ustawy o promocji zatrudnienia i instrumentach rynku pracy z dnia 23 października 2013*. www.legislacja.rcl.gov.pl/docs/2/171820/171829/171833/dokument89898.pdf

30 The Ombudsman. (2014). *Wystąpienie Rzecznika Praw Obywatelskich w sprawie profilowania osób bezrobotnych z dnia 19 listopada 2014*.

31 Panoptikon Foundation. (2014). *Stanowisko dotyczące projektu rozporządzenia o profilowaniu pomocy dla bezrobotnego z dnia 15 stycznia 2014 roku*. www.panoptikon.org/sites/default/files/panoptikon_profilowanie_bezrobotnych_rozporzadzenie_opinia_15.01.14.pdf

32 Niklas, J., Sztandar-Sztanderska, K., & Szymilewicz, K. (2015). *Profiling the Unemployed in Poland: Social and Political Implications of Algorithmic Decision Making*. Warsaw: Panoptikon Foundation. www.panoptikon.org/sites/default/files/leadimage-biblioteka/panoptikon_profiling_report_final.pdf

However, the mechanism used in Polish labour offices is based on simplifications that do not take into account the very wide variety of complex life situations. For example, the range of causes of unemployment does not include homelessness or a stay in prison, which keep many people out of employment. The rules that regulate profiling are very rigid and do not allow for an unemployed person to actively participate in the process. For instance, the law does not provide a possibility to demand that the profile be changed (with the exception being if their life situation has changed after profiling) or re-verified in the case when the unemployed person him/herself thinks that they qualify for another profile or that an error has been made in the course of its determination.

According to official statements, each profile was described as equally good in terms of the assistance received. However, the way that the profiling was designed shows that people assigned to profile II can get a much wider range of support than those that fall under profile I, and especially those that fall under profile III.³³ For example, people assigned to the third category can take part in special programmes. But in practice, they are very difficult to organise, which is confirmed by statistics: 38% of local labour offices do not offer any programme addressed to the third profile.

The documentation also shows that labour office staff are instructed to treat unemployed people according to the principle of “limited trust”. This applies particularly to people qualifying for profile III. They are officially described as lacking motivation and having a “calm” nature. Documents indicate to staff that the unemployed can manipulate and deceive officials just to be assigned to the desired category. This logic of “suspicion” translates into, for example, a lack of legal guarantees to access information on the processed data and the results generated by the computer.

Conclusions

According to the Polish constitution and international law, human rights standards should play a crucial role in creating and developing public policies. However, digitalisation and implementation of e-government in the welfare sector show that the prospect of fundamental rights is virtually unnoticeable or plays a minor role. Analysis of strategic documents and laws on implementing new tools shows that these documents focus primarily on financial, technical and administrative issues. Somewhere in the background there is the question of access to specific forms of support (which may be a reference to the general standards of social rights). Each new piece of legislation which introduced new public IT systems was also assessed from a data protection perspective by GIODO. However, the recommendations of this institution are rarely taken into account in the legislative process.

The examples that we described above show that widespread digitalisation in public administration could behave like a “double-edged sword” for human rights. IT tools could help in better realising the right to social protection or the right to work. Well-designed web pages with transparent and clear information about certain welfare benefits could help people to gather knowledge about possible assistance. Submitting applications for benefits via the internet saves time and reduces what is sometimes unpleasant contact with the authorities. These measures have a potential empowerment impact – they could make it easier to navigate the bureaucratic system, and in the end could positively affect the availability of social services. Unfortunately, in practice these good examples are reduced by the problems in developing, managing and maintaining the IT infrastructure.

On the other hand, digitalisation could limit certain human rights. Firstly, when public administration emphasises developing internet-based tools, this could lead to digital exclusion and discrimination. Secondly, there is a risk related to the automatization of the decision-making process (detecting welfare fraud or using profiling techniques for assigning support). This trend can lead to a decision-making process that is discriminatory and not transparent and which does not meet international human rights standards. Thirdly, digitalisation of certain public services can lead to a violation of the right to privacy and data protection. Creating new big databases and ways to process and analyse information should always

33 Profile I covers mainly active, young and mobile persons, having appropriate professional qualifications and interpersonal skills. Profile II typically includes persons who have certain professional skills, but unfortunately are redundant in the labour market, or worked for a very long time in one company. Profile III comprises persons with serious life problems or those who do not want to cooperate with the employment office. The guidelines suggest that the following people should be placed under this category: persons with disabilities, single women raising children, persons registering themselves only because of the need to obtain health insurance, or persons from small towns who are isolated from larger urban areas.

be consistent with the principles of necessity and proportionality. As we mentioned above, concerns related to data protection and safety rules are one of the biggest barriers for Poles to use more e-services. Reliable and clear data protection safeguards could definitely build more trust between citizens and authorities and encourage the use of more e-government products and services. The link between privacy and social services is a good example of how civil and political rights and ESCRs are indivisible, interdependent and interrelated.

Action steps

Based on our observations, we recommend the following steps:

At the national level

- The creation and implementation of a mechanism to evaluate public IT systems from the point of view of human rights. This mechanism should include both political and personal rights, as well as economic, social and cultural rights. Policy and legislation, as well as IT systems themselves – such as the use of algorithms – should be subject to this assessment.

- It is necessary to develop appropriate safeguards for the protection of individual rights in the context of information systems which support public services. The protection of personal data is not enough. In the era of automated decision making based on the processing of data we need a new approach to principles of transparency, due process and the place of the citizen in the whole process. Such a discussion could be carried out with the participation of public institutions, academia and civil society organisations.

At the international level

- The treaty bodies dealing with the protection of economic, social and cultural rights should be interested in the relationship between these rights and the internet and new technologies. In particular, the Committee on Economic, Social and Cultural Rights should conduct a day of general discussion on this subject, and at the end of this elaborate on the issue in a general comment. This document should take into account both the benefits and risks arising from the use of new technologies in social policies.



KEYWORDS: communities, access, culture, digital literacy

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Introduction

With the information and communications technology (ICT) sector accounting for 6% of the Romanian GDP in 2016, the country ranks fourth among 28 European Union (EU) countries with regard to the ICT sector's share of GDP.¹ However, according to the European Commission's annual Digital Economy and Society Index (DESI), Romania ranks among the last in the EU in online engagement, due to the poor integration of online services.² Has the internet levelled the playing field in the country? Has access to online spaces brought more fairness, resources and freedom to people? This report considers those left behind: Romania's digital immigrants who have a low level of digital literacy. In particular we focus on the Roma community.

Jenkins has noted that the interactive internet gives space for a participatory culture.³ Recent studies on Romanian people's digital literacy have indicated that while infrastructural access to smart devices has doubled since 2013,⁴ the quality of participation has not: the high DESI scores on connectivity for Romania are mainly due to social media use.⁵ The "digital turn"⁶ did not happen in every community. The rural, the poor, and the less

educated have little access to quality content and are less keen to participate in the process of shaping the internet. While looking at the darker side of the digital divide, we highlight initiatives aimed at bridging the gap between digital natives and digital immigrants. Can participatory culture of the few bring benefits for those left behind?

Political and policy background

Despite significant progress in fighting corruption and creating transparent public institutions, Romania is still one of the most corrupt European countries.⁷ Instead of punitive measures, experts recommend more transparency and mechanisms to prevent abuse.⁸ Transparency International's Corruption Perceptions Index ranked Romania 58th out of 168 countries in 2015.⁹

According to an Amnesty International report on Romania (2015-2016), "Roma continued to experience discrimination, forced evictions and other human rights violations. Following the release of the US Senate report on the CIA secret detention programme, a new investigation into Romania's co-operation was opened. In April, the UN Committee against Torture reviewed Romania for the first time in 18 years."¹⁰ Meanwhile, a new Strategy for the Inclusion of Romanian Citizens of Roma Ethnicity for 2015-2020 was adopted, highlighting infrastructural development, equal access to the labour market and education.¹¹

Roma communities are still discriminated against by the majority and living in striking conditions of poverty. According to a National Council for Combating Discrimination document sanctioning

1 European Commission. (2016). *Country Report Romania 2016*. ec.europa.eu/europe2020/pdf/csr2016/cr2016_romania_en.pdf

2 Ibid.

3 Jenkins, H. (2009). *Confronting the Challenges of Participatory Culture: Media Education for the 21st Century*. Cambridge MA and London: The MIT Press. https://mitpress.mit.edu/sites/default/files/titles/free_download/9780262513623_Confronting_the_Challenges.pdf

4 Bakó, R. K. (2016). Digital Transition: Children in a Multimodal World. *Acta Universitatis Sapientiae, Social Analysis*, 6(1), 145-154. https://www.researchgate.net/publication/307638942_Digital_Transition_Children_in_a_Multimodal_World

5 European Commission. (2016). Digital Single Market. Digital Economy and Society. Romania. <https://ec.europa.eu/digital-single-market/en/scoreboard/romania>

6 Westera, W. (2015). *The Digital Turn: How the Internet Transforms Our Existence*. www.thedigitalturn.co.uk/TheDigitalTurn.pdf

7 Societatea Academică din România. (2016). *Raportul anual de analiză și prognoză – România 2016*. sar.org.ro/raportul-anual-de-analiza-si-prognoza-romania-2016

8 Ibid.

9 Transparency International. (2015). *Indicele de percepție a corupției. România 2015*. https://www.transparency.org.ro/politici_si_studii/indici/ipc/2015/IPC2015_Prezentare_RO.pdf

10 Amnesty International (2016). *Annual Report: Romania 2015/2016*. <https://www.amnesty.org/en/countries/europe-and-central-asia/romania/report-romania>

11 Agenția Națională pentru Romi. (2014). *Strategia Guvernului României de incluziune a cetățenilor aparținând minorității rome pentru perioada 2014-2020*. www.anr.gov.ro/docs/Site2014/Strategie/Strategie_final_18-11-2014.pdf

an internet café for not letting Roma people in, 82% of the Romanian population consider Roma criminals, 70.7% would segregate them from the majority of the population, 41.1% would not accept them as neighbours, and 48.6% would limit Roma population growth.¹² Roma people are constantly ridiculed¹³ and stereotyped as criminals by the mainstream media: the most likely media report of a Roma person with a smartphone is that they stole it.¹⁴

Romania signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1968, and ratified it in 1976. In relation to the Roma people's status in Romania, Article 7 (just and favourable conditions of work), Article 11 (decent living conditions), Article 12 (physical/mental health) and Article 13 (proper education) have particular relevance.¹⁵ In its recommendations on the social exclusion and discrimination against the Roma, the Committee on Economic, Social and Cultural Rights has recommended¹⁶ that Romania:

- Collect disaggregated statistical data on the number of Roma living in the country and on their access to employment, social security, housing, health care and education, in order to improve their socioeconomic situation.
- Provide the Roma with personal documents, including birth certificates, which are necessary for the enjoyment of their rights.
- Address the problems faced by the Roma in accessing employment, social security, housing, health care and education.
- Address negative prejudices and stereotypes, which are among the underlying causes of the systemic discrimination and social exclusion experienced by the Roma.

Using the internet to bridge the economic, social and cultural divide

The national strategy for the socioeconomic inclusion of Roma people does not even contain the word “internet”. However, there are some initiatives aimed at bridging the digital divides between the connected and those left behind, such as the TechCamp (December 2011). The Romanian Ministry of Foreign Affairs, the US Embassy in Romania and the Romanian National Library organised a two-day workshop focused on NGOs helping disadvantaged groups through improved digital literacy.¹⁷ ICT experts and NGO representatives have mapped key areas of the digital divide that need attention and have planned a series of actions for bridging them:¹⁸

- How can we create an online platform for disabled persons focusing on employment opportunities?
- How do we engage with teachers to promote creativity and critical thinking in the education system (e.g., social media literacy skills)?
- How can we use new technologies to reduce the school dropout rate?
- How can we solve the lack of specialist IT teachers?
- How can we change the negative image of Roman people perpetuated in traditional and new media, including promoting good role models?
- How do we collect valid data on the Roma?
- How can we reach isolated communities (with no access to technology)?
- How to (prepare to) engage people in response to emergency situations (such as earthquakes and floods) and increase the efficiency of emergency responses.

We could retrieve no information on the implementation of these ideas. Current projects funded by the National Agency for the Roma Community – called “2016: The year of citizen participation and responsibility” – were mainly concerned with general educational issues in rural communities.¹⁹

12 Consiliul Național pentru Combaterea Discriminării. (2008). *Hotărârea nr. 180 din 18 februarie 2008*. nediscriminare.ro/uploads_ro/docManager/1386/180.pdf

13 Ceaușescu, V. (2016, 9 March). România, tot la coada Europei/Primum iar un raport cutremurător din partea “lunii civilizate”. *Cuvântul Libertății*. www.cvlpress.ro/09.03.2016/romania-tot-la-coada-europei-primim-iar-un-raport-cutremurator-din-partea-%E2%80%9Elunii-civilizate

14 Dan. (2011, 3 June). Un țigan cu telefonul descărcat, prins în timp ce încerca să fure curent dintr-un bar. *Times New Roman* (news satire site). www.timesnewroman.ro/26528

15 International Covenant on Economic, Social and Cultural Rights. www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

16 Committee on Economic, Social and Cultural Rights. (2014). Concluding Observations. E/C.12/ROU/CO/3-5. tbineternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/ROU/CO/3-5&Lang=En, pp. 3-4.

17 Storify.com (2011). *TechCamp Goes to Bucharest, Romania!* https://storify.com/techcampglobal/techcamp-goes-to-bucharest-romania

18 TechCamp Wiki. (n.d.). *TechCamp Bucharest Folder*. wiki.techcampglobal.org/index.php?title=TechCamp_Bucharest_Folder

19 Agenția Națională pentru Romi (2016). *Lista proiecte admise. „Anul Participării și Responsabilizării Cetățenilor III” 2016*. www.anr.gov.ro/docs/Site2016/Proiecte/Finantari2016/Sesiunea2/Lista%20proiecte%20admise%20Sesiunea%2011%202016.pdf

Meanwhile, an ongoing international research project – “The Untold Story: An Oral History of the Roma People in Romania” – is being conducted by the Babes-Bolyai University Cluj-Napoca in partnership with the University of Iceland, with funding from the governments of Iceland, Lichtenstein and Norway. It is aimed at recovering and reconstructing the histories of the Roma in Romania by collecting, preserving and interpreting their oral testimonies. As part of disseminating the research results, the project team plans to create a virtual museum in Romani, Romanian and English, build a database of testimonies, and develop educational materials. This is a good example of using ICTs for the benefit of a marginalised community.²⁰

How connected is Romania to the EU and to the world?

Statistical data for ICT access and use in Romania from 2015²¹ show a marked divide between urban and rural areas according to EU standards. While more than half of Romanian households had a computer at home, the percentage in rural areas was 61.9%, compared to 72.2% in urban areas. Overall, 61% of Romanians had internet access, but the percentage rises to 66.9% in urban areas. The report also states that 71.1% of Romanian people aged 16-74 had used a computer, with the percentage of men using a computer slightly higher than that of women: 72.1% versus 68.1%. If we look at the age groups, the most vulnerable category is the elderly: 73.9% of people aged 65-74 have never used a computer, compared to 8.2% for the 16-24 year olds and 29.4% for 45-54 year olds.

Roma people are the most disconnected group in Romania when it comes to benefitting from the advantages of the information society. According to a United Nations e-government survey, only 16.5% of the Roma population could use the internet.²² Meanwhile, another report states that 25% could neither read nor write.²³ Illiteracy in general,

and computer illiteracy in particular, are major obstacles in accessing the labour market for better paid and more stable jobs. The national strategy for implementing the EU digital agenda in Romania is focused on economic and cultural e-inclusion generally, and does not deal with the social marginalisation of the Roma community.²⁴

According to the DESI, when it comes to e-government performance, Romania is lagging behind Western European countries such as frontrunner Denmark, or former Communist countries that have been able to catch up with highly developed countries, such as Estonia (see Table 1).

The UN e-government survey confirms the statistics in Table 1: despite significant progress made in online service delivery, Romania belongs to the group of countries striving to catch up with the developed world, with an e-government development index (EGDI) of 0.5611 (on a scale of 0.0270 to 0.9193), ranking it 75th out of 193 countries.²⁵ The report states: “As a composite indicator, the EGDI is used to measure the readiness and the capacity of national administrations to use ICT to deliver public services.”²⁶

If we consider this result in a global context, it is fairly good, and above the world average score of 0.4922. If we look in more detail, however, the result is more nuanced. Romania was scored 0.4565 for online services (below the world average of 0.4623), 0.4533 for telecommunication infrastructure (above the world average of 0.3711), and achieved a significantly better result for the human capital component: 0.7736, above all regional and world averages (see Table 2). The online service component was evaluated through a global survey measuring online presence of national governmental organisations, whereas telecommunication infrastructure data were provided by the International Telecommunication Union (ITU). The human capital index was calculated based on data provided by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The data presented in Table 2 reflect Romanian governmental efforts to align itself with best practices regarding the use of ICTs for development. But to what extent can ICTs be put to work for development? The socioeconomic and cultural gap

20 EEA Grants. (2016, 20 September). Telling the Stories of Roma. eeagrants.org/News/2016/Telling-the-stories-of-Roma

21 Institutul Național de Statistică. (2015, 27 November). În anul 2015, ponderea gospodăriilor care au calculator acasă a fost de 61,9%, iar a celor care au acces la rețeaua de internet acasă a fost de 61,0%. *Comunicat de presă*, 295. www.insse.ro/cms/files/statistici/comunicate/com_anuale/tic/a15/tic_r2015.pdf

22 As compared to 54.08% for the overall population. United Nations. (2016). *United Nations e-Government Survey 2016: E-government in Support of Sustainable Development*. <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2016>

23 Neagu, G. (2012). *Șanse de acces la educație în societatea românească contemporană*. Iași: Editura Lumen.

24 Guvernul României. (2015). *Strategia Națională privind Agenda Digitală pentru România 2020*. www.ancom.org.ro/uploads/links_files/Strategia_nationala_privind_Agenda_Digitala_pentru_Romania_2020.pdf

25 United Nations. (2016). Op. cit.

26 Ibid.

TABLE 1.					
Romanian e-government performance assessment across EU policy priorities					
Scores for 2014		EU 28+*	Denmark	Estonia	Romania
User centricity	Overall scores	73	84	89	48
	Online availability	75	87	94	51
	Usability	80	85	90	43
	Ease of use	60	69	72	41
	Speed of use	56	66	73	36
Transparent government	Overall scores	51	65	77	19
	Service delivery	41	56	78	9
	Public organisations	60	51	88	37
	Personal data	52	89	67	11
Key enablers	Overall scores	50	82	91	12
	eID	63	100	100	48
	eDocuments	57	71	94	24
	Authentic sources	46	77	93	8
	eSafe	39	71	86	0
	Single sign-on	58	100	86	14
Benchmarks: Insufficient (0–25), Moderate (26–50), Fair (51–75), Good (76–100).					
* EU 28+ stands for the 28 EU countries plus Norway.					
Source: Table compiled based on data from: European Commission. (2015). <i>Romania. E-government state of play. Country Factsheets – eGovernment Benchmark Report 2015</i> . Brussels: Digital Single Market. Digital Economy and Society.					

TABLE 2.				
Regional e-government development index (EGDI) averages				
Region	EGDI	Online service component	Telecom infrastructure	Human capital component
Africa	0.2882	0.2567	0.1724	0.4355
Americas	0.5245	0.4959	0.3844	0.6933
Asia	0.5132	0.5120	0.3730	0.6545
Europe	0.7241	0.6926	0.6438	0.8360
Oceania	0.4154	0.2966	0.2599	0.6897
World	0.4922	0.4623	0.3711	0.6433
Source: United Nations. (2016). Op. cit.				

between the haves and have-nots is enormous. Disadvantaged groups like the Roma, the elderly, and those living in rural areas can hardly have their fundamental human rights to decent work, to proper living conditions and to education realised unless they are brought into the information society. An important part of social inclusion is the participation in global culture enabled by the internet.

Conclusions

Participation is the key enabler of advancing human rights in a democratic society. The EU gives

a strong normative framework for developing a participatory culture in its member states, both in offline and online contexts, but the implementation is the task of national and sub-national governmental entities, businesses and civil society organisations.

With the rise of the network society and the ubiquity of the internet, citizen participation can be raised to the next level. Are the economic and cultural dimensions enough to provide a participatory culture through the internet? We believe they are not. The political and the social dimensions are indispensable for building a fair and just

society. Political will and proportionate measures are necessary to bridge the digital gap, whereas social measures are necessary to bring marginalised groups back from the fringes of society. Should we leave the word “internet” out of a Roma inclusion strategy? We should not. Dire poverty and discrimination are indeed painful problems for marginalised communities – and need focused attention – but ICTs can empower those left behind, and open up possibilities for employment, for citizen involvement in the world of work, and simply for entertainment and fun. Should we give food first and then computers? Yes. Meanwhile, the condescending discourse of “helping them” should be replaced with dialogue involving all stakeholders in the process of bridging economic, social and digital divides.

Action steps

Action steps in Romania should include the following:

- Governmental and civil society organisations should be more active in providing digital literacy services for marginalised groups, such as the Roma and the elderly.
- Businesses should include a strong digital inclusion component in their corporate social responsibility programmes, targeted at digital immigrants and at Roma people in particular.
- Media representatives should raise the ethical standards of their discourse on marginalised groups, especially the Roma population.
- Good practices in the creative and enabling use of ICTs for marginalised groups should be encouraged generally.

RUSSIA

GENDER-BASED VIOLENCE AND THE REALISATION OF SOCIOECONOMIC RIGHTS



KEYWORDS: **gender, education, all rights**

SYSMU

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Introduction

At the beginning of July 2016 a Ukrainian journalist, Anastasiya Melnychenko, started a flashmob on Facebook: under the hashtag #янебоюсьсказати (#iamnotafraidtosay) thousands of women (mostly from the former Soviet Union) started sharing their experiences online about abuse, harassment and violence. Some of them even named their abusers. Action on such a scale devoted to the problem of violence against women has never happened in the post-Soviet space before.

Reactions in the Facebook comments varied: some supported the survivors who were brave enough to share their traumatic experience, but the backlash was strong. Journalists, psychologists, Orthodox Christian representatives and regular users suggested that these stories were made-up, hysterical, misandrist, or were “undermining traditional values”.

According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”¹ Yet the question needs to be asked: In a context where the rights and safety of women are not guaranteed, how can women be expected to realise their economic, social and cultural rights (ESCRs)? In other words, violence against women is one way of depriving them of the social, economic and cultural benefits and opportunities that a society offers.

As this report shows, gender-based violence in Russia is an everyday affair. It considers stories of gender-based violence in Russia that were posted online – highlighting the impact that violence against women has on the right to education in particular.

Gender-based violence and the policy vacuum

Russian society has always been patriarchal – before the 1917 Revolution, during the Soviet period, up until today. Unfortunately, after the “free” 1990s, a new, conservative change has been evident. For example, new anti-abortion measures have been introduced, that include a seven-day waiting period after consulting a clinic about an abortion, sometimes involving psychologists who make the experience more traumatic by telling women that the abortion is morally wrong. There have also been cases when Orthodox priests in small towns and villages lecture women on their depravity and immorality. Meanwhile, some schools are trying to implement separate sex education classes for boys and girls and legislation for sexual education in schools was last discussed in the press in 2014.

According to the Russian Labour Code (Article 253) and Government Regulation No. 162, there are 456 occupations in 38 branches of industry considered by the Russian authorities as too dangerous or harmful to women’s health (their reproductive health above all).² So basically a woman’s inability or lack of desire to have a child does not matter: a woman is first and foremost a mother. This state of affairs is not seen as discriminatory, because on a social level in Russia women are considered primarily mothers and caregivers.

After the release on 15 August 2016 of an official report by the Russian Justice Initiative on female genital mutilation (FGM)³ in Dagestan, one of Russia’s North Caucasus regions, one of the country’s Muslim officials stated that FGM does not harm a woman’s health, and its sole purpose is to calm a woman’s zeal in order to lower her sexuality – to lessen the amount of depravity on Earth.

In Russia there is no legislation against domestic violence; although sexual violation is a criminal offence in our country, proving to the police that you were raped is a deeply traumatising experience. Moreover, it would not be considered rape by most of the country’s population if you were in

² www.zakonrf.info/tk/253/

³ www.srji.org/resources/search/proizvodstvo-kalechashchikh-operatsiy-na-polovoykh-organakh-u-devochek-v-respublike-dagestan

¹ www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

a relationship with the abuser or even if you knew each other.

Up until recently the battering of a close relative was punished mostly with a fine or with labour. Moreover, battering and some forms of bodily injury were considered cases of private prosecution, which meant that the victim had to collect the evidence themselves, and then argue for themselves in court, whereas the abuser was provided with a lawyer. Fortunately, according to the latest version of the Federal Law No. 323-ФЗ (3 July 2016),⁴ the guilty person cannot simply be fined anymore, and is punished with labour, personal restraint, or imprisonment. Also, this offence was transferred to the group of publicly prosecuted cases, which means that after the victim's allegation the police have to investigate the case. The Russian Federation, however, is reluctant to both sign and ratify the Istanbul Convention⁵ against violence against women and domestic violence.

All this makes the general environment toxic and unsafe for women and girls. Cases of violence against women covered online serve as an example: when teenage girls were gang raped, and photos and videos of the deeds uploaded to the internet for everyone to see, the names of the victims and their faces were disclosed in the media. Yet general public opinion stayed in favour of the abusers, even after one of the victims attempted suicide.

Telling our stories online

When it comes to the discussion of feminism in Russian society, some people speak about “natural feminism”: they say women will not be content with just staying at home with kids or not getting an education. But we all know that the situation with gender-based (and especially domestic) violence in Russia is grave: every 40 minutes a woman in our country dies because of it. And until the very end some victims still think that the abuse is somehow their fault. Some girls in Russia, especially in the provinces, are still deprived of education – even at school level – while some women are deprived of money even if they work. There are parts of the country where women do not even know they have rights. In a social and political environment where victim blaming is a common phenomenon, and women are seen first of all as incubators for future soldiers, there are few places where women and girls not willing to comply with these views and demands can turn. Of course there are crisis centres, shelters (Russian ones are hard to get into),

hotlines, etc. But what if you think your problem is not serious enough for professional help? Or if you get rejected after trying to get support?

Since January 2008 many groups and public pages devoted to feminist and gender-equality issues have appeared on VK (VKontakte),⁶ the largest European online social networking service, which is especially popular with Russian-speaking users. On 10 February 2014, a public page called Shut Your Sexist Mouth Up (SYSMU)⁷ was founded. It has become the biggest feminist platform for Russian speakers online. The original idea was taken from the Everyday Sexism project,⁸ a collection of anonymous stories about sexism, misogyny and gender-based violence, such as abuse and rape.

It turned out that for Russians this was a much-needed project. In half a year the number of SYSMU subscribers reached 10,000. At the moment there are over 30,000 subscribers, and the number is growing daily (the number of new subscribers can sometimes be 150 people a day).

More than 12,000 anonymous stories on SYSMU talk about injustice, violence, abuse, women's empowerment, and a growing awareness among women regarding the need to protect themselves and those around them. The group administrators do not only collect the stories, but also provide psychological help if needed. Some girls and women ask for help themselves, others get it because the cases they describe are most disturbing: physical and psychological violence from relatives, teachers, friends or strangers. Sometimes abuse lasts for months and years, leads to the most unfortunate consequences when it comes to mental and physical health, and dominates the woman's life.

According to the project's statistics, the biggest source of sexist remarks, abusive behaviour and violence is family. The second most frequent experiences involve friends or acquaintances, or are the result of casual communications. The third most frequent experiences involve schools: you would be surprised by the amount of stereotypical remarks, and the number of teachers who find it acceptable to insult their students, especially girls. Instead of being the source of knowledge, school becomes an unpleasant experience. Formally, the right to education is being realised, but at the same time monstrously transformed into the daily and yearly history of humiliations based on stereotyped views about men and women.

4 ppt.ru/kodeks.phtml?kodeks=20&paper=116

5 www.coe.int/en/web/istanbul-convention/home

6 [https://en.wikipedia.org/wiki/VK_\(social_networking\)](https://en.wikipedia.org/wiki/VK_(social_networking))

7 https://vk.com/feminist_unicorn

8 everydaysexism.com

Barriers to accessing education

A lot of stories are devoted to cases where professors discourage young women, or even try to prevent them from matriculation or engaging in studies:

I'm a student in a medical institute. Recently, one of the professors started telling us that no woman can be a good doctor. According to her, a female doctor will always have sadistic inclinations, because, being objectively weak, she will try and regain her power by humiliating the patients who depend on her. And if you have to choose a doctor, you should always choose a man, he's more reliable.⁹

In 2012-2013 there was a scandal in Kazan, where an IT institute refused to accept girls, although some of them scored higher than boys during the entrance examinations. When the public prosecutor's office acknowledged these actions to be discriminating and illegal, the institute's governing body claimed that it aimed to turn the institution into an elite institution exclusively for male students.¹⁰

Preventing girls from accessing education starts much earlier, in school, when male teachers try to explicitly show sexual interest towards female students by commenting on their appearance, or when teachers say that physics or mathematics are not for girls. But not only teachers make it more difficult for girls to study. Some classmates do it too. And sometimes in the most violent ways. Girls in these situations are alone, without any support:

One of my classmates was often aggressive towards me: he called me a slut, choked me and hit me, suggested we have sex during prom, promised he would get me drunk and "fuck me well". I didn't know what to do, I couldn't change school, and my parents were telling me that he just liked me very much. There was no use complaining in school because he was a son of one of our teachers who just told me I was provoking him myself. I was so scared I bought myself a pepper spray and used it when he grabbed my arm and tried dragging me to a storeroom. Because of that I was dismissed from school for two months, and my parents transferred me to home education. This boy was not punished at all, he wasn't even told off.¹¹

The project also includes about 200 stories concerning what happened in different medical institutions: women get asked when they are going to get pregnant, and told that motherhood can be beneficial for a woman's health. It is hard to believe how many times, if they experience pain during a medical procedure, teenage girls are asked how they are going to give birth if this is painful for them. After telling a psychiatrist about abuse and violence, some girls and women are told this experience is positive because it means they are attractive to men.

Just recently a new ombudsman for children was appointed. Journalists found out she strongly supports the idea of telegony (a theory that a child can take the physical characteristics of the previous mate of the female parent).¹² She is also the head of a fund that promotes the idea that abortions are harmful for women, and that encourages different health clinics in Penza Oblast to carry out fewer abortions. The clinic that wins gets money, equipment and approval from the Ministry of Health.¹³ So basically the clinics that are financed by the state (and therefore by citizens' taxes) compete over who provides fewer services to those in need. As a result, women who are initially in a worse economic situation become victims of others' bean counters.

Conclusion

The political and social state of affairs in Russia is most unfortunate for women: new strict regulations, the public policy of the body, and biopolitics create an atmosphere that contradicts Russia's official declarations about progress, open-mindedness and unwillingness to discriminate against anyone. We can see that all kinds of women's rights are violated in various spheres of life, as well as a toughening of policy paired with the strengthening of religious fundamentalism. In this social and political environment the internet can become a safe space for women and girls. Anonymity and distance allow them to speak out freely, and to find information without being persecuted. But in order for it to become a source of empowerment, and not of hate speech, we need to create an environment that would allow women to speak without the fear of being abused. This is critical for women to openly be able to access their socioeconomic rights online.

9 www.femunicorn.com/story/13681

10 geekfeminism.ru/kazanski-it-lisei-ne-prinimaet-devochek

11 www.femunicorn.com/story/15502

12 [https://en.wikipedia.org/wiki/Telegony_\(pregnancy\)](https://en.wikipedia.org/wiki/Telegony_(pregnancy))

13 rus2web.ru/mneniya/fond-annyi-kuzneczovoj-zanimaetsya-reproduktivnyim-nasiliiem.html

Action steps

In this context, the following action steps are recommended for activists and policy makers:

- Provide safe spaces for women and girls online where they can communicate, share experiences and get support without their problems being brushed off as not serious enough.
- Pay attention to the information that women and girls share online. In this way a body of evidence can be developed of how women and girls are violated every day.
- Analyse this information in order to make policy proposals regarding socioeconomic rights that are more responsive to the realities women face in everyday life.
- Use social media to create online support for school girls who suffer bullying and threats at school, and who have to deal with teachers who make sexual advances towards them.
- Create legal and support resources for university-going women so that they know their rights and can act on them.
- Support feminist IT start-ups that help young women and girls – this both empowers women economically and offers support to a younger generation.

RWANDA

THE INTERNET AS AN ENABLER OF EMPLOYEE RIGHTS



KEYWORDS: labour, internet, worker's right

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Introduction

The internet is enabling the right to work in Rwanda – although there is still some way to go. In particular, it is being used as a platform allowing citizens to access information on job opportunities, personal work records, and policies and procedures in the workplace. With regards to the latter, civil servants see the state leading the way in terms of creating awareness of workers' rights.

In 2000, Rwanda set the goal of becoming a knowledge-based economy and committed to positioning itself as a globally competitive, diversified and balanced economy that is driven by information, knowledge and skills.¹ To achieve the goal, Rwanda's priorities were to build human capacity, establish institutional and legal frameworks and develop the relevant communications infrastructure. In 2014, when he was closing the Smart Rwanda Days² event, the president of Rwanda declared that the internet is needed as a public utility as much as water and electricity.³

Since then, the roll-out of fibre optic cable has resulted in most central and local government institutions being connected to high-speed broadband.⁴ To deal with "last mile" challenges, the roll-out of 4G LTE, which started in 2015, has reached more than 26 of the 30 district headquarters in Rwanda and is expected to cover up to 95% of the country by 2017.⁵ By July 2016, the number of active mobile phone subscribers had increased to 9,025,516 or 80% of the population, up from 70% in December 2014.⁶ Internet penetration in the country was at

33% by July 2016.⁷ An initiative that provides free Wi-Fi in public transport was launched in February 2016 with 487 buses being connected.⁸ This complements other existing free Wi-Fi access points offered in, for example, public spaces, hotels, restaurants and shopping centres.

Through interviews and an analysis of media reports, this report offers a preliminary assessment of the contribution that the internet makes to the improvement of working conditions in the public, private and civil society sectors in Rwanda.

Political, economic and policy context

Rwanda ratified the ICESCR on 16 April 1975.⁹ As far as workplace rights are concerned, Articles 6, 7 and 8 of the covenant are relevant, while Article 9, which deals with social security, is by implication worth considering.

In addition to this, the National Commission for Human Rights¹⁰ in Rwanda lists a number of legal instruments as relevant when talking about employees' rights. These include the African Charter on Human and Peoples' Rights¹¹ of 27 June 1981 as ratified by Law No. 10/1983 of 17 May 1983. Its article 15 stipulates that every individual shall have the right to employment under equitable and satisfactory conditions, and shall receive equal pay for equal work. Law No. 13/2009 of 27 May 2009 regulating labour in Rwanda stipulates workers' obligations and rights and determines working conditions. Public servants are governed by Law No. 86/2013 of 11 September 2013 establishing the general conditions for public service. Law No. 05/2015 of 30 March 2015 governs pension schemes and provides for workers' rights relating to pensions. Law No. 03/2015 of 2 March 2015 governs the organisation of community-based health insurance

1 MYICT. (2001). An Integrated ICT-led Socio-Economic Development Policy and Plan for Rwanda 2001-2005. www.myict.gov.rw/fileadmin/Documents/Rwanda_ICT_Policy_NICI_2005.pdf

2 www.smartwandadays.rw

3 smartwandadays.rw/spip.php?article27

4 MYICT. (2016). ICT Sector Profile - 2015. www.myict.gov.rw/fileadmin/Documents/ICT_Sector_Profile_2015/ICT_Sector_Profile_2015.pdf

5 ktrn.rw/4g-lte-coverage-map.html

6 RURA. (2016). Active mobile telephone subscriptions as of June 2016. www.rura.rw/fileadmin/docs/Monthly_telecom_subscribers_of_July_2016.pdf

7 RURA. (2016). Statistics and tariff information in telecom, media and postal service as of the second quarter 2016. www.rura.rw/fileadmin/docs/Monthly_telecom_subscribers_of_August_2016.pdf

8 Bizimungu, J. (2016, 20 February). Smart Kigali: 400 buses connected to 4G Internet. *New Times*. www.newtimes.co.rw/section/article/2016-02-20/197264

9 hrlibrary.umn.edu/research/ratification-rwanda.html

10 www.cndp.org.rw/index.php?id=188

11 www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf

schemes and provides for the rights relating to healthcare matters.¹²

In article 27 of Rwanda's constitution (2003, revised in 2015),¹³ the right of equal access to public services for all Rwandans is stipulated. The same constitution provides for the right to employment. This right includes the right to non-discrimination at work, the right to join trade unions, the employees' right to strike, and the right to a safe and clean working environment.

The Smart Rwanda 2020 Master Plan (SRMP),¹⁴ approved by the government on 3 November 2015, has a particular focus on digitising the economy through:

- Government digital transformation: A 24-hour self-service government, driven by a cashless and paperless economy.
- Broadband for all to be realised through a 4G roll-out programme and widespread smart device penetration.
- Digital literacy for all to transform Rwanda into a digitally literate nation, targeting all sectors, including local communities and civil servants.

As for the right to free choice of employment, article 30 of the constitution states that everyone has the right to free choice of employment and without any form of discrimination, and that everyone has the right to equal pay for equal work.¹⁵

The General Statutes for Public Service,¹⁶ under articles 48, 50, 77 and 123, state that public servants shall enjoy the same rights and freedoms as other citizens, the right of access to their personal administrative files, and the right to retirement. The government has an obligation to ensure protection of its employees against accidents and illnesses related to their profession. The employer is required to provide for the professional training of its workers.¹⁷

Improving workplace rights using the internet

For this report, nine people – five from the public sector and four from the private sector – were interviewed. Four among them were women. Their opinions, together with information from media reports, form the basis of our exploration.

The interviews suggested that the internet is an important enabler of a number of the rights related to work contained in the ICESCR. As one interviewee put it: “Boosting internet connectivity for all is one of the factors that are improving our rights, and making us agents capable of coping with information society challenges.”

Asked when employees first felt the impact of the internet in enabling these rights, one respondent – a civil servant – stated that this was already experienced when seeking information on recruitment processes. Rwanda's legal framework provides seekers of employment in public institutions with the right to access to information by requiring that public institutions advertise available vacancies both through online and radio channels. The interviewee admired how all civil servants are now recruited through the Rwanda civil service recruitment portal¹⁸ and, when recruited, civil servants have online access to their own employment information, which is held by the human resources office.

Since 2015, government staff have been able to access this information via the Rwanda employee self-service portal.¹⁹ This portal has information on organisational structures, an employee's recruitment and performance records, records of leave and absenteeism, information on resignations and retirement, payroll information, information on training and career planning, and tools that allow information management and reporting.

We asked interviewees how often they had access to the internet in the workplace. One civil servant said that most of the public sector administrations, including local government, but excluding “cells and villages” – the country's smallest administrative units – have local area networks. All employees working in these administrations have access to computers and most of them have their own smart devices such as tablets, smartphones and laptops.

As shown in CNN's short media report entitled “Take a ride on Rwanda's smart bus”,²⁰ the public is

12 National Commission for Human Rights. (2015). Annual Activity Report, July 2014–June 2015. www.cndp.org.rw/fileadmin/user_upload/Annual_Report_2014-2015.pdf

13 www.minijust.gov.rw/fileadmin/Law_and_Regulations/Official_Gazette_no_Special_of_24.12.2015_2__1_.pdf

14 MYICT. (2014). Smart Rwanda 2020 Master Plan. www.myict.gov.rw/fileadmin/Documents/Strategy/SMART_RWANDA_MASTER_PLAN_FINAL.pdf

15 www.minijust.gov.rw/fileadmin/Law_and_Regulations/Official_Gazette_no_Special_of_24.12.2015_2__1_.pdf

16 www.mifotra.gov.rw/fileadmin/user_upload/Laws/Sitati_nshya.pdf

17 www.mifotra.gov.rw/fileadmin/templates/downloads/NEW%20LABOUR%20LAW%20N13.2009%20OF%2027.5.2009.pdf

18 recruitment.mifotra.gov.rw

19 selfservice.mifotra.gov.rw

20 edition.cnn.com/videos/world/2016/05/23/marketplace-africa-wef-digital-transformation-spc-a.cnn

benefiting from internet hotspots that offer free Wi-Fi to commuters. Interviewees appreciated these initiatives and indicated that when they are on their way to the office or on their way back home, they are still able to finalise unfinished work that requires them to be online. For them, free Wi-Fi is also very important for conducting personal business and communication which is not allowed when at the office. High productivity is expected from the employee who is generally not allowed to use the internet for personal reasons during working hours. This includes using social media when this is not related to work duties.

All interviewees in the public sector recognised that the internet is crucial in their daily working life, given that much of what they do or need is online. The example of the Integrated Payroll and Personnel Information System (IPPIS) was given.²¹ Interviewees said that this has been very important in helping them to access key employment-related information and tools. This includes accessing information related to their salary and personal employment records, which became available in 2015. Staff are able to plan, record and monitor their performance, and follow up on their pension contributions and any other administrative information relating to their work.

Employees were also asked how the internet helps them to access services, such as banking and government services, in case they need them. They noted that given that some of these key services are now delivered online 24 hours a day, employees are able to easily access these services during lunch breaks or after hours without leaving their offices. They pointed out that before having these services available online, citizens used to have to make several trips to a physical office to follow up on applications. This often affected their work performance and had a negative impact on their relationship with their employers, but now they can easily follow the progress of their applications via the internet and using their mobile phones. Online services have reduced time spent accessing government services, and have improved the stability of the workforce when they are on duty in terms of person hours worked and their availability in the workplace.

Interviewees pointed out that all employees have access to all laws and documents on employment, which are published by the Ministry of Labour (MIFOTRA) on its website.²² They said that this helps them understand how to exercise their rights and to be aware of their responsibilities.

On the right to strike, interviewees confirmed that although they have that right they have never exercised it. According to the Trade Union Centre of Workers of Rwanda (CESTRAR),²³ workers are sometimes limited when it comes to the right to strike. Peaceful strikes are allowed, but only after all the methods of dispute resolution have failed.²⁴

The right of employees to appeal decisions made against them in the workplace has helped them combat injustice in the workplace. When we asked interviewees if they had ever used the right to appeal, some said they had exercised this right when defending their legitimate interests. Other respondents said they do not feel confident to report workplace ill-treatment. This was confirmed by Angelina Muganza, executive secretary of the Public Service Commission,²⁵ who criticised employees and job seekers who did not report cases of injustice because they had not bothered to find out about their rights.²⁶ On this issue, trade unions have helped employees to become aware of their rights and helped with mediation and legal procedures.²⁷

We also wanted to know about sexual harassment in the workplace, given that there are currently no legal provisions to prosecute offenders.²⁸ Interviewees felt that this was a phenomenon that was on the decline, but that when it occurs, the lack of legal recourse results in significant frustration.

Various initiatives are being put in place for employees' economic empowerment. In one interview, a secondary school teacher praised the Umwalimu savings and credit cooperative (Umwalimu SACCO),²⁹ established to empower Rwandan teachers economically and to contribute to the socio-economic development of the community in which they live.³⁰ Before the establishment of SACCO, the main concern was that, due to budgetary constraints, the economic needs of teachers would not be catered for, including a minimum wage advocated by

21 www.mifotra.gov.rw/index.php?id=206

22 www.mifotra.gov.rw/index.php?id=111

23 Brioni, B. (2007, 23 October). Spotlight interview with Eric Manzi (CESTRAR-Rwanda). *International Trade Union Confederation*. www.ituc-csi.org/spotlight-interview-with-eric?lang=en

24 www.mywage.org/rwanda/home/labour-law/trade-union-rights

25 www.psc.gov.rw/index.php?id=103

26 Shuti, J. (2013, 25 February). PSC urges employees to report injustice cases. *New Times*. www.newtimes.co.rw/section/article/2013-02-25/63286/

27 The Rwanda Focus. (2015, 31 March). Human and Labour Rights, Social Dialogue improve welfare of workers and productivity. www.focus.rw/wp/2015/03/31/human-and-labour-rights-social-dialogue-improve-welfare-of-workers-and-productivity

28 Kaitesi, M. (2013, 5 August). Transparency Rwanda wants sex based corruption criminalized. *New Times*. www.newtimes.co.rw/section/article/2013-08-05/68050/

29 www.umwalimusacco.co.rw

30 Rwahigi, M. (2015, 13 February). Celebrating Rwanda's "living heroes". *Hope Magazine*. hope-mag.com/index.php?com=news&option=read&ca=1&a=1880

international institutions. The head of the Umwalimu savings and credit cooperative confirmed that the scheme is contributing to teacher retention, employment stability, and effective curriculum instruction, and having multiple positive effects on community development by supporting small business collaboration and the development of joint ventures, and enabling motivated teachers to offer other services and skills to communities.³¹ Due to the internet, teachers' salaries now reach accounts faster due to improvements in the interbank funds transfer system by the National Bank of Rwanda (BNR). All transactions are now done online.³² In addition, SACCO's website provides downloadable forms for its clients.

An Affordable Housing Development Project has enabled state employees to move into decent modern housing units, even if they are employed at a low salary level.³³ The project targets employees earning low and medium monthly salaries but with secure and stable-enough jobs that allow them to repay mortgages.³⁴ The initiative ensures that the units have basic infrastructure, including landlines for internet access.

Conclusion

The internet is a platform that can enable the ESCRs of employees. In Rwanda, the internet helps employees know what their rights are, and to access work-related administrative information as well as online services. The internet also gives them easier access to trade unions and other support that is necessary for them to claim their rights.

However, apart from the limited technical capability of some users, the low levels of internet penetration and use as well as limited electric power in the country, especially in rural areas, are impacting on employees' full enjoyment of their rights.

It is also clear that having access to information on employee rights on the internet is just part of the solution to having those rights fulfilled. Other mechanisms need to be put in place to support the enactment of those rights, including support when workplace disputes arise.

Action steps

The following action steps are suggested for the public, private and civil society sectors:

- Scale up ICT connectivity and electric power infrastructure in rural areas so that they service the public sector and encourage growth in the private sector.
- Establish an intensive capacity-building programme to increase digital literacy for citizens in general and for employees in particular.
- Ensure that information on job opportunities is accessible online in all sectors. Create public information desks staffed with infomediaries that facilitate access to this online information for those who do not have access to the internet.
- Develop online recruitment processes for the private and civil society sectors.
- Use the internet to boost awareness of employees' rights, especially in the private sector. Besides providing online information on these rights, the internet can be used to create channels of open communication between employer and employee. In particular, an online programme for reporting sexual harassment in the workplace, and which can support victims of harassment, should be developed.
- The innovative use of the internet should be considered as a way of supporting financial schemes that supplement the income of employees, and support other socioeconomic development needs.

31 Umwalimu SACCO. (2014). Umwalimu SACCO Impact Assessment. www.umwalimusacco.co.rw/docs/UMWALIMU%20SACCO%20IMPACT%20SURVEY%20FINAL%20REPORT%202014.pdf

32 Hope Magazine. (2012, 13 March). UMWALIMU SACCO: Homegrown Initiative Changing Teachers' Welfare. *Hope Magazine*. www.hope-mag.com/index.php?com=news&option=read&ca=6&a=6

33 Centre for Affordable Housing Finance in Africa. (2016). Excerpt from Africa Housing Finance Yearbook 2016: Rwanda. www.housingfinanceafrica.org/country/rwanda ;

34 www.rha.gov.rw/uploads/media/Affordable_Housing_project.pdf

SENEGAL

THE ROLE OF THE INTERNET IN THE RIGHT TO ACCESS EDUCATION IN SENEGAL



KEYWORDS: **education**

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Introduction

Senegal's population is currently estimated at 14 million inhabitants. The average age is 22, meaning that the country's population is relatively young. According to a study by the National Agency for Statistics and Demography, "Children under 15 represent 42.1% of the overall population. This proportion is higher among boys (43.6%) than girls (40.5%)."¹

Senegal has a 54.76% internet penetration rate, according to a 2015 report by the Telecommunications and Post Regulatory Agency.² Mobile access is overwhelmingly the primary way that Senegalese connect to the internet. There are 7,396,940 people connected to the internet, 94% of them through 2G and 3G mobile services, while only 1.4% access the internet through fixed-line ADSL services.

One never gets tired of arguing for the importance of education in society, especially one in which the majority of the population is made up of young people. This is the age group that most needs to have its right to education met, and is also the age group that has grown up with new technologies. Because of this our report focuses on the right to access education and the internet in Senegal.

Policy and political background

Senegal signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 13 February 1978. Three months later – on 13 May 1978 – the covenant was ratified in domestic law.

Education is a fundamental human right necessary for everyone to affirm and develop their personality and identity. It is fundamental for people to participate in the economic, social, cultural and political life in their country. Education allows a person to develop their physical and intellectual aptitudes, to be fulfilled, and integrated into society socially and professionally. The right to education is recognised in Senegal's constitution, which states

in article 22: "The state has the obligation to carry out the education and training of the youth through creating public schools. All children, boys and girls everywhere in the national territory, have the right to have access to school. Institutions that are part of religious and non-religious communities are also recognised as places of education."³

Article 3 of the National Law on Education reaffirms the state's obligation: "National education is placed under charge of the state, which guarantees citizens the right to education."⁴

Nevertheless, despite the rapid roll-out of the internet in Senegal, offering strategic possibilities for the state to progressively ensure the realisation of economic, social and cultural rights (ESCRs), there is little evidence that it has been sufficiently used to meet the right to education in the country.

Virtual education: Meeting the needs of excluded youth

The state has made significant efforts to meet its responsibility to progressively ensure the right to education to the maximum availability of its resources. This includes investing in school infrastructure, recruiting teachers for primary education, installing computers in some schools, and connecting them to the internet.

The private sector has helped the state with regards to e-education, providing learners with access to digital learning resources, and allowing children to become familiar with the digital environment from a young age. For example, the IAM Group, a private educational institution, offers distance courses through a virtual classroom.⁵

However, despite all the efforts that have been made, there are huge disparities in access to education for Senegalese youth. Many children are still abandoned to their own fate on the street, many parents sometimes do not have sufficient resources to pay the education fees of their children, and some children live too far away from schools to attend. Furthermore, many of those who do receive schooling have difficulties accessing higher education even if they have been awarded the appropriate

1 www.ansd.sn/ressources/publications/1-demographie-SES2013.pdf

2 www.osiris.sn

3 www.gouv.sn/Titre-II-Des-libertes-publiques-et.html

4 www.gouv.sn/Titre-II-Des-libertes-publiques-et.html

5 www.groupeiam.com/index.php/e-learning/271-classe-virtuelle

high school diplomas. This is mostly due to a lack of space in universities to enrol them.

The difficulties Senegalese have in accessing higher education is a real problem that education authorities have had to grapple with for years. There is currently insufficient capacity in the country's universities to accept any more students than they do. This leaves high school graduates, many with great potential, without any means to further their studies.

One solution to this crisis explored by the state has been the use of information and communications technologies (ICTs) to bridge the gap. It is in this context that the Virtual University of Senegal⁶ has been created, allowing for distance learning rather than face-to-face pedagogy.⁷

The Virtual University of Senegal was created under Decree No. 2013-1294 with the aim of “put[ting] information and communications technologies at the core of the development of higher education and at the centre of research to better allow students access to higher education and to training, and to reduce inequalities concerning access to education.”⁸ Besides those who are unable to register at universities because there is no space, the Virtual University of Senegal allows access to education for people with reduced mobility, as well as others who may be limited in attending classes at universities, such as new mothers or others with prohibitive family or social duties.

Among other things, the initiative created the Open Digital Space which offers online resources, including teaching tools, for students, teachers and researchers.⁹

The Virtual University of Senegal is a good example of what should be rolled out in the school system generally. It is a perfect illustration of the possibilities of virtual learning compared to face-to-face pedagogy. Its educational services are now substantial. As stated by the rector: “To date, we have 200 contract teachers and 1,500 tutors on contracts.”¹⁰

However, numerous obstacles to the distance learning system remain. Two key problems are: a) insufficient access to electricity, and power cuts due to an ill-maintained electrical network, and b) the unavailability of a high-speed internet connection and the high cost of internet access. There are also challenges around developing strong pedagogical standards and processes of evaluation.

To achieve the right to education using the internet, the government should implement its policy

on the development of infrastructure and digital resources so that the internet is accessible to everyone and everywhere in the national territory. This should involve all relevant stakeholders, as well as international cooperation. The private sector must be encouraged to continue to invest in distance learning. The Open Digital Space, for example, is a good model to follow.

Conclusion

Digital applications and resources are indispensable for the realisation of ESCRs, especially when it comes to the right to education. The internet offers developing countries like Senegal a real opportunity to realise the right to education. The Virtual University of Senegal is a perfect example that illustrates this.

Nowadays innovation is the engine that creates wealth and possibilities. Similarly, education is an energising force for the socioeconomic development of our countries. That is why the right to education is a fundamental one that the state must endeavour to secure for its citizens if it wants to answer the questions presented to us at the crossroads of development. It is also why the internet, a key innovation of our time, must be a part of this equation.

Today we cannot think about policies and strategies for the implementation of our fundamental human rights without including the internet – a tool that has profound implications for our access to information and knowledge. This is particularly the case when it comes to realising the right to education in developing countries.

Action steps

We recommend the following actions regarding the use of the internet in securing the right to education in Senegal:

- Ensure high quality, affordable and accessible access to the internet for everyone. This is critical if the internet is to be integrated into education policy. At the same time, a policy dealing with upgrading the electricity grid needs to be developed.
- Develop distance learning programmes which include appropriate online teaching resources. This is important for the inclusion of those who are unable to access schools or universities. Given that universities in the country have reached their capacity, it is important to continue to create virtual alternatives for higher education and learning.
- Civil society must continue to advocate for due consideration to be given to the internet among policy makers when it comes to securing the right to education for all.

6 www.uvs.sn

7 www.uvs.sn/?page_id=14

8 www.adl.sn/acteur/uvs

9 www.uvs.sn

10 www.uvs.sn/?page_id=847

SERBIA

DIGITAL RIGHTS IN THE WORKPLACE



KEYWORDS: labour, digital rights, workplace

SHARE Foundation

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Introduction

As technology is increasingly playing an important role in our everyday lives, using information and communications technologies (ICTs) at work has also become almost mandatory for most office jobs. Most people spend eight or more hours each day in their workplace, sending and receiving emails, posting on social media, updating website content and so on. According to the Statistics Office of the Republic of Serbia, in 2015, 100% of surveyed enterprises used computers,¹ while 99% of them used the internet for conducting their business.² The statistical data also shows that almost 95% of companies surveyed by the Statistics Office used e-government services in 2015.³ But how are our basic human rights, such as freedom of expression and privacy, as well as employment rights, affected when we use technology at work?

Recent developments involving workers' rights and the use of ICTs have shown that these issues are yet to be discussed at the policy level. However, some countries in Europe, such as France, have already taken steps in order to define the relationship between employers and employees with regards to use of technology. For example, labour law reform in France included banning work-related emails

outside of working hours.⁴ This is a particularly interesting example, since these legal provisions actually do not allow employers to put more work-related obligations on their employees outside working hours with regards to online communications, which is not a common thing in most countries.

Policy background

The Constitution of Serbia⁵ (Article 46) guarantees freedom of expression, i.e. the freedom to impart and receive ideas and information through speech, writing, images or in other ways. Article 60 of the Constitution (Right to work) prescribes that everyone has the right to the protection of their personal dignity in the workplace – which means they cannot be subjected to degrading treatment at work – as well as the right to safe and healthy working conditions.

According to the provisions on workers' rights in the Serbian Law on Labour,⁶ rights such as personal integrity and dignity are guaranteed (Article 12), as well as the rights of workers to express their opinions and be informed on matters important for their work, directly or through their representatives (Article 13). The protection of personal data of employees is also prescribed in Article 83 of the Law on Labour, which is quite important for different aspects of data collection in the workplace.

A lot of questions regarding workers' digital rights are still left to interpretation in general legal provisions, as well as their employment contracts. This opens space for different kinds of endangerment of employees' rights in Serbia in relation to their online behaviour, such as the cases of Radovan Nenadić, a former court trainee, and Jasminka Kocijan, a journalist, who have had problems with employers because of what they published on the internet.

1 Statistics Office of the Republic of Serbia. (2015). Enterprises using a computer for their business. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270301IND01%262%3d%23All%23%2635%3d6%2c7%2c00%2c8%265AreaId%3d270301%26dType%3dName%26lType%3dSerbianCyrillic

2 Statistics Office of the Republic of Serbia. (2015). Enterprises using the internet for their business. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270301IND02%262%3d%23All%23%2635%3d6%2c7%2c00%2c8%265AreaId%3d270301%26dType%3dName%26lType%3dSerbianCyrillic

3 Statistics Office of the Republic of Serbia. (2015). Use of e-government services by enterprises. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270304IND01%262%3d%23All%23%2635%3d6%265AreaId%3d270304%26dType%3dName%26lType%3dSerbianCyrillic

4 Stump, S. (2016, 26 May). French law makes weekend work emails illegal, grants the 'right to disconnect'. *Today.com*. www.today.com/money/french-law-makes-weekend-work-emails-illegal-grants-right-disconnect-t94886

5 Republic of Serbia. (2006). Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, no. 98/2006. Available in Serbian at: www.paragraf.rs/propisi/ustav_republike_srbije

6 Republic of Serbia. (2014). Law on Labor. Official Gazette of the Republic of Serbia, nos. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_radu

What are the limits to free expression in the workplace?

SHARE Foundation has observed a number of cases where people of different professions have had trouble at their workplace – ranging from mobbing⁷ to dismissals – because of their activity online, including social media posts and blogging. In Serbia, the examples that caught the public's attention the most were related to state institutions or state-run companies. Such was the case of Branislav Mihajlović, an engineer who tweeted critically and wrote blog posts about the situation in the state-owned Mining and Smelting Combine in Bor, a small city in eastern Serbia. Mihajlović's employment contract was cancelled in the summer of 2015 because he had criticised the way the company was managed, but the court in Bor ordered that he should return to work shortly after that.⁸

A slightly different situation happened to Kocijan, a journalist working in the state news agency Tanjug,⁹ which was formally shut down by the government, but still operates under dubious circumstances. In February 2014, while on sick leave, Kocijan wrote about the staged rescuing of citizens from a blizzard near Feketić, a small town in the northern part of Serbia, on her personal Facebook profile and in a personal capacity. In her Facebook post she stated that the responsible authorities at the site "prepared" everything for the arrival of then Deputy Prime Minister of Serbia Aleksandar Vučić, so he could be filmed while rescuing people, and prevented the well-equipped and experienced Red Cross personnel from acting before Vučić arrived.¹⁰ The campaign for the 2014 parliamentary elections had just started, and the event in Feketić was also highly controversial because a parody video of the deputy prime minister's "rescue mission" with satirical subtitles was removed from video-sharing

platforms for alleged copyright infringement. SHARE Foundation filed a criminal complaint against a representative of the company that removed the parody video, but there is still no official reaction from the responsible authorities.¹¹

When Kocijan returned to work from sick leave, she suffered pressures at her workplace, such as not being allowed to use her vacation days, monetary fines and moving her to a lower work position that required lower qualifications and knowledge than those she had. In March 2014, shortly after these incidents at Tanjug, Kocijan decided to take the news agency to court because of mistreatment at work.¹² The court proceeding is still ongoing – at the last hearing held in late June 2016, the judge fined the director of Tanjug, Branka Djukić, for failing to come to the hearing for the second time because of health problems. The next hearing was scheduled for 12 September 2016 at the High Court in Belgrade.¹³ Even though Kocijan reported on social media and acted as a responsible and informed citizen and in a personal capacity, she was still treated unfairly by her employer. She also did not cause direct damage of any kind to the news agency that employed her, and even if she did, her employer would have to prove that the actual damage occurred, as well as the extent of the damage. It would then have to start a disciplinary proceeding in accordance with Kocijan's employment contract, internal company regulations and relevant legislation.

The next example – involving Nenadić – is also interesting, but instead of involving workers' rights in state media, it shows the situation in the judicial system of Serbia. In July 2015, Nenadić, then a young court trainee in the High Court in Belgrade, wrote on his blog and on social media about the action of one of the judges working in that court. In a rehabilitation¹⁴ case, Aleksandar Karadjordjević, a member of the former Serbian royal family, was

7 "Mobbing" is any active or passive behaviour towards an employee or group of employees that is repeated, and which aims to undermine the dignity, reputation, personal and professional integrity, health, and position of the employee and which causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions or results in the isolation of the employee or causes them to terminate their employment contract. See Article 6 of the Law on the Prevention of Abuse at Work, Official Gazette of the Republic of Serbia, no. 36/2010. Available in Serbian at: www.paragraf.rs/propsi/zakon_o_sprecanvanju_zlostavljanja_na_radu

8 S.L. (2015, 14 July). MSC Bor: The court orders engineers dismissed for tweeting to return to work. *Blic.rs*. www.blic.rs/vesti/ekonomija/rtb-bor-sud-vratio-na-posao-inzenjere-koji-su-otpusteni-zbog-tvitovanja/p7n8r3r

9 www.tanjug.rs

10 Vesti Online. (2014, 6 February). Red Cross barred from rescuing until Vučić comes. *Vesti Online*. www.vesti-online.com/Vesti/Srbija/380126/Crvenom-krstu-zabranili-spasavanje-dok-ne-dode-Vucic

11 SHARE Foundation. (2014, 5 February). Serbian Internet wars: fighting memes with copyright. www.shareconference.net/en/defense/serbian-internet-wars-fighting-memes-copyright

12 Independent Journalists' Association of Serbia (IJAS). (2015, 22 September). Jasminka Kocijan versus Tanjug. www.nuns.rs/info/news/24922/jasminka-kocijan-protiv-tanjug

13 Journalists' Association of Serbia (JAS). (2016, 21 June). Judge fines Branka Djukić 30,000 dinars for not coming to the hearing for a lawsuit by Jasminka Kocijan. www.uns.org.rs/sr/desk/UNS-news/40063/sudija-kaznila-branku-djukic-sa-30000-dinara-zbog-nedolaska-na-rociste-po-tuzbi-jasminke-kocijan

14 Rehabilitation means that if someone has been deprived of certain rights in the past (life, property, etc.) because of political, ideological, religious or any other reasons in accordance with previous regulations, this person can ask for these decisions to be annulled (e.g. a court decision) and for compensation for the consequences of these decisions. In Serbia, these cases are related to decisions of post-World War II state bodies in communist Yugoslavia, which sentenced the former royal family and others associated with it as traitors and took away their rights.

visited by Predrag Vasić, the judge who decided in the case. The judge had brought a framed copy of the court decision to rehabilitate Karadjordjević as a gift on his birthday. After that, Nenadić explained on his personal Facebook and Twitter profiles that the described action of judge Vasić was “shameful” and “unworthy of a judge”.¹⁵ Only a few days after his social media posts, Nenadić wrote a post on his blog in which he informed the public that his contract had been terminated by the president of the High Court in Belgrade. The court president’s decision, which Nenadić also published with the blog post but refused to sign, contained no explanation for Nenadić’s dismissal from the position of a court trainee.¹⁶ “Honestly, I didn’t expect these consequences to occur, as I have already been in conflict with Stepanović [the court’s president] over some more serious matters,” said Nenadić. He added that he was put under different kinds of pressure to stop writing about the judiciary. “I accepted to work for the court driven by two motives: to try to make the court a better place than it was, and to point out to the public and society what our judiciary is like.”¹⁷ Nenadić has been writing about the problems with the judicial system in Serbia, and this time he was trying to alert the public that Vasić’s action was contrary to the Law on Judges, which regulates the behaviour of judges in proceedings and in general. Nenadić explained this in detail in a disciplinary complaint against Vasić he filed to the High Council of Judiciary in late July 2015,¹⁸ but the complaint was rejected.

Nenadić has confirmed that he filed a lawsuit against his dismissal according to the Law on the Protection of Whistleblowers.¹⁹ As we can see, Nenadić only tried to act in the public interest and let the public in Serbia know that this kind of action was unacceptable for a judge. Instead of a positive approach and an acknowledgement of respect for his reaction as a lawyer and an employee in the judicial system of Serbia, he was removed from his position without any formal explanation. This attitude towards employees, especially in the judicial

system, causes a “chilling effect” for reporting future irregularities to the public using social media, blogs and other online communication channels, having in mind that most traditional media often do not report on these problems.

The only example we are aware of that explicitly involves the right to use the internet in the workplace involved the blocking of access to websites in the Administration of the Municipality of Bujanovac, a small town in the south of Serbia. According to media reports, the administration prevented employees from accessing social networking platforms such as Facebook or YouTube in their offices, and also blocked access to an independent local news portal called Titulli.com. The editor of Titulli.com, Argjent Goga, explained that this was clearly a case of pressure from the local authorities.²⁰ This shows us that the blocking of access to the internet in the workplace does happen, but unfortunately we are not aware of the scale on which it happens in Serbia. The reasons for blocking internet access at work might relate to workers’ lack of knowledge of their rights or unwillingness to challenge their employers, or a complete disregard by employers of the right of workers to receive and impart information.

Conclusions

These are only a few cases that we have noted that have taken place in Serbia, but we have seen similar examples related to digital rights in the workplace around the world in the last couple of years as well, with really unfair and illegal consequences. Employers must be aware that their internal procedures, policies, employee contracts and all other documents in relation to employment must be in compliance with all relevant legislation. In Serbia, this is the Constitution and the Law on Labour. In addition, an important international legal instrument is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified in 1971 by the former Socialist Federative Republic of Yugoslavia, which Serbia was a part of. In 2001, the Federal Republic of Yugoslavia, which consisted of Serbia and Montenegro, gave a successor statement to the United Nations in relation to joining the ICESCR once again.²¹

¹⁵ See Radovan Nenadić’s tweet from 20 July 2015, which also includes a screenshot of his Facebook post. www.twitter.com/RadovanN87/status/623116482654904320

¹⁶ Nenadić, R. (2015, 23 July). I will not be silent even after my dismissal. *radovannenadic87*. www.radovannenadic87.blogspot.rs/2015/07/necu-da-cutim

¹⁷ Interview with Radovan Nenadić, 27 July 2016.

¹⁸ Nenadić, R. (2015, 27 July). Disciplinary complaint. *radovannenadic87*. www.radovannenadic87.blogspot.rs/2015/07/disciplinska-prijava

¹⁹ Interview with Radovan Nenadić, 27 July 2016.

²⁰ Cenzolovka. (2015, 20 March). Municipality of Bujanovac blocks access to Titulli portal. www.cenzolovka.rs/vesti/opstina-bujanovac-blokirala-zaposlenima-korisecenje-portala-tituli

²¹ Office for Human Rights and Minority Rights of the Government of the Republic of Serbia. (2014, 18 July). International Covenant on Economic, Social and Cultural Rights. www.ljudskaprava.gov.rs/index.php/yy/ljudska-prava/konvencije/54-pakt-o-ekonomskim-socijalnim-kulturnim-pravima

All guaranteed rights must also be protected in the workplace, including the civil and political rights of freedom of expression, privacy, and protection of personal data. Access to the internet in the workplace in fact highlights the close link between civil and political rights and ESCRs. While the Covenant in Article 7 defines the “the right of everyone to the enjoyment of just and favourable conditions of work”, this should include the freedom to speak one’s mind in the workplace, as well as reasonable periods of rest and private time during the workday. During these periods of private time, is it reasonable that employees cannot update their private blogs, send personal emails or comment on Facebook? Given that these are private online platforms, the employee has the right to say whatever he or she wants. And should these comments bring the employer into disrepute, proper processes – rather than ad hoc processes – need to be put in place for a fair hearing on how this impacts on the employee’s job.

Vip mobile,²² a mobile network operator in Serbia, offers an example of a good social media policy within a private company. Employees are free to use social media both during working hours and in their free time. There is one condition, however: the employees are not allowed to share confidential work-related information on social media. In case the employees have any doubts regarding social media posts, company staff are there to assist them.²³

However, as we have seen from the above cases, because of the internet, employers are now more “visible” when they behave in a way that is unethical or wrong. In the absence of clear guidelines that moderate both their behaviour and employees’

behaviour, and a lack of understanding of the digital environment and human rights, employers take hasty steps, which can be unfair and frequently even illegal. But as it stands, the “chilling effect” of possible consequences if employees publish something online greatly affects the enjoyment of their rights in the workplace.

Action steps

In the end, we propose several recommendations on how to improve the protection of workers’ rights in the digital environment in Serbia:

- Amendments to the Law on Labour, which need to be adopted in consultation with trade unions and civil society. Amendments should address workers’ digital rights in a manner that would reduce the problem of legal uncertainty and would protect workers from the arbitrariness of the employers.
- The improvement of company policies, employment contracts, employment rule books, etc. in favour of better protection of digital rights for workers in the workplace. These need to be aligned with legal obligations and human rights standards.
- Better court protection of workers’ rights can be accomplished through education and development of manuals for judicial actors on how to ensure the respect of human rights in the digital environment. None of the aforementioned cases has been finalised in court, so strategic litigation that results in a positive outcome for workers can serve as a judicial cornerstone.

²² www.vipmobile.rs

²³ Terzić, J. (2016, 29 July). Privacy on the internet in the employer’s network. *Radio-Television of Serbia*. www.rts.rs/page/stories/sr/story/125/drustvo/2402884/privatnost-na-internetu-u-mrezi-poslodavca

SEYCHELLES

USING THE INTERNET TO BOOST THE ROLE AND RELEVANCE OF THE SEYCHELLES FEDERATION OF WORKERS' UNIONS



KEYWORDS: **labour**

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Introduction

The organisation currently known as the Seychelles Federation of Workers' Unions (SFWU) has been in existence since 1964. It was first set up as the National Workers' Union (NWU) as the means for the newly established Seychelles People's United Party (SPUP) "to mobilise, organise and direct mass organizations of workers, of women and of youth to serve as a channel between the Party and the masses."¹ According to the SFWU, a process that started as far back as 1967 with the emergence of trade unions "gradually evolved under more progressive leadership to pressure the British government [Seychelles was then a British colony] to implement significant changes in salaries and other working conditions. The most significant of changes however happened in 1977 with the establishment of a workers' government..."²

This clearly implies that the workers' union was a vigorous and popular organisation and that it played a significant role in establishing the SPUP as the ruling party in Seychelles.³ And yet, 50-odd years later, the offspring of this organisation, the SFWU, seems to be struggling for its continued existence. The motto of the organisation, which was "Unity in Strength", has recently been amended to "Unity in Strength. Championing the Rights and Responsibilities of Workers" – reflecting broader, and possibly more diffuse, objectives.

During initial research for this report, the author was unable to access much information about the organisation from internet sources. It only appears on the websites of some international organisations such as the International Labour Organization (ILO)

or is briefly mentioned in newspaper articles in the local press or on the websites of Parti Lepep and the Ministry of Labour. On third-party websites, it is present essentially through a very basic profile – a clear indication of the level of current visibility of the organisation on the web. This report considers the role that the internet could play in strengthening the impact of the SFWU in the Seychelles.

Workers' rights in the constitution and other laws in Seychelles

The Seychelles Third Republic, which came into existence after the introduction of multiparty politics in the early 1990s, has a comprehensive constitution that protects citizens' fundamental human rights. The country acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 5 August 1992.⁴ The stipulations of the covenant are in force in the country and were domesticated through incorporation in the country's new constitution which was written in 1993.

The rights and freedoms which concern workers are covered in Articles 17, 30, 31 and 35 of the Seychelles constitution. Article 35 refers directly to the contents of Articles 7 and 8 of the ICESCR on workers' rights and the right to form trade unions, and includes provisions for the establishment of measures to "maintain a high and stable level of employment", to "protect effectively the right to earn a dignified living in a freely chosen occupation", to "promote vocational guidance and training", to "make and enforce statutory provisions for safe, healthy and fair conditions of work", to "promote machinery for voluntary negotiations between employers and workers or their organisations... by means of collective agreements", to "promote the establishment and use of appropriate machinery for conciliation, and voluntary arbitrations for the settlement of labour disputes", and "subject to such restrictions as are necessary in a democratic society, and necessary for safeguarding public order..., to ensure the right of workers to organise trade unions and to guarantee the right to strike."⁵

1 www.partilepep.com/our-history/history-of-the-spup-sppf-parti-lepep

2 SFWU. (2010, 29 April). A Seychelles Federation Workers' Union perspective-Post 70s: Evolution of conditions of work in Seychelles. *Seychelles Nation*. www.nation.sc/article.html?id=226559

3 It is to be noted that the SPUP, which was re-organised and renamed the SPPF in 1978, then Parti Lepep in 2009 (as indicated in the name of its website), has won at every election since 1977 and is still the ruling party in Seychelles. See www.partilepep.com/our-history/history-of-the-spup-sppf-parti-lepep

4 Rosalie, M. 2008. *Levels of Awareness and Understanding of Human Rights in Seychelles – Report*. UNDP/EU Project.

5 Republic of Seychelles. (1994). *Constitution of the Republic of Seychelles*, Revised Edition. The Government Printer.

In 1994, the Industrial Relations Act (IRA) – a new piece of legislation regulating the functioning of trade unions – was adopted. This law requires that for any trade union to be recognised by an employer, there has to be a formal agreement between the workers’ union and the employing organisation. For the agreement to be possible, at least 10 existing workers of the employing organisation need to be members of the union.

The IRA also stipulates that a registered trade union is the only entity that can call for industrial action; but even if such an industrial action is authorised, the minister for labour, under the IRA, can declare the action illegal after it has started, if it is the minister’s opinion that such a decision is justified.⁶ Additionally, the Act makes provision for the establishment of an Industrial Relations Tribunal – a role which was discharged by the Industrial Relations Section of the Ministry of Social Affairs and Employment prior to the establishment of a Tribunal in November 2008.⁷ It should be noted that this tribunal is known as the Employment Tribunal rather than the Industrial Relations Tribunal – as proposed in the Act.

Some of the requirements of the IRA seem to have made things rather difficult for existing unions and potential new trade unions.⁸ A new independent union, the Seychelles National Trade Union, was launched after the adoption of the IRA but ceased operating in 2007,⁹ possibly because it could not reach enough members to be viable.¹⁰

Some think that the IRA is overdue for a general overhaul, as a rapid rate of development has meant that current circumstances in Seychelles are vastly different from what they were 20-odd years ago.

Context and present situation

It should be noted that from the late 1970s through the early 1990s, NWU membership of all workers (local and expatriate) in Seychelles was automatic. The organisation was financed through the Social Security Fund, which collected all social security salary deductions including trade union membership dues from workers’ salaries. In the early 1990s

and as a result of the introduction of multiparty politics, the NWU, which was part of government, had to make way for independent workers unions. In March 1994, six unions were formed from the original workers groups that were part of the NWU. These were: the Teachers, Medical and Other Public Service Employees Union (TMPU); the Trade and Commerce Workers Union; the Hotel and Catering Workers Union; the Transport, Communication and Public Utilities Workers Union; the Stevedores, Dockers and Other Port and Marine Workers Union; and the Construction and Civil Engineering Workers Union.¹¹

Government funding being no longer available, the independent unions had to find ways to survive financially, and one approach was to try to recruit more members and collect membership fees. This did not work as well as expected and the unions were soon in financial difficulties. With the exception of the Teachers, Medical and Other Public Service Employees Union (TMPU), the other five unions decided to amalgamate to form the Seychelles Transport and General Workers Union (SGWU). By the end of 1994, there were only two registered trade unions in Seychelles: the TMPU and the SGWU. A year later they decided to federate and this led to the creation of the Seychelles Federation of Workers’ Unions.¹² The SFWU is currently subsidised by a few “generous organisations” – in the words of the current secretary general.¹³

A request was made by the author for the number of cases of labour disputes in which the SFWU is involved, but the information was unfortunately not made available, although it was stated that “sometimes there are three or four cases in one day.”¹⁴ Information on the level of membership was also not available, although it was pointed out by the representative of the union that many employing organisations – a number of them multinational companies operating in tourism or construction – were uncomfortable with having to deal with the SFWU.¹⁵

The SFWU is involved essentially in representation, mediation and negotiation between workers with grievances and their employers. If mediation does not succeed, then the case usually goes to the Employment Tribunal. This closely parallels the roles and functions of the Industrial Relations

6 Republic of Seychelles. (1994). Laws of Seychelles: Chapter 96A – Act 7 of 1993, Act 17 of 1994, Part 6, 52(4) - Industrial Relations Act. www.seyllii.org/sc/legislation/consolidated-act/96a

7 Telephone conversation with M. Valentin, Seychelles Employment Tribunal, 18 July 2016.

8 www.seyllii.org/sc/legislation/consolidated-act/96a

9 Freedom House. (2011). *Freedom in the World 2011: Seychelles*. <https://freedomhouse.org/report/freedom-world/2011/seychelles>

10 Deegan, H. (2003). *Post-Election Bulletin: Seychelles 2002*. Royal Institute of International Affairs. https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/seychelles_bp_proof.pdf

11 Interview with B. Adonis, former secretary general of the NWU, 2016.

12 Ibid.

13 Interview with A. Robinson, current secretary general of the SFWU, 2016.

14 Ibid.

15 Ibid.

Section of the current Ministry of Labour and Human Resource Development, which ensures “the protection of workers’ fundamental rights in accordance with national legislation and ratified international conventions” in addition to providing advice, conciliation and mediation, or where this does not work, “prosecution of defaulters... by filing new cases before the Employment Tribunal.”¹⁶

At first glance, it would seem that the SFWU is almost a redundancy. Nonetheless, some existing legislation, such as the Pension Fund Act of 2005 Part III(6), for example, requires that at least two members of the Board of Governors be from workers’ organisations. In view of the fact that the SFWU represents the only two trade unions in existence in Seychelles, it still has a non-negligible role to play.

In 2010, the following was posted on the Seychelles Hungarian consulate’s website: “New ways of thinking and doing things at both government and party level have been stressed in a series of strong recommendations at the end of the ruling Parti Lepep’s general conference... the workers’ group stressed the need for the party and government to review the competence of the Seychelles Federation of Workers’ Unions and encourage party members to become members of the workers’ union.”¹⁷

It would be appropriate to ask how – in view of its current rather limited resources¹⁸ – the SFWU can use modern communication methods, such as the internet, to broaden its sphere of influence and usefully engage with workers to help build a better-informed workforce, help reduce the number of labour disputes, and generally become more attractive and relevant to the younger working generation which may be somewhat unfamiliar with trade unions and the role that they can play.

There are a number of examples of how unions can benefit from the internet. A 2002 paper on British trade unions points out that unions which are in decline can choose to “change and evolve or face political irrelevance”; it also refers to “the possible role of new ICTs within and across union structures”. One of the approaches covered is that of the “modernisation” of trade unions – by “harnessing some of the opportunities provided by new communications technology to update... traditional functions”.

Examples given are: i) having websites that can be used as information storehouses for “organisational, personnel, policy documents and regular news releases”; ii) recruiting members; and iii) improving the image of the organisation and becoming more appealing to younger workers.¹⁹

A more recent thematic article in the GISWatch report of 2011 presents a number of examples as to how workers can, either as a collective or as individuals, use the internet to spread information and gather support to tackle unfair, unethical or illegal practices in organisations.²⁰ One of the earliest examples was the development of an international web page for education and solidarity for Liverpool dockworkers in 1995. This served to break an “information blockade” in a situation where workers had to stand not only against what they felt were unfair government laws but also “acceptance of these laws by their national union”.²¹ Another example highlights the use of mobile phones to organise workers and notes that “the use of mobile phones has become a historic vehicle for workers’ and peoples’ struggles... but also the use of social media sites like YouTube to get their actions plans out.”²²

These specific examples may point the way to the SFWU. The union is currently thinking of having a page on Facebook, a much used social media platform in the country. This could be seen as a starting point for the development of an online information hub which workers could access to get information, participate in discussions or share information about problems. Nonetheless, it needs to be remembered that the use of social media by unions has many implications. These can be both positive, for example, as a means to engage with the workforce, or negative, as reflected in a comment by a representative of the Trades Union Congress (TUC) of the UK to the effect that Facebook was “3.5 million HR accidents waiting to happen”.²³

The country also has a range of mobile phone post-paid packages, commonly known here as “unlimited”, that are extremely popular among the

16 www.employment.gov.sc/about-us/section-and-units/labour-relation-division/industrial-relations

17 www.seychelles.hu/node/377

18 The impression gathered during the author’s visit to the offices of the SFWU was that this was an organisation that was struggling rather than thriving. This subjective assessment was confirmed by one of the interviewees who commented that while the SFWU did get some funding, this was only sufficient for survival.

19 Ward, S., & Lusoli, W. (2002). *Dinosaurs in Cyberspace? British Trade Unions and the Internet*. citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.454.6135&rep=rep1&type=pdf

20 Zeltzer, S. (2011). Workers’ rights and the internet. In A. Finlay (Ed.), *Global Information Society Watch 2011: Internet rights and democratisation*. <https://www.giswatch.org/en/freedom-association/workers-rights-and-internet>

21 *Ibid.*

22 *Ibid.*

23 Smith, S., & Harwood, P. (2011). *Social media and its impact on employers and trade unions*. Advisory, Conciliation and Arbitration Service (ACAS). www.acas.org.uk/media/pdf/a/i/social_media_FINAL_3108111.pdf

working-age population because they are low-cost and available in various “sizes”. They offer talk time and text messages while mobile internet data is accessible at an additional rate. These packages are essentially for socialising or for work-related calls when purchased by organisations, but their use to create awareness and support workers’ rights could be encouraged, for example, through a helpline mobile number operated by the union or by volunteers.

Another strategy would be to reach out to and establish working links with international unions through the internet. The UNI Global Union, based in Nyon, Switzerland, for example, states that it “represents more than 20 million workers from over 900 trade unions in the fastest growing sectors in the world – skills and services”²⁴ – areas of economic activity that are of particular relevance to the Seychelles workforce.

Action steps

It is clear that the SFWU will continue to exist in the foreseeable future: it is the only active workers’ organisation in the country and its presence fulfils a number of existing legal requirements. To increase its relevance and visibility, the SFWU should:

- Negotiate with a well-funded appropriate local organisation to support development of and host its website in order to offer comprehensive information to workers, as developing and maintaining a website of its own may be beyond its current means. This would include public

information on workers’ rights and privileges as found in various national instruments such as the constitution, the Industrial Relations Act, the Employment Act, etc., as well as practical information on steps to be taken for reporting and dealing with situations of perceived unethical or illegal practices by employers. The website could also offer secure content that would be accessible only to members and which could include, among other things, legal guidance and access to advice from local/international lawyers specialising in labour issues and willing to be part of this effort, or the possibility to contribute suggestions to any ongoing discussions with employers/government bodies on decisions that affect workers (such as changes in tax rates on earnings).

- Reach out to existing members to discuss what they could jointly do to become more visible on the internet and more appealing to younger workers; some members (organisational or individual) may be willing to volunteer time or skills or their knowledge of workers’ rights to push the SFWU’s agenda forward. This might also generate greater engagement.
- Design a simple web-based information, education and communication programme that aims at connecting with workers in Seychelles – especially the younger ones – to inform them about their rights and responsibilities, and how best to deal with perceived infringements of these rights.

²⁴ www.uniglobalunion.org/about-us

SOUTH AFRICA



DETERMINING USER CAPABILITIES TO ENSURE THE ACHIEVEMENT OF ESCRS THROUGH INTERNET USE

KEYWORDS: **access, gender**

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Introduction

The South African national broadband policy, “South Africa Connect”, acknowledges the internet as a basic human right that may be used to improve equality in South Africa.¹ The national policy recognises the importance of creating a digital ecosystem that will lead to improvement of people’s lives and enable equality in the rights, privileges and benefits of citizens and assist in poverty eradication and empowerment of marginalised members of society. Presently, internet access at the national household level is 53.5%.² Mobile devices are the most popular means of connecting to the internet with 47.6% of national respondents using it to access the internet. While closing the gender gap has been the main focus, there is a need to assess how people use the internet to ensure that economic, social and cultural rights (ESCRs) are realised. Increased internet access is often matched with limited optimal use, more so among women.³

The Western Cape provincial government in South Africa, in line with the national policy, implemented the “Connected Leadership” broadband roll-out for purposes of provincial development and growth.⁴ The provincial roll-out forms the crux of our assessment of ESCRs and the internet. A

provincially representative Digital Readiness Assessment conducted by Research ICT Africa (RIA) in 2014 found that 57% of individuals in the province of Western Cape were internet users, with 53.5% of women using the internet.⁵ Of the remaining 43% of the population, comprising people who did not use the internet, 61.4% were female. Social networking was the main driver for internet, with 48% of internet users stating that it was the main reason why they first used the internet, while work-related use was the main reason for 20.6%.⁶ Broken down into demographics, more females – 56.8% percent of the female internet users compared to 39.3% of male internet users – used the internet for the first time for social networking. Work-related or educational purposes were not the main reasons people went online for the first time.

This report assesses user capabilities to use the internet to attain the right to education, health, and work opportunities, focusing on the differences between men and women. We use individual and household survey data collected from the 2014 Digital Readiness Assessment survey. The analysis provides descriptive statistics on internet use with a focus on the demographic of the internet user in the province; that is, we consider the activities of internet users and information-seeking behaviour linked to internet use.

Policy background

The Bill of Rights is the cornerstone for the South African constitution, with the state constitutionally bound to work towards the best of its abilities to protect and ensure these rights.⁷ ESCRs such as education, health, labour and cultural rights are enshrined in the constitution. South Africa also ratified and enforced the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2015.

The national broadband plan has been designed to help protect and achieve these rights through internet-based information and communications technology (ICT) access and use. The plan focuses on infrastructure roll-out and creation of associated

1 Department of Communications. (2013). South Africa Connect: Creating Opportunities, Enabling Inclusion. South Africa’s broadband policy.

2 Statistics South Africa. (2016). General Household Survey 2014. Pretoria: Statistics South Africa

3 Chair, C. (2014). *Mobile phones for development: How have women in the informal sector made use of their mobile phones to enhance themselves and their business?* Masters thesis, University of Cape Town, Cape Town, South Africa. hdl.handle.net/11427/6833; and Deen-Swarraj, M., Gillwald, A., Morrel, A., & Khan, S. (2012). *Lifting the veil on ICT gender indicators in Africa*. Cape Town: Research ICT Africa and University of Cape Town. www.researchictafrica.net/publications/Evidence_for_ICT_Policy_Action/Policy_Paper_13_-_Lifting_the_veil_on_gender_ICT_indicators_in_Africa.pdf

4 Research ICT Africa. (2015). *Western Cape Digital Readiness Assessment 2015*. Cape Town: Western Cape Department of Economic Development and Tourism. www.westerncape.gov.za/assets/departments/economic-development-tourism/digital_readiness_full_report.pdf

5 Research ICT Africa (2014). Western Cape Survey Data.

6 Ibid.

7 www.gov.za/documents/constitution/chapter-2-bill-rights

TABLE 1.			
Demographics of internet users by gender			
		Male	Female
Age	Youth	15.1%	21.5%
	Non-youth	84.9%	78.5%
Highest educational attainment	Primary	7.5%	7.7%
	Secondary	61.5%	67.2%
	Tertiary	31.0%	24.4%
Activity engaged in	Pupil/student	8.3%	10.8%
	Unemployed	11.7%	17.5%
	Employed	60.4%	54.2%
	Self-employed	8.9%	3.9%
	Others	10.6%	13.70%

Source: RIA database, 2014 Western Cape survey data.

content, applications and services. This highlights South Africa's political will at a policy level, with issues of implementation often raised. Following the national plan, the province of Western Cape has made progress in implementing the necessary infrastructure to connect its communities and citizens. Realising the full benefits of broadband will, however, depend on the extent to which end users make use of the technology and the services it provides.⁸

Conceptual framework

The capability approach which this study uses defines development as a process whereby the substantive freedom of individuals can be expanded in order for them to achieve the lives they value. This approach assumes that well-being and agency should be looked at based on people's effective opportunities to undertake the actions and activities they want to engage in and be whom they want to be.⁹

The capability approach used as a framework for this study has several dimensions that focus on well-being and the freedom of agency.¹⁰ These include economic capability, which highlights that wealth and employment are freedoms;¹¹ social capability, which emphasises the freedom to enhance literacy and the scope of knowledge and in this

way provide social opportunities;¹² and cultural capability, which focuses on the capability for entertainment and leisure.¹³ In particular, this report focuses on the capacity of individuals to use the internet to gain access to employment, education and health activities.

Results and analysis

Demographics of internet users

This section provides a summary of the demographics of female and male internet users. Based on the survey data, both male and female internet users are more likely to hold secondary education in comparison to primary or tertiary education, to be employed, and to be past the stage of youth as defined as 15-24 by the United Nations (See Table 1). Secondary education is the highest level attained by the majority of Western Cape residents – 60.5% to be precise; it is not surprising that this is where most internet users are found.¹⁴ Only 2.6% of the population had not attained any formal education.

Internet use is highest among individuals from both sexes who are employed. Considering that cost is often cited as a limitation to internet use, it is understandable that the internet is being used more by those who are employed. There are more men (60.4%) than women (54.2%) who are employed that use the internet. With attempts by the government to connect schools and institutions of learning, it is of concern that internet use is relatively low among pupils and students. Table 1 shows this to be 8.3% for males and 10.8% for females. Users

8 Calandro, E., Deen-Swarray, M., & Chair, C (2015). Demand side stimulation strategies to boost broadband access in South Africa: Case study of the Western Cape. Conference paper presented at CPRSouth 2015, 27 August, Taipei, Taiwan.

9 Wang, R. (2015). Internet use and the building of social capital for development: A network perspective. *Information Technologies & International Development*, 11(2), 19-34.

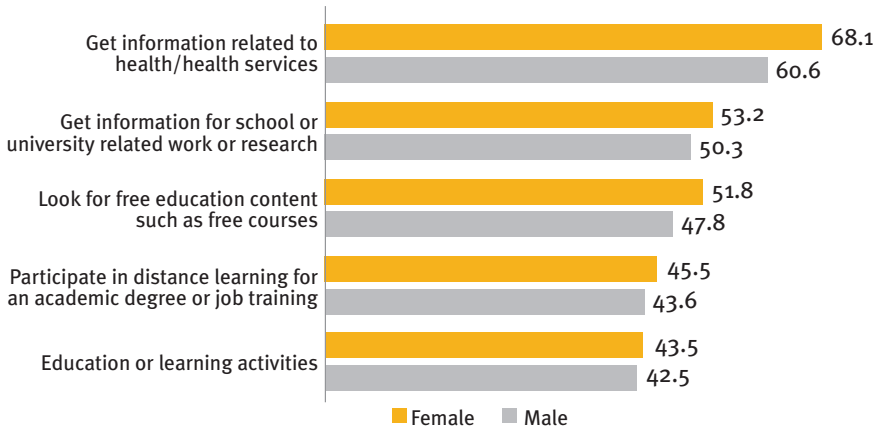
10 Giger, B.-S. (2011). *Informational Capabilities: The Missing Link for the Impact of ICT on Development*. Washington: World Bank. <https://openknowledge.worldbank.org/handle/10986/19011>

11 Heeks, R., & Molla, A. (2009). *Impact Assessment of ICT-for-Development Projects: A compendium of approaches*. Manchester: Development Informatics Group, Institute for Development Policy and Management, University of Manchester.

12 Ibid.

13 Gurstein, M. (2003). Effective use: A community informatics strategy beyond the Digital Divide. *First Monday*, 8(12). firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1107/1027

14 Research ICT Africa. (2015). Op. cit.

FIGURE 1.**Activities relating to education and health performed on the internet by gender (%)**

Source: RIA database, 2014 Western Cape survey data

in these demographics have the choice to make use of the internet in order to realise their ESCRs.

User activities online

The majority of individuals across both sexes make use of the internet to get information related to health or health services and more so among the female population (see Figure 1). Over 50% of men and women search for information for educational purposes or research. This provides evidence of how important the internet is as a source of information for educational purposes. Also, the share using the internet to look for free educational content is above 50% among women, though below that among men.

Across all activities, more women than men are engaging online. This suggests that internet users who are women are harnessing the use of the internet as a source of information and learning opportunities more than men. This also shows that the internet can be used to make more relevant health and educational materials available to reach those who are unable to access such materials via other means.

Potential use of the internet for information-seeking purposes

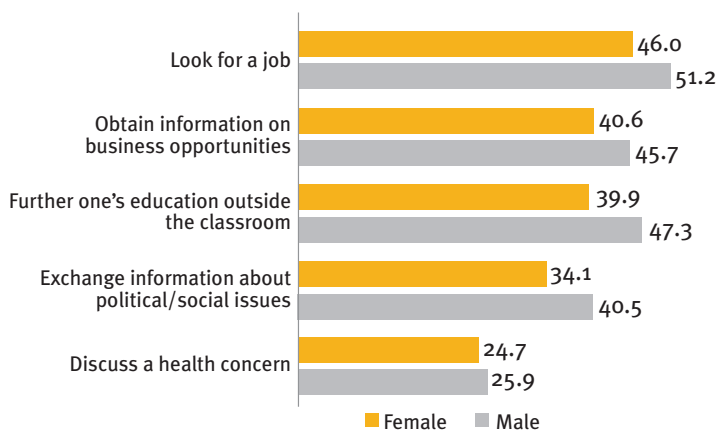
Taking the analysis further, the study looks at the responses of all individuals surveyed when asked how they potentially would use the internet to conduct specific health, education and economic activities. About 51.2% of men stated they would use

the internet to “look for a job”, compared to 46% of women (see Figure 2). However, this is where the highest responses are recorded for both sexes. For women, using the internet to “obtain information on business opportunities” was the activity that recorded the second highest response. This seems to indicate that women are showing more inclination towards getting economically empowered and seem to be identifying the internet as a medium that can allow them to achieve this. Using the internet as a medium to educate oneself further also recorded relatively higher figures compared to other activities. The results indicate that if given a choice, only about a quarter of the respondents would use the internet to “discuss a health concern”. Whereas in the previous section it was recorded that the majority of both men and women use the internet to get health/health services information, in this section using the internet for health purposes recorded the lowest figures. This suggests that while people feel comfortable getting information on health issues online, discussing their health concerns online does not seem that appealing.

Activities that would enhance economic well-being are among the ones where more people stated that they would make use of the internet. While women expressed interest in using the internet to conduct specific activities, it is noteworthy that for each activity, there are more men than women who indicate their readiness to use the internet. This could be due to the fact that more men use the internet than women, but further investigation research

FIGURE 2.

Share of individuals who indicated the internet as an option they would use to conduct specific activities (%)



Source: RIA database, 2014 Western Cape survey data

would need to be conducted to determine the reluctance for women to use the internet for activities that would enhance their economic well-being.

Barriers to internet use for users and non-users

The above sections show the capabilities of people to make use of the internet in a way that would result in effective opportunities for ESCRs. However, barriers for both internet users and non-users result in the limitation of achieving ESCRs through internet use. It seems that women were more likely to face barriers to internet use as users and non-users when compared to men (see Tables 2 and 3).

Limitations for internet users

Internet speed, the cost of using the internet, and concerns with surveillance or privacy issues are the top three concerns cited for limited internet use by internet users (see Table 2). Concern about surveillance or privacy issues seems more of an issue for

women, as close to 9% more women than men stated that the factor of surveillance and privacy online limits their use of the internet.

Limitations for non-internet users

For non-internet users – 43% of those surveyed – it is interesting to note that the reason most commonly cited for not using the internet is the lack of access to a computer or internet connection, as seen in Table 3. Provincially, about 60% of non-internet users cited this as a barrier to internet use, with about 63% of female non-internet users claiming the lack of access to a computer or internet connection as their main barrier for not using the internet. Among the male respondents, cost was the most selected reason cited as a barrier to internet use.

Also, a large proportion of females (62.5%) claim that they do not use the internet because they “don’t know how to use it” compared to 48% of males. There is still a high share of individuals who

TABLE 2.

What limits the use of the internet by internet users

	Male	Female	Provincial level
Internet is very slow	53.7%	56.3%	55.1%
Too expensive	52.2%	54.1%	53.2%
Worried about surveillance or privacy issues	44.8%	53.4%	49.3%
Few people to communicate with via the internet	27.9%	34.1%	31.2%
Lack of local language content	26.7%	31%	28.9%
No interesting content	17.3%	25%	21.4%

Source: RIA database, 2014 Western Cape survey data

TABLE 3.

Reasons cited for not using the internet (multiple responses)

	Male	Female	Provincial total
No computer/internet connection	56.2%	63.3%	60.5%
Don't know what it is	53.7%	61.4%	58.3%
Too expensive	56.9%	57.6%	57.3%
Don't know how to use it	48%	62.5%	56.8%
No interest/not useful	44.8%	54.2%	50.5%

Source: RIA database, 2014 Western Cape survey data

do not use the internet because they “don’t know what it is”, and this figure is higher at 61.4% among women. Cost is still a barrier and almost equally so among both sexes.

Conclusion

Overall, internet access in the province of Western Cape is still on the increase, but for women it remains low in comparison to men, which would affect using the internet for the realisation of ESCRs. However, our user assessment shows that while social networking may be driving internet access, more and more users have shown the capacity to use the internet for purposes of achieving ESCRs. Based on our framework, people with internet access and those who could have the choice of access would use the internet to take action on activities that would lead to improving their well-being. Women who were internet users were more engaged with health and educational information to further their well-being as compared to men.

However, the barriers to internet use that would lead to achievement of ESCRs, such as cost and surveillance, in particular among women, might be limiting the opportunities for internet use. The barriers for non-internet users are more significant among women than men. This reflects that more women are still not using the internet compared to men – a worrying trend given that in many contexts, women are less likely than men to have their ESCRs realised. There is still a relatively large proportion of women who are not aware of the internet and its uses, and for those who are aware, a large share are not aware of how to use the internet.

Action steps

The following should be advocacy priorities for civil society:

- Challenges of affordability and quality of service need to be addressed by policy makers and regulators to ensure that the internet is affordable for all with a good quality of services. There is a need for policies that tackle pricing in the aspect of data costs, alternative cheaper or free access models, and educating internet and non-internet users on the optimal internet use to achieve ESCRs. Alternative access models such as public Wi-Fi could be seen as complementary to providing internet services for users.
- Prioritisation of the development of digital skills is crucial to ensure that all users and non-users may use the internet optimally in order to have the choice and freedom to achieve their ESCRs. The increased concerns with privacy and surveillance online require further analysis to develop policy recommendations as to how to build more trust with internet access and use.
- There is a need for a critical assessment by civil society and academia of e-education and e-health policies in South Africa to determine whether they are reaching their target audience and if the information is relevant and sufficient for users.

SPAIN

CITIZENSQKM: TRANSFORMING THE SQUARE KILOMETRE THAT SURROUNDS US



KEYWORDS: right to information, science and technology, gender, community networks, information and communication technologies (ICTs)

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Introduction

CitizenSqKm¹ (*Km2 del Poblenou*) is an experiment which builds a complex communicative ecology using a technological platform and serves as a methodology for community engagement. Several pilot projects have been conducted in Barcelona, aimed at finding out how geolocation technologies and community networks can be used, from local to global levels, to help increase civic engagement.

The initiative involves connecting an online platform with a map to a community telecommunications network.² This allows people to make an inventory of “the things” in their neighbourhood, including institutions, services, historical landmarks and natural surroundings. The information is classified by author, source and topic. This process of “civic reappropriation of data” engages citizens in the development of their own community.

Anyone who has a mobile device connected to the internet can create, collect, process and share massive amounts of data widely, “geolocatedly” and in real time. Having this possibility, now with the ubiquitous attributes of digitised media, citizens can regain ownership over that data, particularly if they can access it through an open, free and neutral community network.³ “Open” means anyone can be a user, connect to the network and understand how it works; “free” means it is unrestricted; and “neutral” refers to content and the technology used – for example, internet service providers (ISPs) should not favour specific kinds of internet traffic over others.

Being empowered to decide on the collection, use and storage of data may involve several economic, social and cultural rights (ESCRs) for citizens, such

as the right to information, food, housing, education, the benefits of science and technology, health, security, cultural life, water and sanitation, and work.

Policy, economic and political background

Even though Spain has been party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1977, the country seems to be regressing when it comes to human rights protection. The 2015 Center for Economic and Social Rights Fact Sheet on Spain concludes that “over the past four years poverty in Spain has increased and inequality has widened as a result of austerity policies. Evidence shown in this factsheet makes clear that the effect of these measures on the economic and social rights of the most vulnerable has been devastating.”⁴

Moreover, Amnesty International states in its report on ESCRs in Spain that they are not sufficiently guaranteed by law, or fully protected by the constitution. State, regional and local authorities should ensure that people can demand these rights and go to court when they are violated. However, there are barriers preventing access to legal resources which would enable people to assert their rights. Amnesty International specifically mentions the rights to health and housing.⁵

Spain’s social crisis, as stated by the report on the *Housing Emergency in Spain* conducted by the Observatorio DESC (Observatory of Economic, Social and Cultural Rights), has had a serious impact on the right to housing, with large numbers of evictions and an increase in debt, since the government promotes ownership and borrowing with unfair terms in mortgages and does not invest in public housing.⁶ This situation led, in 2011, to the anti-austerity movement, 15M, with demonstrations all over the country claiming their socioeconomic rights.⁷

1 CitizenSqKm (www.citizensqkm.net) was a 12-month experiment (May 2014-May 2015) conducted by Itinerarium and IGOPnet, within the European Union project CONFINE (<https://wiki.confine-project.eu>), to research community-owned telecommunications networks. All deliverables are available online: <https://mogams.com/citizensqkm>

2 <https://guiifi.net/en>

3 Byrum, G. (2015). What Are Community Wireless Networks For? *The Journal of Community Informatics*, 11(3).

4 Center for Economic and Social Rights. (2015). *Fact Sheet No. 14: Spain*. cesr.org/downloads/FACTSHEET_Spain_2015_web.pdf

5 Amnesty International. Derechos económicos, sociales y culturales en España. <https://www.es.amnesty.org/en-que-estamos/espana/derechos-economicos-sociales-y-culturales/>

6 Observatorio DESC. (2013). *Housing Emergency in Spain: The crisis of foreclosures and evictions from a human rights perspective*. observatoriodesc.org/sites/default/files/2013-housing-emergency-spain-observatorio-desc.pdf

7 https://en.wikipedia.org/wiki/Anti-austerity_movement_in_Spain

Three years later a new public safety law – *Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*,⁸ generally known as the Gag Law – was passed. This law restricts freedom of speech, forbids the use of communication technology (such as streamed video) in demonstrations and protests, and encourages self-censorship among journalists. It has been criticised by Amnesty International, Human Rights Watch and Greenpeace, as well as by Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. It has also been questioned in the European Parliament.⁹

Another direct consequence of 15M is the emergence of Spanish “municipalism”¹⁰ in the “rebel cities” of Madrid, Barcelona, Valencia, Zaragoza, Pamplona, Oviedo, Cádiz, Santiago de Compostela and El Ferrol. This involves creating a model of technological “intermunicipalism” where “cities share their technology, tools and platforms.”¹¹ In this new model, the use of communication technology and the collection of relevant data by the citizens themselves are encouraged in order to help them make informed decisions.

What does real access mean?

A wide range of internet access statistics are relevant to the CitizenSqKm initiative, in particular statistics related to the digital divide. The digital divide is an evolving concept. According to the European Parliament, whereas it initially referred exclusively to access to ICTs, it later included “types and levels of internet use, motivation and skills.”¹² In this regard, the Mobile World Capital 2016 report on *The Digital Divide in the City of Barcelona*¹³ states that “the digital divide refers to the inequality between people who have access and knowledge of new technologies and those who do not.” This report measures digital performance in the 28 European Union member

states, Spain being positioned 12th. According to the report, Spain improved its results in 2014, mainly due to an improvement in connectivity. However, it also states that in Barcelona, district income levels linked to gender, age, education and profession have a significant influence on the use of digital technology.

For us, the digital divide is about internet governance, about access to and use of ethical and emancipatory technologies and their conscious adoption. It is about the “participation gap”, as described by Henry Jenkins, and about “access to skills, experiences, and mentorship” rather than merely about connectivity and access to technology.¹⁴ We do not have statistics measuring these variables. The abovementioned report on Barcelona reveals that the most common online activities are email, reading news, and using social networks. However, it does not explore, for example, how much users know about online security, privacy, personal data collection, electronic surveillance, confidentiality, transparency, participation, the environmental impact of using ICTs, or walled garden ecosystems.

The report also indicates there are no gender differences in internet access, but refers exclusively to connectivity and use of technologies. It is widely known, and specifically reflected in the Digital Agenda for Europe, that women are under-represented at all levels in the ICT sector and the number of girls choosing ICT careers is decreasing. “Out of 1,000 women with a bachelor degree in Europe, only 29 hold a degree in ICT (compared to 95 men) whilst only 4 eventually work in the ICT sector,” states a 2013 European Commission report called *Women Active in the ICT Sector*.¹⁵ We identify an important gender dimension in the CitizenSqKm initiative, because generally participation in community networks is mainly male.

Opening the community up to itself

The CitizenSqKm communicative ecology starts with the idea that for citizens to be engaged and informed, and able to transform and enhance their lives, it is not sufficient that public servants, journalists or teachers are the “holders of facts” that are then communicated to the public. Our idea of communication is that it should encourage citizen participation, and that it should influence and help participants to exchange ideas, in this way creating democratic debate. Any

8 Parlamento Español. (2015). Ley Orgánica 4/2015, de 30 de Marzo, de Protección de La Seguridad Ciudadana. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3442

9 European Parliament. (2015, 22 July). Answer to a written question on the Basic Law for the Protection of Public Security Adopted by Spain – E-006056/2015. www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-006056&language=EN

10 Gutiérrez, B. (2016). *The open source city as the transnational democratic future*. Transnational Institute. <https://www.tni.org/en/publication/the-open-source-city-as-the-transnational-democratic-future>

11 Ibid.

12 Negreiro, M. (2015). *Briefing: Bridging the Digital Divide in the EU*. [www.europarl.europa.eu/RegData/etudes/BRIE/2015/573884/EPRS_BRI\(2015\)573884_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/573884/EPRS_BRI(2015)573884_EN.pdf)

13 Mobile World Capital Barcelona. (2016). *The Digital Divide in Barcelona*. mobileworldcapital.com/escltexa-digital/download/escltexa-digital_en.pdf

14 Jenkins, H., Ito, M., & boyd, d. (2016). *Participatory Culture in a Networked Era : A conversation on youth, learning, commerce, and politics*. Polity.

15 European Commission, Directorate-General for Communications Networks, Content and Technology. (2013). *Women Active in the ICT Sector*. bookshop.europa.eu/en/women-active-in-the-ict-sector-pbKK0113432

piece of information can be translated into numerical data accessible to computers and, due to its ubiquitous attributes, this digitised material blurs the boundaries between institutional and citizen roles. What was once official information only (coming from public or private sources, and which was pre-digested and interpreted) becomes demystified when citizens regain the power over their own data.

Community networks are designed, structured and organised to guarantee that all benefits and value they generate go to the network users. These networks therefore contribute to the socioeconomic development of the place where they operate. They provide local connectivity, within and among communities, and offer a wide range of services to users that go beyond private sector internet networks. For example, they can provide open and free access to services such as telemedicine services or online education. They also provide access to localised e-commerce sites. Furthermore, when the private system breaks down or is censored, they provide an alternative channel of information. In the age of Spain's Gag Law, this is about awareness of freedom and is more than a mere back-up strategy.

The square kilometre that surrounds us is an excellent learning and living environment, but only when citizens are empowered to transform it. This is why CitizenSqKm encourages participants to conduct a census of the land, its inhabitants, infrastructure, services, history and nature and also to take full advantage of open data coming from public administration portals, such as open government data services, civic organisations, and sensors owned by citizens.¹⁶ The local community actively participates in discovering and improving their neighbourhood by collecting and classifying data related to it and even deciding where to store this information and data. For individuals, this means not only having their rights met, but defining and claiming them as a community.

CitizenSqKm's pilot project drew on the existing community network in the selected neighbourhood (Guifi.net),¹⁷ used an already active geolocation platform (Itinerarium's Eduloc),¹⁸ and designed a qualitative and quantitative assessment methodology (IGOPnet)¹⁹ involving the wider local community. It conducted numerous interviews in the local community (local associations, shopkeepers, foundations, libraries, schools, local media, etc.) and with the public administration. It also interviewed organisations conducting citizen-science projects such

as CitiSense,²⁰ Open Systems,²¹ Point of Information on Aerobiology (PIA)²² and the local branch of Wikipedia.²³

The resulting model, which can be re-packaged and adapted elsewhere, is therefore a communicative ecology for community engagement and participation with guidelines for specific activities. A communicative ecology is conceived by Foth and Hearn²⁴ as a technological layer (devices and connecting media), a social layer (people and social modes of organising those people) and a discursive layer (the content of communication). The CitizenSqKm model can be redesigned using other digital tools and platforms, such as those being created by the new European-based project OrganiCity.²⁵ It can be better adapted to the needs and wants of its users, by for example using the Co-creation Made Agile methodology designed by yet another European project, Wotify.²⁶ It can be expanded to host a conversation about the social construction of technology, from ethical and emancipatory viewpoints, and include a service like Teixidora (Weaver).²⁷ And it can be used to identify philanthropic projects citizens want to support within match-funding programmes,²⁸ co-financing – via crowdfunding platforms – these programmes with public and private institutions.

The CitizenSqKm pilot projects launched in Barcelona covered the widest possible range of ages and sectors in the community. They built on the work of public programmes such as “*Camins escolars, espais amics*” (The Way to School, Friendly Spaces),²⁹ a participatory project aiming to provide students with a safe route between home and school without being accompanied by an adult. This project not only develops autonomy among students, but also civic co-responsibility and the recovery of public space.

This initiative gave rise to “The Optimal Path”. The aim was for people in a village or city neighbourhood to gain personal independence and quality of life coming and going from point A to point B – for example, walking in the park or going to play sports

16 <https://smartcitizen.me>

17 <https://guifi.net>

18 eduloc.net

19 igopnet.cc/citizensqkm-2

20 www.citi-sense.eu

21 www.ub.edu/opensystems

22 lap.uab.cat/aerobiologia/en

23 https://ca.wikipedia.org/wiki/Viquiprojecte:Fons_Gràfic_Xavier_Badia

24 Hearn, G. N., & Foth, M. (2007). Communicative Ecologies: Editorial Preface. *Electronic Journal of Communication*, 17(1-2). eprints.qut.edu.au/8171/

25 organicity.eu

26 wotify.eu

27 <https://www.teixidora.net/wiki>

28 Platoniq and Goteo Foundation. (2016, 2 September). Goteo and the case for match funding. *Europeana Pro*. pro.europeana.eu/blogpost/goteo-and-the-case-for-match-funding

29 smartcity.bcn.cat/en/school-routes.html

– while also growing in their commitment to the local community. This sort of project benefits particularly from the participation of the elderly and disabled.

For students, CitizenSqKm is an excellent learning environment in which they can work in an interdisciplinary way in different areas of the curriculum (learning, for example, about environmental health in their neighbourhood and also exploring science, technology and mathematics)³⁰ and creating a space for the whole community to interact. Students and local historians may also use CitizenSqKm to explore historical heritage. For example, a project called the Catalan Wikimedia Thematic Organisation (Amical Wikimedia) and a local secondary school (Salvador Espriu) teamed up with CitizenSqKm to help preserve the photographic work and historical research by local artist Xavier Badia. In this way students at the Salvador Espriu secondary school are learning about their neighbourhood's industrial past by studying the Xavier Badia Archive and, in fieldwork, by geolocating historical images over today's buildings.

Scientists used CitizenSqKm to explore the local environment in a project tracking allergy-causing plants. Scientists from the PIA³¹ at the Autonomous University of Barcelona (UAB) developed a guide for citizens to produce a phenology – a study of how plants evolve over the seasons. Assisted by experts from the PIA, students from several schools in the Poblenou neighbourhood are learning to identify and scientifically observe how specific species evolve throughout the year. They geolocate, photograph and describe a series of trees and plants in the neighbourhood, and the data they collect is stored in a collective database accessible to the PIA scientists.

CitizenSqKm was related to yet another initiative³² that created small mobile weather stations for collecting local weather data and importing open data – provided by the public administration -- to the geolocation platform. The project also used open source technologies and second-hand computer hardware. The weather station was made using Arduino³³ (an open hardware platform). Participants created the small stations and then managed the data collected by a number of sensors (such as temperature, atmospheric pressure, and humidity). This data was stored locally, in a database located on a server or in a spreadsheet. Sensors, linked to a fixed or mobile device, enhance awareness of the degree of environmental health in the neighbourhood and

also deepen learning related to science, technology and mathematics.

Conclusions

In Spain, the national government, which is supposedly responsible for guaranteeing ESCRs, does not seem committed to this. Indeed, the parliament is passing some very restrictive laws which are questioned by many human rights organisations. However, there are also numerous grassroots, political or citizen-centred initiatives and some new, more independent local governments which are starting to use the internet to protect some of these rights. They are creating platforms to collect relevant information and use it to take more citizen-centric decisions, in this way changing the dialogue between government and citizens.

The internet can help citizens to become more aware of the potential uses for data collection, local content development and knowledge sharing, and it can empower them to develop and strengthen local infrastructure through their community telecommunications network.

Conducting local programmes where the internet is used to collect data relevant to the community, mapping it and sharing it via social media, while owning (and having partly produced) the technologies used, may encourage participants to question and discuss issues related to the social construction of technology, as pointed out by Wiebe E. Bijker.³⁴

The link between ESCRs and the internet in CitizenSqKm is found in the concept of “awareness of freedom”. The internet itself is not an enabler or a withholder of ESCRs. Rather, it is the way the community or the individual uses the internet and technologies related to communication that may give or withhold rights.

CitizenSqKm's model may encourage participants to experience collaborative production in participatory processes, fostering autonomous and decentralised participation and decision making, and also creating a sense of responsibility. Using social media locally is also a powerful way of dealing with some ethical issues related to privacy, consent or data sharing. When people are part of a local community, it becomes more obvious if someone is stalking, victimising, or giving partial or exaggerated information.

In the few examples described above, CitizenSqKm highlights the right to open, free and neutral technologies, promoting the use of

30 Ibid.

31 lap.uab.cat/aerobiologia/en/

32 blog.citizensqkm.net/protocol-taller-per-construir-una-estacio-meteorologica-portatil

33 <https://www.arduino.cc>

34 Bijker, W. E., Hughes, T. P., & Pinch, T. (1987). *The Social Construction of Technological Systems: New Directions in the Sociology and History of Technology*. MIT Press.

community networks and the exploration of mobile devices and open source sensors. By encouraging the community to collect their own data, the project – which also makes sure it involves local media and journalists – stands for the right to information, but also any other rights in relation to which the community decides to collect data. For instance, the right to food. The community collects data about the foods sold in the participating shops, whether they respect the environment, the labour rights of the workers who produce them, and consumers' health. In the end, the right involved depends on the different kinds of data collected.

Action steps

The following are some suggestions on how the internet could be used to realise ESCRs in Spain, what needs to happen in terms of policy change to achieve this, and what the next advocacy steps for civil society should be.

If the internet is to be used to ensure that ESCRs in Spain are respected, it is necessary, in the first place, to redefine the concept of the “digital divide”. To us, the term “digital divide” is not only about connectivity, access and use of technologies, but about the conscious and informed adoption of ethical and emancipatory technologies to:

- Promote government transparency
- Promote citizen participation and freedom
- Ensure access to open data and promote the collection and processing of data by citizens
- Promote different regulations to ensure access to internet services.

For change to occur we need:

- Legislation promoting net neutrality
- Legislation promoting the reuse of technological devices
- Legislation promoting cloud computing services based on open-source software
- Legislation promoting the deployment of open, free and neutral telecommunications infrastructure
- To rethink legislation about privacy and data protection.

The next advocacy steps for civil society should be:

- To promote knowledge by:
 - Making digital and data literacy, as well as access to connectivity (preferably through community networks), a central part of children and adult education programmes, at schools, universities and public libraries.

- Promoting awareness about terms of use and privacy policies.
- To encourage collaborative processes of work across sectors and communities by:
 - Co-financing projects with new models, like the match-funding model, where an institution makes a sum of money available to develop a specific area and, using a crowdfunding platform, calls for financial contributions from the community to match the money pledged.³⁵
 - Supporting the development of content by communities themselves, enabling the re-appropriation of data and technology.
 - Promoting multisectoral and interdisciplinary experiments and pilot projects for citizen participation.
- To promote access to open, free and decentralised technologies, web services, and apps.

Some of these suggestions draw from the first “Commons Collaborative Economies” event,³⁶ held in Barcelona, March 2016, where experts, citizens and sector representatives worked on a series of proposals and policy recommendations for governments. These recommendations were collectively gathered using an open source online editor, placed in Teixidora,³⁷ revised and rephrased into proposals,³⁸ and eventually published on the Barcelona City Council site decidim.barcelona.³⁹ These recommendations were then collected in the document “Declaration and policy measures of procomuns”, created by Barcola (Node on Collaborative Economy and Commons Based Peer Production in Barcelona), in the form of a joint statement on public policies for the collaborative economy⁴⁰ sent to the European Commission.

Some of these proposed action steps are already being acted upon locally in a few towns and cities in Spain, with practical examples such as DCDCity-Aire Madrid, the Los Madriles project,⁴¹ and participative budgeting initiatives such as IA Porta Aberta in La Coruña.⁴²

35 Platoniq and Goteo Foundation. (2016, 2 September). Op. cit.

36 procomuns.net/en/about-2/barcola

37 https://www.teixidora.net/wiki/Economies_col%C2%B7laboratives_procomuns_03/11/2016/apunts

38 Ibid.

39 ajuntament.barcelona.cat/alcaldesa/en/blog/decidimbarcelona

40 procomuns.net/en/policy

41 Gutiérrez, B. (2016). Op. cit.

42 <https://aportaaaberta.coruna.es>

SUDAN

NEW SPACES FOR WOMEN IN SUDAN



KEYWORDS: **gender, culture**

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Introduction

Women's rights activists and organisations in Sudan face different challenges in using the internet, social media and mobile phones to enhance public awareness on economic, social and cultural rights (ESCRs), to advocate for gender equality and justice, and to defend human rights. These challenges are due to low technical capacity and poor access to resources, as well as oppressive laws and policies. The internet helps women find new spaces to overcome some of these challenges. The internet can offer an easier channel of communication to influence policy makers, reach more women, and to support women's recovery when they are subject to human rights violations. This report will discuss the opportunities and challenges women face and how they overcome these challenges which impact negatively on their economic and social life.

Women's rights activists and organisations use the internet in their campaigns in Sudan in order to gather support for their causes, and to attract international media attention and the support of international human rights organisations. I will discuss and share two cases in particular. The first involves a sentence that was handed down to Amara Osman, who was arrested by the public order police because she refused to wear a hijab. The second case involves the experiences of a pressure group called "No to Women's Oppression". This group is advocating for the abolishment of the public order laws and helps women and girls who are punished by the laws. These two cases throw into sharp relief the challenges faced in countries that sign the International Covenant on Economic, Social and Cultural Rights (ICESCR), but with exceptions.

The public order laws target women working in informal sectors, violating their right to work and limiting their opportunities to raise their income. This violates Article 6 of the ICESCR, which recognises the right to work, as well as Article 11, which states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to

the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Challenging oppressive laws and practices

Sudanese women have been subject to political, economic, social and cultural marginalisation. This exclusion and marginalisation are reflected in discriminatory laws, policies and practices, which negatively affect their lives. These laws and policies are not in line with the country's constitution and Sudan's regional and international human rights obligations. On 18 March 1986 the government of Sudan ratified the ICESCR.¹ According to the National Interim Constitution (2005), all rights and freedoms enshrined in international human rights conventions and instruments ratified by Sudan should be an integral part of the bill of rights. The citizen is the rights holder as stated in Article 7 in the constitution, which states that "citizenship shall be the basis for equal rights and duties for all Sudanese", and Article 15 which says "[t]he State shall protect motherhood and women from injustice, promote gender equality and the role of women in the family, and empower them in public life."² However, Sudan's international human rights obligations are not reflected in domestic laws, in particular in so-called public order laws,³ the Criminal Code of 1991⁴ and the Personal Status Law.⁵

Public order law is one of the socio-legal challenges facing women: the law violates the constitution as well as the country's international

1 University of Minnesota Human Rights Library. (n/d). Ratification of International Human Rights Treaties – Sudan. hrlibrary.umn.edu/research/ratification-sudan.html

2 The Interim National Constitution of the Republic of the Sudan 2005. www.refworld.org/pdfid/4ba749762.pdf

3 Project for Criminal Law Reform in Sudan. (2011). *The Draft Social Control Act, 2011, for Khartoum State: Flogging into Submission for the Public Order*. [www.redress.org/downloads/Draft%20Public%20Order%20Law%20November%202011\[1\].pdf](http://www.redress.org/downloads/Draft%20Public%20Order%20Law%20November%202011[1].pdf)

4 www.wipo.int/wipolex/en/details.jsp?id=10737

5 Abdelsalam, A. H. (2010). Sudanese Personal Status Law of 1991: A new legislation to ongoing human rights violations. *RESPECT, the Sudanese Journal for Human Rights Culture and Issues of Cultural Diversity*, November. sudan-forall.org/sections/ihitiram/pages/ihitiram-special-issue-abdelsalam/pdf_files/Abdelsalam-Hassan-Personal-Status-Law-of-1991-English.pdf

human rights obligations. This law regulates the public and private life of women based on ideological and religious beliefs that determine a set of values regarding the proper place and behaviour of women in the society. It particularly impacts on women who are marginalised, internally displaced people (IDPs), and refugee women who work as street vendors or in other informal sectors, such as producing crafts, running restaurants from their homes, and brewing alcohol. The punishment for the contravention of public order law is a fine and flogging. More than 90% of women detained by the Sudanese public order police are subjected to forms of sexual assault.⁶

Not the first and it will not be the last...

The case of Amera Osman, a women's rights activist, has attracted the attention of the international media⁷ and international human rights activists. It is a case involving the free exercise of cultural choice in a society largely oppressive to women and how the internet was used to challenge this oppression. Amera was arrested by public order police because she refused to put a scarf on her head, which is considered a crime under Article 152 of the Criminal Code of 1991, one of several public order laws in Sudan. Article 152 states: "Whoever does in a public place an indecent act or an act contrary to public morals or wears an obscene outfit or contrary to public morals or causing an annoyance to public feelings shall be punished with flogging which may not exceed 40 lashes or with fine or with both."

Amera, who is a computer engineer, used social media – Facebook, YouTube⁸ and WhatsApp – to inform the public and the world about her case while she was in detention. In an interview conducted for this report, she said: "When the public order police arrested me, the first thing I thought about was to inform my family and friends about my case and to show them the place of my detention. I posted on my Facebook page what had happened with me. I published a video on YouTube telling the activists what happened to me and calling for them to attend my court hearing".⁹ After reading her post, her friends

and lawyers went to the place where she was being detained, and paid her bail. "Many people responded to my invitation," said Amera. "At the first court session, the court hall, yard and the street around the court were full of supporters. They organised a rally after the session calling for reforming the [public order] law and abolishing my case."

The punishment in the case of Amera could be 100 lashes and/or imprisonment and a fine.¹⁰ She has insisted on challenging the injustice of the law and says she will continue her campaign to abolish the law. She also says that women's rights activists want to break the silence about discriminatory law enforcement practices and unfair trials. "The majority of the women who suffer the consequences of the law do not speak about their experiences to avoid social stigma," she said, and added: "For me this is not the first time to be punished under public order law and may not be the last."

According to human rights groups, the public order laws are arbitrarily enforced and used as a cover to oppress vulnerable groups, particularly women, who face long spells in jail for infractions such as dancing with men or operating a hair salon before the age of 35.¹¹ As in the case of Amera, many of these laws are in clear violation of the IC-ESCR. By being punished for not wishing to wear a hijab, Amera's rights to free cultural participation were violated. By being prevented from running a hair salon, the right to work is violated. Although Sudan did not ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹² Article 3 of the ICESCR stipulates: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant." This means that the state should respect cultural rights and treat all citizens on an equal basis, without any kind of discrimination.

No to Women's Oppression

Amera's experience has inspired a women's rights pressure group called "No to Women's Oppression" to recognise the importance of the internet to its work and to use social media and the internet to raise awareness among women street vendors (who are mostly tea and food sellers) on their economic rights, as well as to advocate for reform of the law. In particular, the group is advocating for abolishing public order laws, and also tries to help women

6 No to Women's Oppression Coalition. (2013, 7 September). A call for solidarity with Amera Osman and women living in Sudan under the terror of Sudan public order regime. *Strategic Initiative for Women in the Horn of Africa*. www.sihanet.org/news/call-solidarity-amira-osman-and-women-living-sudan-under-terror-sudan-public-order-regime

7 Mutiga, M. (2014, 2 October). Sudan's 'morality' laws used to punish women, report finds. *The Guardian*. www.theguardian.com/world/2014/oct/02/sudan-morality-laws-women-report

8 <https://www.youtube.com/watch?v=IXsZbfncUgE> and <https://www.youtube.com/watch?v=I7r5Alx9ZqQ>

9 <https://www.youtube.com/watch?v=8RROXvfBecE>

10 No to Women's Oppression Coalition. (2013, 7 September). Op. cit.

11 Mutiga, M. (2014, 2 October). Op. cit.

12 www.un.org/womenwatch/daw/cedaw

and girls who have been punished under the laws. The group's members are active on social media and publish in local newspapers. They use the internet to reach out to those who have suffered under the law, including by distributing the phone numbers of a women lawyers group who provide legal aid, doctors who can assist survivors, and other useful services providers, such as access to credit and training.

Amel Mohammed, the founder of the group who was interviewed for this report, spoke about the group's experience in using WhatsApp to send messages to women street vendors informing them of their legal rights, as well as sharing lists of mobile phone numbers of a women lawyers association. She said, "This protects women from different kinds of human rights violations and harassment they may face if they are arrested or caught by police." She added that according to public order law, the vendors selling food and tea should wear "appropriate" clothing and follow "good conduct" and "public morality", terms which she thinks are vague and depend on the judgement of police officers and their political or ideological backgrounds.

She stressed, "The internet gives us more space to reach women working and living in remote areas, especially internally displaced women who come from conflict zones and who work in informal sectors targeted by public order police." She mentioned that according to the Public Order Act, any person who violates these conditions shall be punished by a fine and the court may confiscate their wares, which would cause them serious financial losses. Amel added: "We plan in our future programme to reach more women, train them on how to use social media, to lead debates on their human rights and their needs, and to speak freely about what happened to them, sharing their experiences with other communities who suffered similar experiences". She mentioned that the majority of women prefer communication and debate through WhatsApp groups.

Constraints and challenges

What are the challenges that women activists and organisations face in using the internet in their work, and what opportunities does it present in enabling them to realise their economic, social and cultural rights? Given that she has looked at the experience of women's organisations using the internet in their work, I asked this question to Bakhita Othman, a lecturer in the economics department at Al Iman Elhdi University in Omdurman. She is one of the founders of the Women's Economic Rights Association (*Egtisadiat*). She said: "The high cost of internet access and low level of experience in how

to use new technology, as well as a lack of knowledge on how to protect themselves from spying and hacking, are the main challenges they face." She added: "Recently most of them use smartphones, which facilitates their use of social media, including online chats and organising themselves in different social media groups." According to Bakhita, most young girls use the internet for their day-to-day communication, while middle-aged and older women face difficulties in using the internet. She said this was due to the high illiteracy rate and the burden of running a household.

There is also a lack of funding and weaknesses in networks that limit the opportunities for women's rights organisations to implement projects that encourage the women to use the internet to achieve ESCRs. They struggle to share similar and different experiences with women around the globe, to monitor human rights violations and to advocate for better living conditions. She mentioned that poverty, the armed conflict in three regions in Sudan, inequality and gender-based violence all negatively affect women and limit their opportunities to have the time to learn how to use new technology. "IDPs and poor women have fewer choices," she explained. "Either they have to spend money to cover their family's needs for shelter, food, health and education, or they have to pay the cost of internet access or to buy smartphones." She hopes that in the future women's human rights organisations and activists will develop projects to encourage women to use the internet in their daily life.

Concerning "No to Women's Oppression", Bakhita appreciated the use of the internet to reach out to those who have suffered under the penal laws, and said that it was important to build a solidarity network at the national and regional levels. It was also important, she said, to call for demonstrations and public gatherings to protest the punishments handed down by the courts, for example, in the case of a girl who was flogged repeatedly by laughing policemen.¹³ A video of the flogging was posted online.¹⁴ Using social media, "No to Women's Oppression" called for demonstrations condemning the humiliating punishment the girl was subjected to. Bakhita feels that the "No to Women's Oppression" initiative succeeds in attracting the attention of the international community, and she says this can be seen from the input during different sessions of the Human Rights Council.

¹³ Daily Mail. (2010, 14 December). Screaming woman publicly flogged by laughing policemen in shocking video from Sudan. *Mail Online*. www.dailymail.co.uk/news/article-1338479/YouTube-video-Sudan-shows-woman-flogged-laughing-policemen.html

¹⁴ ireport.cnn.com/docs/DOC-527066

Mobilising more supporters

In the two cases mentioned in this report, the internet helped activists to mobilise the public and create a sense of solidarity against oppressive laws. Networking with other women's human rights organisations around the globe, as in the case of "No to Women's Oppression", could not have happened without the internet and the social media campaigns. However, more skills are needed to organise sustainable social media campaigns. Until now it seems that activists are active only when there is a well-known case.

However, women working in informal sectors and the ordinary girls and women in the street are targeted by the public order police every day. One of the challenges that "No to Women's Oppression" faces is keeping the momentum going. Most of the group members do not have the skills to avoid censorship, such as using proxy sites to access information that is filtered or blocked by the government.

Few women and organisations in Sudan use the internet to promote their work and market their products online. Again, this is due to a low level of skills and knowledge. According to Bakhita, "More research and studies need to be done in this area to assess women's needs to develop their technical skills and knowledge."

Action steps

The following action steps can be suggested by civil society:

- The authorities should lift blanket restrictions on access to the internet. This will encourage women to broaden their means of communication, to associate online and to raise public awareness on ESCRs. Internet service providers need to look at the high cost of internet access compared to the income of Sudanese people. According to Freedom House's Freedom on the Net report for 2015,¹⁵ access to the internet has now become even more of a challenge for Sudanese people.

- A radical change in internet policies and laws is needed, rather than modifying existing laws and policies which are oppressive. Using regional and international instruments to pressure the government of Sudan to lift internet censorship and restrictions on freedom of expression by the National Intelligence Security Services (NISS) could be one of the tools to open more space and help Sudanese communities to freely use the internet to achieve ESCRs. Advancing internet rights for women, designing educational and training programmes, and conducting systematic research and studies that focus on the internet in the Sudanese context and how it can enable ESCRs are all important. Research will help to advance ESCRs and to influence government internet rights policies that promote and facilitate access to internet. It is necessary to expand internet infrastructure to the whole country, and to encourage telecommunications companies to fund computer and internet training as part of their corporate social responsibility commitments. It is also important to review the government's national strategy for building the information industry so that it reaches its goal of enabling all sectors of society to access information and media, in this way leading to the widest dissemination and utilisation of information.¹⁶
- Finally, technical and advanced women's empowerment and protection programmes and projects should be designed to build the capacities of women to use the internet for marketing purposes and to increase their income.

15 Freedom House. (2015). Freedom on the Net 2015: Sudan. https://freedomhouse.org/sites/default/files/resources/FOTN%202015_Sudan.pdf

16 Open Net Initiative Sudan- August 2009. <https://opennet.net/research/profiles/sudan>

SWITZERLAND

HOW IMPORTANT IS THE ESCR COVENANT TO SWITZERLAND?



KEYWORDS: **ESCRs, far-right**

Comunica-ch
Wolf Ludwig
comunica-ch.net

A state of ambivalence

Switzerland is usually seen as an affluent and stable country. It hosts one of the major seats at the United Nations (the UN Office at Geneva, UNOG) and is the home of various UN conventions (Geneva Conventions I-IV) and depositary state for 79 international treaties – including the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹ Nevertheless, the country and its people have always had a distant and rather ambivalent attitude towards the UN and its organisations.

There are two exceptions. In 1994, the Swiss government intended to join the International Convention on the Elimination of All Forms of Racial Discrimination by introducing an article (Art. 261 bis) into its penal code, but it was challenged and contested by a referendum launched by right-wing circles. After heated debates all over the country, this referendum was dismissed by a tight majority of voters (54.6%) in September 1994.² Switzerland finally only joined the UN itself in September 2002³ after years of long and fierce debates. A long-lasting obstacle was the country's ethos of neutrality – a pillar of Swiss identity. After several attempts, the last people's initiative in this respect (*Volksinitiative*) was adopted by 54.6% of the voters in March 2002 in favour of joining the UN.⁴

Given this, it is not surprising that Switzerland was a latecomer when it joined the ICESCR in 1992 – a move that did not meet any public resistance, which is more the norm when it comes to the UN system of international treaties and obligations. Because of this disinterest, it is difficult to find any references about the ESCR covenant on official

websites for federal offices and NGOs or in the national media. There is hardly any public discourse on the ESCR covenant and its rights framework in the country.

Political, economic and policy context

Generally speaking, Switzerland is strong in terms of cultural rights. This can be seen in its multilingual and multicultural background, which includes several national and cultural minorities, and the provision of various rights-related benefits to these groups. This is part of the country's long-lasting national cultural coherence, another cornerstone of Swiss identity and pride. However, when it comes to economic and social rights, the picture looks more diverse, conflicting and controversial. Compared to neighbouring countries (Austria, Germany, France or Italy), union rights are low, with unions having marginal power compared to big enterprises and the notorious financial sector, which are always in a “pole position” – including having a major influence among bourgeois parties in the national parliament and enjoying broader public consent. While there are plenty of economic resources to achieve ESCRs in Switzerland, considered one of the richest countries in the world, observers and critics note a considerable lack of political will from its institutions to implement ESCRs – despite several areas of weakness, including the wealth gap, the rights of migrants and immigrants, discrimination against women, and public health insurance.

ESCRs: A kind of non-issue

When Switzerland ratified the ICESCR in 1992, the government and its offices in charge of implementing it found themselves in a dilemma again. Adopting international standards and laws (external affairs) is a first step only; complying with related obligations and commitments (the domestic level) becomes a major challenge afterwards. And nothing can be taken for granted in a complex country with a sophisticated political system (direct democracy with various instruments of recourse) supported by a traditionally minded and fairly conservative public. When Switzerland had to appear before the UN Committee on ESCRs in 2010 to provide an account of its efforts on the implementation of the covenant,

1 <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/internationale-vertraege/depositary.html>

2 <https://de.wikipedia.org/wiki/Rassismus-Strafnorm>

3 Prior to this, Switzerland could sign conventions as a depositary state.

4 SWI. (2008, 14 February). Schweiz-UNO: späte Ehe. *swissinfo.ch*. www.swissinfo.ch/ger/schweiz-uno--spaete-ehe/5866536

it was the second and third country report since ratifying the covenant in 1992.⁵ Official reports submitted by governments are usually known to be apologetic or reflecting the governmental point of view only.

Social rights are of too little importance

One would assume that Switzerland, as one of the richest countries in the world and with a well-developed social system, does not have to fear too much criticism. But even before the first country report, the Committee on ESCRs voiced its worries about the distribution of wealth and prosperity in Switzerland. Another important issue was discrimination against women (e.g. with regard to salaries and promotion) or the very high costs of the health insurance system. Further criticism mentioned the fact that there is a lack of data in many fields.

In its concluding observations in November 2010, the UN committee welcomed some “positive aspects” such as the ratification of Optional Protocols and International Labour Organization (ILO) conventions, besides Federal Acts on vocational training, social security law and family allowances. However, the report states:

The Committee regrets the State party’s persistent position that most of the provisions of the Covenant merely constitute programmatic objectives and social goals rather than legal obligations. Consequently, some of those provisions cannot be given effect in the domestic legal order of the State party and cannot be directly invoked before domestic tribunals and courts of the State party.

The committee recommended that Switzerland:

(...) take steps to agree upon a comprehensive legislation giving effect to all economic, social and cultural rights uniformly between the Federal Government and the cantons; establish an effective mechanism to ensure the compatibility of domestic law with the Covenant; and, guarantee effective judicial remedies for the violations of the rights enshrined in the Covenant.⁶

NGO shadow report

A broad-based coalition of Swiss NGOs, headed by Humanrights.ch, forwarded an assessment on the implementation of social rights in Switzerland – a so-called shadow report – to the Committee in November 2010.⁷ The *Coalition suisse romande sur le droits économiques, sociaux et culturels* (Swiss Francophone coalition on economic, social and cultural rights) also submitted a report for the attention of the committee.⁸

The coalition, which included Swiss human rights and relief organisations, as well as trade unions, complained that:

There exist various problems and shortcomings within the [Swiss] system. [The government claims], in particular, that social rights are only of minor importance because, in comparison with classic fundamental rights, they are not included in the Swiss Federal Constitution as rights but as programmatic provisions only. Therefore, they are only enforceable to a very limited degree (see Art. 41 of Federal Constitution).

The coalition also expressed concern about the “grave shortcomings in the implementation of the economic, social and cultural rights of foreign persons and minorities.”⁹ For example, Switzerland has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).¹⁰

Switzerland’s next periodic country report to the committee was due in June 2015, but, a year later, it has not been submitted. Such a delay somehow shows that ESCRs and their implementation in the country are not figuring among the government’s priorities. “Haste makes waste” is a common saying in the country, but sometimes this can feel like an excuse. While the government delays, numerous issues persist, such as women’s rights in the

5 Economic and Social Council. (2009). Implementation of the International Covenant on Economic, Social and Cultural Rights, Second and third periodic reports of States parties under articles 16 and 17 of the Covenant: Switzerland. www.humanrights.ch/upload/pdf/110720_Implementation_CESCR.pdf

6 Committee on Economic, Social and Cultural Rights. (2010). Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Switzerland. [humanrights.ch/upload/pdf/101123_Sozialpakt_Concluding_Obs_Switzerland.pdf](http://www.humanrights.ch/upload/pdf/101123_Sozialpakt_Concluding_Obs_Switzerland.pdf)

7 Swiss NGO Coalition. (2010). NGO Report on the second and third periodic reports of Switzerland concerning the International Covenant on Economic, Social and Cultural Rights. www.humanrights.ch/upload/pdf/100929_Sozialpakt_Swiss_NGO_report_CESCR_engl.pdf

8 Coalition suisse romande sur le droits économiques, sociaux et culturels. (2010). 2nd and 3rd Shadow Report on the International Covenant on Economic, Social and Cultural Rights. www2.ohchr.org/english/bodies/cescr/docs/ngos/CSR_Switzerland45.pdf

9 Humanrights.ch. (2010, 27 October) Switzerland to appear before the UN Committee on Economic, Social and Cultural Rights. www.humanrights.ch/en/switzerland/internal-affairs/social-policies/social-rights/switzerland-appear-committee-economic-social-cultural-rights-and-swiss-ngo-coalition. (2010). Op. cit.

10 www.humanrights.ch/en/switzerland/un-conventions/non-ratified/international-convention-protection-rights-migrant-workers-members-families-icrmw

workplace,¹¹ problems with the country's banking sector and secrecy (2012),¹² and challenges regarding the rights of sexual minorities (2015),¹³ all of which have been written about in previous GISWatch country reports.

A more recent but relatively unknown initiative was launched in March 2016 by the Center for Economic and Social Rights (CESR) in cooperation with the Swiss NGO Berne Declaration, aimed at bringing Switzerland's financial secrecy under the human rights spotlight. The focus of this initiative is tax avoidance and evasion, which "represent a systemic drain on government revenues needed for the fulfilment of women's rights and gender equality." The initiative, based in Geneva, outlines "Switzerland's role in facilitating cross-border tax abuse and the impact this has on women's rights in countries such as Zambia, which loses billions each year in potential revenue due to tax abuse facilitated in part by Switzerland's lax tax and financial rules." It also highlights "critical policy safeguards – such as impact assessments, exchange of taxpayer information, country-by-country corporate tax reporting and whistle-blower protections – which Switzerland should put in place to prevent such abuse and to mitigate its harmful human rights impacts."¹⁴

For the moment there is no further shadow report on the status of ESCR's implementations foreseen, as Ruedi Tobler, one of the editors of the last NGO report confirmed. One minor, but important achievement was however reported in the summer of 2016: the Federal Council finally approved the creation of an independent human rights institution that will be funded by the Confederation. With this, a long-term demand and struggle by national human rights groups became true.¹⁵ A main target of this new institution will be monitoring and consultancies like comparable entities in Germany and Norway.

The role of the internet

As previous GISWatch reports over the years have shown, the internet and related communication tools and channels are of major importance for any social and economic growth or change in the country. Generally, Swiss citizens have access to internet infrastructure and a variety of content, such as educational content – including those who have lower incomes. But the picture is still complex and diverse. Many small and almost marginalised social and political groups which have hardly any access to the traditional media have become efficient in using the internet to promote their views and needs and to create networks of support. What this means is that the traditional media and their gatekeepers no longer have the same influence and control over a more diversified public opinion. Thanks to the internet, minorities and political opposition have become much more visible and influential than ever before.

Yet, arguably, this visibility has had little impact on driving ESCRs onto the public agenda in any sustained way. UN issues and concerns – like European affairs and topics – remain the interest of "elitist" groups in the country. Average Swiss citizens and voters, or the mainstream Swiss media, simply do not care much about the UN, or topics such as ESCRs and the country's related obligations.

The website run by Humanrights.ch is still among the few reliable sources of information on international law and rights obligations. However, similar resources cannot be found on official websites.

Conclusion

Ironically, the country's UN obligations may receive more public recognition in the near future, but for the wrong reasons. Currently, the popular right-wing Swiss People's Party (SVP/UDC), the strongest political force in the country and part of the government,¹⁶ is openly and repeatedly challenging the Swiss political and constitutional system and any international laws and commitments.¹⁷ In August 2016 the party handed in the signatures collected for its people's initiative "Swiss Law Instead of Foreign Judges" at the Federal Chancellery in Bern. For this occasion, the NGO coalition Schutzfaktor M¹⁸ launched the "Show the Red Card" campaign on social media channels. In a press release,

11 Ludwig, W. (2013). Women's rights, gender and ICTs. In Finlay, A. (Ed.), *Global Information Society Watch 2013*. www.giswatch.org/en/country-report/womens-rights-gender/switzerland

12 Ludwig, W. (2012). Facets of an unimposing problem. In Finlay, A. (Ed.), *Global Information Society Watch 2012*. www.giswatch.org/en/country-report/internet-and-corruption/switzerland

13 Ludwig, W. (2015). Sexual rights: Still a long way to go. In Finlay, A. (Ed.), *Global Information Society Watch 2015*. www.giswatch.org/country/switzerland

14 Center for Economic and Social Rights. (2016, 1 March). Switzerland's financial secrecy brought under human rights spotlight. www.cesr.org/article.php?id=1812

15 Humanrights.ch. (2016, 27 July). The field is clear for a national human rights institution. www.humanrights.ch/en/switzerland/internal-affairs/national-institution/news/field-clear-a-national-human-rights-institution

16 https://en.wikipedia.org/wiki/Consociationalism_z

17 Humanrights.ch (2016, 24 August). SVP Anti Human Rights Initiative submitted. www.humanrights.ch/en/switzerland/internal-affairs/law/svp-anti-human-rights-initiative-submitted

18 www.schutzfaktor-m.ch

Schutzfaktor M warns that the initiative may try to terminate Switzerland's adherence to the European Convention on Human Rights (ECHR).¹⁹ If this right-wing attack (like others before) is accepted by the majority of Swiss voters, the consequences for the country's international relations, commitments and reputation could be disastrous. During the last *Volksinitiative* campaigns on comparable issues ("anti-minarets", "stop mass immigration" and the like) social media became more and more important for the broader mobilisation of citizens – but this has not yet resulted in an obvious change in public engagement and opinion.

Action steps

The recommendations stated in the NGO shadow report in September 2010 are still valid today, and worth highlighting. They include:

- Ratifying the Optional Protocol to the ICESCR.
- Ratifying the European Social Charter.

- Drafting an action plan for the implementation of social rights in cooperation with cantons, communes (in particular cities) and civil society.
- Passing a federal law obligating the cantons to implement human rights.
- Writing ESCRs into law – including revising constitutional provisions on the right to work, education, health and social security.²⁰

As the Swiss NGO report has shown, there is still a long way ahead for the Swiss government and its institutions to properly implement the covenant in the country. And as in various other fields, the internet could be better used as a strong tool and enabler to promote ESCRs in Switzerland – on the governmental side and for civil society.

¹⁹ www.schutzfaktor-m.ch/newsalert-vom-12-08-2016

²⁰ These points are adapted from Schweizer NGO-Koalition. (2009). Vorschläge für die „List of issues“ zur Behandlung des zweiten und dritten Schweizer Berichts zum Sozialrechtspakt (Pakt I). www.humanrights.ch/upload/pdf/091030_PaktI_NGO_List_of_issues_deutsch.pdf and Swiss NGO Coalition. (2010). Op. cit.

SYRIA

MITIGATING THE DAMAGE: THE DIGITAL PRESERVATION OF PALMYRA'S HISTORIC MONUMENTS



KEYWORDS: **culture**

Karim Bitar

Introduction

After more than five years of conflict and violence, the destructive outcomes of the war in Syria have devastated the country. The massive human tragedy is certainly the most disturbing: a report by the Syrian Center for Policy Research (SCPR) released in early 2016 estimated that over 470,000 people had been killed, one in 10 Syrians had been wounded, and more than 10 million were internally and externally displaced.¹ Moreover, the vast majority of the country's infrastructure has been destroyed. And, recently, the damages have extended to Syria's rich and coveted historic sites and national treasures.

While many historic sites have suffered significant destruction inflicted by both sides of the conflict,² this report will focus on the recent events that devastated the ancient ruins in Palmyra. This small city in central Syria holds significant symbolic status as a living record of the several civilizations that inhabited the area, dating back to the early second millennium BC.³

This report will briefly describe the events that caused the destruction in Palmyra. It will then discuss the efforts of many activists, scholars and volunteers to leverage digital media and the internet to mitigate the impact of this destruction and contribute to the preservation of an important cultural treasure for the whole world.

A cultural tragedy, with a sliver of hope

The historic ruins of Palmyra were designated as a UNESCO World Heritage Site in 1980. The site contains a wealth of Greco-Romano-Semitic architectural and cultural monuments, including the Great Colonnade, Agora and many temples and cemeteries.

On 20 May 2015, the so-called Islamic State of Iraq and Levant (ISIL) captured the city of Palmyra after a brief offensive and the withdrawal of government forces.⁴ The capture immediately sparked widespread concern and worry about the fate of the historic ruins, given ISIL's record of intentionally destroying ancient monuments.

UNESCO issued a statement calling for the cessation of hostilities in the historic sites in the city: "It is imperative that all parties respect international obligations to protect cultural heritage during conflict, by avoiding direct targeting, as well as use for military purposes."⁵ Other calls to spare the historic sites reminded the country of its obligations under the International Covenant on Social, Economic and Cultural Rights (ICESCR), which the Syrian Arab Republic ratified on 3 January 1976.⁶ The British historian Dan Cruickshank called the capture a "cultural crisis of the highest order".⁷

Soon after ISIL took control of the city, reports emerged of the destruction of several cultural and historic artefacts, including the Lion of Al-l statue (1st century AD)⁸ and the Temple of Baalshamin (2nd century BC).⁹ On 30 August 2015, ISIL demolished the Temple of Bel (2nd century AD),¹⁰ which had some of the most preserved ruins in Palmyra and the region.

The frustration felt with the tragic news led many archaeological experts, volunteers and activists to search for ways to even slightly mitigate the impact of the destruction, and help preserve the cultural treasures for Syria and the world. With very few feasible options available, these individuals and groups turned to digital media and the internet

1 Black, I. (2016, 11 February). Report on Syria conflict finds 11.5% of population killed or injured. *The Guardian*. <https://www.theguardian.com/world/2016/feb/11/report-on-syria-conflict-finds-115-of-population-killed-or-injured>

2 Curry, A. (2014, 3 September). Archaeologists Train "Monuments Men" to Save Syria's Past. *National Geographic*. news.nationalgeographic.com/news/2014/09/140903-syria-antiquities-looting-culture-heritage-archaeology/

3 <https://en.wikipedia.org/wiki/Palmyra>

4 [https://en.wikipedia.org/wiki/Palmyra_offensive_\(May_2015\)](https://en.wikipedia.org/wiki/Palmyra_offensive_(May_2015))

5 UNESCO. (2015, 25 May). UNESCO Director-General calls for immediate cessation of hostilities in Palmyra. en.unesco.org/news/unesco-director-general-calls-immediate-cessation-hostilities-palmyra?language=en

6 Davila-Ruhaak, S. (2016). Beyond the Destruction of Syria: Considering a Future in Syria and the Protection of the Right to Culture. *John Marshall Review of Intellectual Property Law*, 15(3).

7 Batchelor, T., & Virtue, R. (2015, 21 May). Call for 'drastic military action NOW' to save Palmyra from ISIS or 'all will be lost'. *Express*. www.express.co.uk/news/world/578660/Islamic-State-capture-ancient-city-Palmyra-fears-world-heritage-site

8 https://en.wikipedia.org/wiki/Lion_of_Al-l

9 https://en.wikipedia.org/wiki/Temple_of_Baalshamin

10 https://en.wikipedia.org/wiki/Temple_of_Bel



The Triumphal Arch before and after its destruction. SOURCE: GETTY IMAGES

with the aim to first understand the extent of the events, and to mobilise efforts to document and preserve the legacy of the damaged or destroyed artefacts.

Several Syrian archaeologists abroad swept into action. Amr Al Azm, the former head of archaeological research at the Syrian General Department of Antiquities and Museums, who currently lives in the United States and teaches at Shawnee State University in Ohio, is helping the informal “Syrian Monument Men” group of volunteers in their efforts to document looting of archaeological artefacts. The volunteers who reside in different parts of Syria and hide their identity to protect their work use simple tools like digital cameras and smartphones to capture cultural heritage crimes. They send the collected evidence to experts abroad like Azm, who in turn use it to pressure international organisations to track these artefacts in the hope of possible recovery from smuggling or the black market.

The Institute for Digital Archaeology (IDA)¹¹ is another initiative trying to use digital technology to protect cultural heritage. Jointly founded in 2012 by Harvard University, Oxford University and Dubai’s Museum of the Future, the institute aims to build an open source database of high-resolution images and 3D graphics and models of archaeological artefacts to contribute to the preservation of the shared cultural identity and shared history.

The IDA team was able to put together a group of contributors on the ground and achieved a remarkable outcome of documenting most of Palmyra’s ruins and ancient buildings. The group succeeded in gathering the necessary data about most buildings in Palmyra before their destruction. These data were processed by the IDA to produce high-resolution imagery and 3D models of the buildings or objects. The IDA makes the resulting images, 2D and 3D models available as open source materials through its Million Image Database.¹² This will enable other interested parties to use these materials to create content and an experience that will help preserve the Syrian cultural heritage.

An interesting example of what can be done using the digital materials developed and preserved by the IDA is the reproduction of the Triumphal Arch using large-scale 3D printing technology. The 5.5-metre-high replica is two thirds the scale of the original arch, and was unveiled at Trafalgar Square on 19 April 2016. The model was planned to tour several cities around the world before moving permanently to Palmyra where it will be installed near the site of the original arch.

The new model has already made a significant contribution to the global awareness of the scale of damage and destruction to the Syrian cultural and historic heritage as a result of the war. It cannot, however, compensate for the massive loss that

¹¹ digitalarchaeology.org.uk/our-purpose

¹² www.millionimage.org.uk



Model of the Triumphal Arch created using 3D printing technology. SOURCE: BBC

has already occurred, as many experts have already stated.¹³

The innovative use of the internet to support the cultural preservation efforts has gone beyond the digital documentation and open access dissemination of images and architectural models. Conan Schmigel Parsons, an archaeologist from the United Kingdom who was alarmed by the news coming from Palmyra, decided to take positive steps in his own capacity. He embarked on a journey he called Saving Palmyra Digitally.¹⁴ Parsons wants to create digital 3D reconstructions of the ruins of Palmyra using a digital imaging technique called “photogrammetry”. To help launch his project, he turned to the internet crowdfunding platform GoFundMe to raise funds for the equipment and software he needs. As of writing, the Saving Palmyra Digitally campaign has raised GBP 793 (USD 1,026) on its way to its goal of GBP 1,800 (USD 2,330). However, Conan has already released several 3D models (including the Temple of Baalshamin and Trooper Potts VC Memorial) under an open Creative Commons Attribution licence.¹⁵

One fundamental aspect that underlies most initiatives to document the cultural and historical heritage in Palmyra is their adoption of an open approach to the content and digital artefacts they are producing. By releasing these artefacts under permissive licences that enable others to use, share and remix to create new and derivative works, the impact of the original work is greatly amplified, and the space for innovation is significantly widened. This openness will also assist the efforts to restore and reconstruct the actual sites in Syria when the war ends. The Million Image Database at the IDA allows any use of its resources without requiring attribution, and the works of Saving Palmyra Digitally only need author attribution to be reused freely.

All these projects and initiatives have good intentions and are starting from the premise that Palmyra’s heritage embodies the shared history of humanity, and its preservation and restoration are necessary for Syria and for the whole world. There is, however, an important issue that should be addressed: the vast majority of initiatives and their output are implemented and released in languages other than Arabic, the official language of the people of Syria. This can arguably limit access and the contribution of most Syrian citizens to these efforts, and reduce the benefits they can get from

¹³ Turner, L. (2016, 19 April). Palmyra’s Arch of Triumph recreated in London. *BBC*. www.bbc.com/news/uk-36070721

¹⁴ <https://www.gofundme.com/6b4q5z94>

¹⁵ <https://sketchfab.com/palmyra3dmodel>

their outcomes. Some experts and activists, such as Al Azm, are working on bridging this gap, but a systematic consideration of the inclusion of Arabic and the local residents can address the unintended consequences of this issue.

Conclusions

The stories above illustrate how digital technologies and the internet can become effective tools for the preservation of historical heritage and the protection and support of the cultural rights of citizens in war-torn countries. From documenting cultural heritage crimes to facilitating the tracking and recovery of stolen artefacts, to the collection of data and evidence to support the development of digital imagery, 2D and 3D models, to the reconstruction of buildings and artefacts using 3D printing, to crowdfunding to support these efforts, the internet plays a critical role as the enabler for grassroots mobilisation, international collaboration and open sharing and access.

These initiatives have successfully used the internet to respond to the incidents in Palmyra at a global scale. However, they unintentionally left out a critical element: ensuring that the processes used to gather data and evidence, document incidents and develop and disseminate digital artefacts consider the Syrian citizens as the primary beneficiaries of their efforts, and hence make these processes and their outputs accessible to them. Fortunately, this access barrier is mostly a language issue. But considering the importance of embedding Arabic in the works of these efforts, and in the results they produce, will go a long way in extending their reach and impact to the people of Syria – those whose lives have been most affected by the conflict and the destruction.

Unfortunately, what happened in Palmyra is not an isolated incident. In fact, several other historic sites of tremendous significance have also been destroyed or severely damaged because of regional conflict: the ancient ruins of the city of Nimrud in Iraq, many statues in the Mosul museum, and the Crac des Chevaliers castle in Aleppo. With very few viable options available for action, the internet provides a sliver of hope.

Action steps

The following considerations need to be taken on board when using digital technologies in preserving cultural heritage:

- The internet and its associated digital technologies provide unique opportunities to support and strengthen the efforts to preserve cultural heritage and greatly reduce the costs of these efforts and initiatives. Countries that have ratified the ICESCR must actively embrace digital technological advances to boost their cultural preservation efforts and deliver on their commitments to the Covenant.
- At the same time, internet content suffers from weaknesses in its linguistic diversity, which results in biases in the digital cultural heritage preservation efforts towards English content and dissemination. This linguistic bias needs attention from proactive stakeholders.
- As can be learned from Palmyra's stories, the internet can also facilitate collaboration and the mobilisation of resources to support the preservation of cultural heritage (including skills and content sharing, technology transfer and through crowdfunding).
- Most importantly, the internet promotes dialogue and debate over the diverse cultural heritage shared by humankind, which can lead to better understanding, tolerance and respect among cultures and nations.

TURKEY

GENDER INEQUALITY: WHEN THE INTERNET REINFORCES SOCIAL BARRIERS TO PARTICIPATION BASED ON CLASS



KEYWORDS: **gender, labour**

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Introduction

According to research and statistics from various private and public institutions,¹ conventional working styles and modes of employment have been changing in Turkey due to the internet, changes that have been described through concepts such as “social entrepreneurship”, “digital investment”, and the more familiar “online start-ups”. The common perception is that these new ways of working online enhance gender equality when it comes to labour rights and eliminate barriers that previously excluded vulnerable groups from accessing the job market. Although there is some statistical data showing that this perception is true, as explained briefly below, these new concepts and the progressive discourse created around them also foster an illusion of “gender equality”, “gender balance” and the “empowerment of women” and may pave the way towards losing our current legal gains favouring the fundamental rights of women in the workplace.

We would like to discuss whether or not new ways of online self-employment and other employment opportunities offered by the internet have the potential to have an impact on the right to work and access the labour market for vulnerable groups, especially women, and whether they trivialise significant principles such as “affirmative action” or the application of quotas in the private sector.

Policy background

The right to work in a safe, productive and fair environment is a globally accepted economic right guaranteed under the International Covenant on Economic, Social and Cultural Rights (ESCRs). In Article 7 it says in relation to gender:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

Turkey signed the Covenant on 15 August 2000 and ratified it on 4 June 2003 with Law No. 4867. The cabinet confirmed the Covenant under decree No. 2003/5923 on 10 July 2003. The Covenant became a part of the domestic law when a translated version was published in the official gazette on 11 August 2003, and became internationally enforceable for Turkey as of 23 December 2003. However, Turkey put a reservation on the 3rd and 4th paragraphs of Article 13 of the Covenant on the grounds that they are in conflict with Articles 3, 14 and 42 of the Turkish Constitution.

Turkey also recognises the right to work in its constitution, in Article 49, not only as a right but as a positive duty of the state as well. However, affirmative action and quotas in the workplace are not specifically given constitutional protection, but are indirectly mentioned in Article 10 of the constitution under the general principle of equality. If one considers all written codes of the Turkish legal order it may be said that the state may apply affirmative action and quotas only for these groups of people: elderly people, women, children, people with disabilities, and the families of martyred² and veteran soldiers of the Turkish army.

The internet as a tool promoting privilege

If one looks into norms regulating employment in Turkey there is no article explicitly guaranteeing affirmative action and quotas. However, Article 5 of the Code of Employment prohibits discrimination

¹ Unfortunately, this issue has been seldom researched in Turkey and we could only consult a few reports while writing this report: Reports of Women Entrepreneurs Association in Turkey (KAGIDER) titled “Graduate Young Women’s Employment in Turkey” and “KAGIDER Annual Report 2015” ; academic field research prepared by Batum, Takay and Tuzun in 2014 titled “Women Entrepreneurship in Ankara: Examples and Road Map” and a report on Global Entrepreneurship Monitor (GEM) disseminated through the Turkish Women’s International Network.

² Martyrdom is a very important concept due to ongoing internal armed clashes between the state and the PKK, Kurdish armed fighters. Families of martyred soldiers have had a privileged legal status in various areas such as employment and property law.

based on gender in the process of employment and in the workplace. There are also some protective measures in the Code of Employment³ for these three groups: people with disabilities,⁴ pregnant women⁵ and mothers nursing children.⁶ While these are welcome steps for women, they exclude women generally, with the result that gender equality in participating in the work force is still not attained. While the difference between the participation of men and women in higher education is relatively low (16.2 % and 11.7 %, respectively, have access to higher education institutions),⁷ the population of illiterate women is five times more than the illiterate male population.⁸ This suggests that in Turkey, gender equality is more attainable as social class and economic income rise.

However, the relatively small gap between educated populations does not reflect in gender employment numbers. According to the Turkish Statistical Institute, the employment rate for men between the ages of 15 and 64 is 68.4% and for women it is 29.6%.⁹ Moreover, the disparity between labour force participation rates was also very large at 75.8% for men and 34.1% for women in 2015. In the political realm, there is also a massive difference in participation between males and females, which partly results in a lack of women's issues being prioritised.

The question as to whether new forms of employment or doing business when it comes to the internet empower women across different social backgrounds remains. When looked at more broadly, and not just limited to the problem of "gender equality" and "gender balance" in online working environments, the question of which groups of women from which cities can access the online labour market and be active in internet work, compared to which groups of women cannot do this, is an important factor in terms of social and economic inequalities.

Here, we want to look very briefly at the big picture of women's entrepreneurship in Turkey.

We would like to question the progressive and egalitarian discourse that surrounds online "entrepreneurship" and suggest it has the potential to reproduce not just gender inequality but also social and economic class-based gender inequality.

According to a report titled "Graduate Young Women's Employment in Turkey",¹⁰ most of the studies regarding women in the workplace are concentrated on agricultural employment or household work, as these are the most commonly unrecorded forms of work in which women participate much more than men. There are micro loans available, particularly for women that live in rural areas and are from disadvantaged backgrounds. However, as mentioned in the report, these credits fail to provide women with sustainable business opportunities because of both faulty implementation and harsh loan conditions. Despite seemingly available seed funding offered by public institutions, women from disadvantaged backgrounds, and particularly women living in rural areas, have very limited access to new means of entrepreneurship such as online businesses.

This is supported by the Women Entrepreneurs Association's 2015 annual report on Turkey,¹¹ which finds that the dominant profile of women entrepreneurs is young, educated, from the middle or upper class, urban, and mostly active in e-commerce in the textile, cosmetics, organic food and health sectors – sectors that are generally regarded as being "left" to women entrepreneurs. Since there is no specific legislation in Turkey regulating these new forms of employment and self-employment, there is no mechanism to monitor inequalities and to adjust gender, social and economic class balances among self-employed and "employer" entrepreneurs.

According to a report¹² looking into women's entrepreneurship in Ankara, the capital city of Turkey, and prepared by Batum, Takay and Tuzun for the Ankara Development Agency in 2014, women may be *drawn* or *pushed* towards entrepreneurship for several reasons. These include the general unemployment problem as well as gender biases in workplaces and the inconvenient work environment for women, such as inflexible hours or male-dominated workplaces. On the other hand, on top of all these common problems, in Turkey the major obstacles women face in terms of entrepreneurship are

3 www.mevzuat.gov.tr/MevzuatMetin/1.5.4857.pdf

4 Article 30 of the Code of Employment stipulates that it is obligatory to employ people with disabilities in the public and private sector.

5 Article 18 of the Code of Employment states that pregnant women have the right to take unpaid leave of eight weeks during the pregnancy before giving birth.

6 Article 74 of the Code of Employment establishes that nursing mothers have the right to take unpaid leave of up to six months after giving birth.

7 Turkish Statistical Institute. (2016, 7 March). Women in Statistics, 2015 (press release). www.turkstat.gov.tr/PreHaberBultenleri.do?id=21519

8 Ibid.

9 Ibid.

10 www.kagider.org/docs/default-source/Raporlar-ve-Sunumlar/genckadinistihdamiarastirma.pdf?sfvrsn=2

11 www.girisimhaber.com/post/2015/07/06/Kadin-Girisimciligi-Arastirmasi-2015.aspx

12 Batum U., Takay B. A., & Tuzun, I. K. (2014). *Women Entrepreneurship in Ankara: Examples and Road Map*. Ankara Development Agency.

given as a lack of experience, a lack of initial capital, and the absence of the necessary network to develop their businesses. However, the most commonly stated difficulty given by the women who participated in this study is simply “being a woman”, which is interestingly the highest for both the lowest *and* the highest education groups, as well as for the single women.

In order to overcome obstacles such as a lack of networks, mentoring and managerial or business-related knowledge, there are several NGOs established and run by women. The same report mentions the Turkish Women’s International Network (Turkish WIN)¹³ as the most prominent NGO advocating for and promoting women entrepreneurs. The aim of this network, established in 2010, is to connect businesswomen and women entrepreneurs around the world that have ties with Turkey. They also provide mentoring services to women entrepreneurs in Turkey. However, the fact that their website is available only in English is a good indicator that they aim to reach certain groups of women in Turkey that can speak English, which shows a massive lack of diversity.¹⁴

According to a Global Entrepreneurship Monitor (GEM) report,¹⁵ between 2006 and 2012 there was a massive change in the number and the “quality” of entrepreneurs in Turkey. In particular, the demographic make-up of early-stage entrepreneurs had changed in that they tend to be relatively older, from a higher income group, and better educated. As for women early-stage entrepreneurs, although there was a slight increase after the 2009 crisis, the GEM report mentions that the overall profile of entrepreneurs tends to be clearly from the more privileged parts of the society. While the report emphasises the large gap between male and female entrepreneurs, it also argues that the increase of entrepreneurs from the higher income group indicates the need for more diverse finance mechanisms in order to increase access to the market for entrepreneurs from a broader spectrum of social and economic groups.

Conclusions

In order to enable a more diverse female work force, and for the internet to stimulate participation in new forms of business, NGOs should target women who lack the necessary technical and networking skills. If the sole target groups of these NGOs continue to be women from privileged backgrounds with higher education and social capital, disadvantaged groups will continue to be deprived of opportunities. Moreover, as mentioned above, the loan or seed funding systems that particularly target women from disadvantaged backgrounds and in rural areas, such as micro-credits, need to have many adjustments in their implementation and application. In order to create more sustainable business opportunities, women need more access to mentoring and networking at a much more diverse level.

Action steps

The following actions steps should be considered for Turkey:

- NGOs and institutions such as universities should define gender barriers that impact on the right to work online as a social and economic problem. This will increase the qualitative and quantitative data available, which is necessary to develop effective public policies.
- The state should amend the relevant legislation in order to protect vulnerable groups and to empower them.
- NGOs should focus on developing the technical skills of rural and disadvantaged women.
- Advocacy is also necessary to challenge the prohibitive terms attached to micro loans aimed at disadvantaged women so that they can have a real impact on entrepreneurship at the grass-roots level.

¹³ login.turkishwin.com/public/Default2.aspx

¹⁴ According to a policy paper dated 2011, Turkey ranked 44th on the Global English Language Competence Index. www.tepav.org.tr/upload/files/1329722803-6.Turkiye_nin_Ingilizce_Acigi.pdf

¹⁵ www.gemconsortium.org/country-profile/116

UGANDA

THE USE OF THE INTERNET TO ADVANCE SEXUAL AND REPRODUCTIVE HEALTH



KEYWORDS: **gender, e-health**

Initiative for Social and Economic Rights (ISER)

Allana Kembabazi

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Introduction

Despite improving health outcomes, Uganda has high rates of maternal mortality. The overall maternal mortality rate is 360 per 100,000 live births, while the risk of a mother dying in a health facility during childbirth is 118 per 100,000 live births.¹ Delay in seeking healthcare is partly the cause of this. Only 36.6% of women in 2014/2015 attended the minimum four antenatal care sessions, and only 52.7% delivered in health facilities.² The contraceptive prevalence rate is 30%.³

The internet has the potential to complement advocacy on sexual and reproductive health and to strengthen health systems. In 2014, internet penetration in Uganda was at 42.5%.⁴ The increasing availability of mobile phones, with a penetration rate of 52% in 2014, has made the internet more accessible.⁵ Monthly mobile phone data bundles cost between USD 4 to USD 8 for 500 MB to 1 GB.⁶

Despite the increasing availability of the internet, it is only recently that its potential to galvanise citizens and to complement the advocacy that happens on the ground is being recognised. This report discusses the use of the internet in Uganda to advance sexual and reproductive rights.

Political will to achieve the right to health in Uganda

Uganda is a signatory to international instruments affirming the right to the highest attainable standard of physical and mental health.⁷ The right to health, like all economic, social and cultural rights (ESCRs), must be progressively realised, requiring the government to take steps to respect, protect and fulfil it including “appropriate legislative, administrative, budgetary and other measures.”⁸ It must also allocate the maximum of available resources and meet certain minimum obligations, including providing essential medicines, ensuring the right to reproductive, maternal and child health-care, and addressing preventable mortality.⁹

There is insufficient political will to achieve the right to health in Uganda, which makes advocacy essential. Uganda’s constitution does not enshrine the right to health in the Bill of Rights, only guaranteeing access to health services in the National Objectives and Directive Principles of State Policy.¹⁰ There is no legislation in place to provide a comprehensive

1 The government target is 131 per 100,000 live births overall. Ministry of Health. (2015). *Annual Health Sector Performance Report 2014/2015*. www.health.go.ug/download/file/field/553

2 Ibid.

3 Data from 2011/2012. Ibid.

4 Uganda Bureau of Statistics. (2015). *Statistical Abstract 2015*. www.ubos.org/onlinefiles/uploads/ubos/statistical_abstracts/Statistical%20Abstract%202015.pdf

5 Freedom House. (2015). *Freedom on the Net 2015: Uganda*. https://freedomhouse.org/sites/default/files/resources/FOTN%202015_Uganda.pdf

6 Uganda Bureau of Statistics. (2015). Op. cit.

7 Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) (ratified in 1987); Articles 11 (1)(f), 12 and 14 (2)(b) of the Convention on the Elimination of All Forms of Discrimination against Women (1979) (ratified in 1985); Article 24 of the Convention on the Rights of the Child (1989) (ratified in 1990); Article 25 of the Convention on the Rights of Persons with Disabilities (2006) (ratified in 2008). Regionally it is bound by the African Charter on Human and Peoples’ Rights (1981) (ratified in 1986), which enshrines the right to health in Article 16, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which Uganda signed in 2003 but has not yet ratified.

8 Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (1966) (ratified in 1987); Article 4 of the Convention on the Rights of the Child (1989) (ratified in 1990); Article 4(2) of the Convention on the Rights of Persons with Disabilities (2006) (ratified in 2008).

9 Committee for Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (Art. 12) (2000) at para 14. www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf

10 The right to health can also be derived from other articles of the constitution. These include article 39, which recognises the right to a clean and healthy environment; article 8A, which affirms that the Bill of Rights should be read with the National Objectives; article 45, which recognises that the Bill of Rights does not exclude other rights; and article 287, which affirms Uganda’s respect for its binding international obligations. See also Mbazira, C. (2013). *The Status of Economic, Social and Cultural Rights in Uganda: The Huge Potential*. *ESRA Brief*, Issue 1. iser-uganda.org/images/downloads/ISER_ESRA_brief_october_2013.pdf

framework for realising the right to health. The government has enacted a National Health Policy and the Health Sector Development Plan to guide the health sector.¹¹ However, the government is yet to allocate adequate resources for health. During the last five years, the national health budget has hovered between 7% and 9%, below the Abuja Declaration target of 15%.¹²

Legislation and policies on access to the internet in Uganda

It is increasingly recognised that access to the internet is essential to realising rights and to development.¹³ Recent resolutions have called for accessible, available and affordable internet and internet governance frameworks that are open and respect human rights.¹⁴ Uganda has passed laws to regulate cyber frameworks¹⁵ and has a national IT Policy (2012).¹⁶

ICT interventions undertaken to improve health outcomes

The internet as a tool for advocacy

The internet is increasingly used to monitor and advocate for the right to health. The Initiative for Social

and Economic Rights (ISER)¹⁷ recruited volunteers from the community and trained them on the legal and policy framework on the right to health. The organisation also provided them with smartphones and trained them on the effective use of social media. They serve as Community Health Advocates (CHAs), monitoring the realisation of the right to health in their communities. Although based in different districts, using social media platforms, CHAs discuss the challenges their communities are facing in realising the right to health, and share results from their monitoring with each other, ISER and their communities. Their use of social media raises awareness about the gaps in healthcare systems, and provides ISER with real-time updates from the communities. ISER follows up on these issues during its engagement with the local government and Ministry of Health. ISER is planning to work with the CHAs to submit complaints to quasi judicial bodies like the Uganda Human Rights Commission¹⁸ and to identify cases for strategic litigation.

The use of social media by these CHAs is salient because although participation is a right enshrined in the constitution, Ugandans, especially those in rural communities, rarely challenge the status quo to demand government accountability. *Barazas*¹⁹ – initiatives by the Office of the Prime Minister designed to stimulate accountability by enabling communities to voice their complaints – often occur infrequently. Since they are general for every rights violation, they are insufficient platforms to enable the community to voice their concerns about the quality of healthcare.

Social media and advocacy on the internet are also used to build momentum for strategic litigation. When filing a case on maternal mortality, the Center for Health, Human Rights and Development²⁰ extensively used the internet and social media to draw attention to violations in health facilities. Although there is still no victory in the legal sense,²¹ this campaign highlighted the deplorable conditions in health facilities that result in preventable maternal deaths and made the government pay increasing attention to maternal mortality. There has been a 40% reduction in maternal mortality between 2011 and 2014 in part due to improvements

11 Ministry of Health. (2010). National Health Policy II; Ministry of Health. (2015). Health Sector Development Plan 2015/16-19/20. health.go.ug/content/health-sector-development-plan-201516-201920

12 Ministry of Finance, Planning and Economic Development. (2016). Background to the Budget (FY 2011/12 – FY 2016/17).

13 The Human Rights Council resolution on “The promotion, protection and enjoyment of human rights on the Internet” (A/HRC/20/L.13), signed by 85 countries, recognises “the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms.” <https://daccess-ods.un.org/TMP/6083592.17643738.html>. Although not binding, the 10 Internet Rights and Principles launched by the Internet Rights and Principles Dynamic Coalition in 2011 recognise that “everyone has an equal right to access and use a secure and open Internet” (Principle 3). internetrightsandprinciples.org/site

14 Regionally, the African Declaration on Internet Rights and Freedoms, in its preamble, recognises “that the Internet is particularly relevant to social, economic and human development in Africa.” It underscores “that the Internet is a vital tool for the realisation of the right of all people to participate freely in the governance of their country, and to enjoy equal access to public services.” It calls for accessible, available and affordable internet and lays out a strategy to achieve that. It also reiterates that “the Internet governance framework must be open, inclusive, accountable, transparent and collaborative” and “governed in such a way as to uphold and expand human rights to the fullest extent possible.” africaninternetrights.org/articles

15 Electronic Signatures Act (2010) www.ict.go.ug/sites/default/files/Resource/UGANDA%20Electronic%20Signatures%20Act%20No.%207%20of%202011.pdf; Electronic Transactions Act (2011) www.ict.go.ug/sites/default/files/Resource/UGANDA%20Electronic%20Transactions%20Act%20No.%208%20of%202011.pdf; Computer Misuse Act (2011) www.ict.go.ug/sites/default/files/Resource/UGANDA%20Computer%20Misuse%20Act%20No.%202%20of%202011.pdf

16 www.ict.go.ug/sites/default/files/Resource/NATIONAL%20IT%20POLICY%202012.pdf

17 www.iser-uganda.org

18 www.uhrc.ug

19 For more on *barazas*, see: opm.go.ug/baraza-program/

20 www.cehurd.org

21 Constitutional Court Petition No. 16. The case is yet to be resolved after being initially dismissed on the political question by the Constitutional Court and has now been remanded to the Constitutional Court by the Supreme Court.

in health facilities.²² Similarly, when filing a petition challenging clauses of the HIV Act²³ that violate human rights, civil society organisations used social media to mobilise a public protest to accompany the filing of the petition and started a discussion on HIV and the need to respect human rights while addressing public health concerns.

Strategic litigation is only successful when it is followed up by mobilisation and advocacy.²⁴ In both these cases, engaging with social media enabled the organisations to reach people that were not familiar with the cases and the human rights implications raised by them and to broadly disseminate their advocacy message.

The internet as a tool to strengthen health systems

Access to health information

The internet, particularly social media, has become an important platform to disseminate health information. The Facebook page called Mama Tendo²⁵ discusses sexual and reproductive health and disseminates health information in an easy-to-understand manner. A group for mothers to share their stories, it has also become an open platform of over 12,000 members who share information concerning sexual and reproductive health. This is especially critical given the limited health information provided by healthcare providers. The website also enables mothers to share information about malpractice by doctors and health centres, in this way promoting accountability.

The Rwenzori Center for Research and Advocacy²⁶ project “Converging ICTs for saving mothers giving life” uses information technology to disseminate primary healthcare information and improve maternal health and child mortality outcomes through facilitating better record-keeping processes and enabling communication between the community and health facilities. It enables Village Health Teams with Java-enabled mobile phones to register new patients and confirm follow-up visits for pregnant women. It also has an e-learning system that provides basic information and education

on health through mobile phones, which volunteer Village Health Teams disseminate.²⁷

The government is also increasingly harnessing technology to disseminate health information. In 2011, a maternal health project was launched in the districts of Kamuli, Luweero and Lyantonde. Pregnant women are registered through the use of mobile phones and reminders are sent to them to attend the required four scheduled antenatal care visits and to encourage them to deliver in health facilities. Community members are also able to provide anonymous feedback on this platform, which enables these districts to follow up issues affecting health service delivery.²⁸

These interventions are important because the lack of knowledge or what is often termed “health-seeking behaviour issues” – usually related to the woman’s delay to seek help – are the major underlying cause for maternal deaths.²⁹ The distance and lack of transport from home to health facilities also prevent mothers from reaching the health service point to access health information and services.³⁰ By bringing the information closer to the community through technology, these interventions result in increased clinic attendance, particularly for pregnant women and mothers with children under five.³¹

Digitised health records that result in better record keeping and can result in disaggregated data

The health sector in Uganda often lacks disaggregated data.³² The use of the internet to digitise health records improves data collection and analysis. The Ministry of Health uses the District Health Information Software (DHIS2) system for data entry and analysis. DHIS2 is a web-based Java application that can be used to collect, validate and present

22 Ministry of Health. (2015). Op. cit.

23 Constitutional Court Petition No. 24/26.

24 Berger, J. (2008). Litigating for Justice in Post Apartheid South Africa. In V. Gauri & D. M. Brinks (Eds.), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*. Cambridge: Cambridge University Press.

25 <https://www.facebook.com/Mama-Tendo-Foundation-181933331888027>; the group’s website can be found at www.mamatendo.org

26 www.rcra-uganda.org

27 Rwenzori Center for Research and Advocacy. (2015, 4 June). Accelerating access to ICTs to improve maternal health in Uganda. *Nethope*. solutionscenter.nethope.org/case_studies/view/accelerating-access-to-icts-to-improve-maternal-health-in-uganda

28 Ministry of Health, mTrac, Information for Better Health. www.mtrac.ug

29 Ministry of Health. (2015). Op. cit.

30 Ibid.

31 As a result of this project, health care workers and Village Health Teams were able to pay more visits to pregnant women and mothers, resulting in increased clinic attendance. There were 381 visits by healthcare workers to pregnant women resulting in an 18% increase in clinic attendance and 255 visits by village health workers to mothers with children under five resulting in a 23% increase in clinic attendance. Rwenzori Center for Research and Advocacy. (2015, 4 June). Op. cit. Similarly, results from the government project reveal an increase in the number of women attending antenatal visits. www.mtrac.ug

32 Ministry of Health. (2015). Op. cit.

data, and Uganda is the second country in Africa to implement it countrywide. Village Health Teams use mobile phones to report data, which is collated on a central server at the Ministry of Health that provides weekly and monthly reports.³³ This allows timely access to and verification of data. For example, Village Health Teams report death rates of women of reproductive age and infants, enabling the teams to audit this information. Through the DHIS2 mobile, Village Health Teams can receive information on maternal and child health campaigns.³⁴

As a result of the DHIS2, all systems combine the disaggregated data and report facility aggregate data online, with reporting rates of 85%.³⁵ Access to national data results in more informed management decisions that enable effective responses to disease outbreaks and shortage of medications.³⁶

Conclusion

The internet can be used to provide health information, strengthen data collection, promote accountability, and complement the advocacy happening on the ground. However, Uganda cannot harness the full potential of the internet to advance the right to health unless it addresses the limitations below.

Government censorship

Government has broad power to procure surveillance equipment and regulate internet content.³⁷ The Data Protection and Privacy Bill (2015),³⁸ while

a positive step forward for privacy, has broad and vague conditions that allow personal data to be collected, leaving discretion for abuse.

In 2016, the government blocked social media during the presidential elections and during the swearing in of the new president, in response to what it dubbed a “security threat”, based on the fear that social media would be used to mobilise people to protest perceived election irregularities.

Unfortunately, social media shut-downs during the presidential elections reflect broader attempts to censor dissenters.³⁹ The government has arrested individuals for posting critical comments on social media.⁴⁰ In 2015, the Uganda Police Force’s Cyber Crimes Unit publicly acknowledged that cracking down on cybercrimes includes “threats that could destabilize the country” on social media.⁴¹

These routine shut-downs engender self-censorship of critical commentary, including commentary that highlights gaps in the government’s provision of health services.

Lack of availability and ease of access in remote rural areas

Although internet penetration has increased in Uganda, less than 1% of the population had access to fixed broadband in 2014. As mentioned, mobile phone penetration was only 52% in 2014. Only 12% of the population in 2014 accessed the internet via mobile broadband.⁴² Moreover, internet speeds still remain very slow, discouraging people from using the internet and limiting the dissemination of health information videos over e-learning web platforms.

Low literacy levels and the lack of digital literacy

Only 71% of Ugandans over the age of 10 are literate, with only 66% of people in rural areas literate.⁴³ This limits the ability of communities to engage with

33 ITU Telecommunication Development Sector. (2013). *ICT for Improving Information and Accountability for Women’s and Children’s Health*. www.itu.int/en/ITU-D/ICT-Applications/eHEALTH/Pages/Women_and_Children.aspx

34 Ibid. Similarly, the mTrac system that the Ministry of Health is rolling out enables real-time data collection and basic data analysis for each district. Data is collected by healthcare workers and Village Health Teams which report on certain indicators on a weekly basis by sending an SMS from their mobile phones to a code each week and then submit the data through SMS texts with coded key words based on the existing Health Management Information System (HMIS) paper form o33b. The community, through an anonymous SMS hotline that is widely advertised at health facilities, also reports on the quality of health care including issues like drug stock-outs and absenteeism of health workers. District Health Teams access the data on an online dashboard where it is aggregated, tabulated and graphed. Using a computer and modem provided by the Ministry of Health, district teams, together with pre-selected national stakeholders, cross check, review and approve all data submitted for their district before submitting it to the ministry. The Ministry of Health Resource Centre reviews the data and investigates and responds to the anonymous SMS reports. See: www.mtrac.ug

35 ITU Telecommunication Development Sector. (2013). Op. cit.

36 The Ministry of Health reports that collecting this real-time data has resulted in less drug stock-outs and more accountability. See: www.mtrac.ug/content/how-mtrac-works

37 For example, the Anti-Terrorism Act (2002) has vague provisions.

38 parliamentwatch.ug/wp-content/uploads/2016/04/Data-Protection-and-Privacy-Bill-2015.pdf

39 In 2011, in response to the “walk to work” protests over rising food prices, the national regulator issued a directive to ISPs ordering them to temporarily shut down citizens’ access to Facebook and Twitter, a directive which most ISPs did not comply with. Freedom House. (2015). Op. cit.

40 Freedom House. (2015). Op. cit. In February 2015, Robert Shaka was arrested for allegedly running a popular Facebook account, Tom Voltaire Okwalinga (TVO), which was critical of the government and how it handles corruption. In 2014, four individuals were arrested for their involvement with Facebook pages that were critical. In November 2014, three activists from western Uganda were arrested on allegations of inciting violence on a Facebook group, Masindi News Network (MANET). The popular Facebook group often demanded accountability from government.

41 Ibid.

42 Ibid.

43 Uganda Bureau of Statistics. (2015). Op. cit.

the health information they find online, which is also predominantly in English. Moreover, a number of Ugandans, especially the elderly, are not digitally literate, preventing advocates from exploiting the full potential of the internet as a tool in their advocacy. When ISER recruited its CHAs, it trained them on the use of the internet and social media. Some of the CHAs opened an email address for the first time during our training.

High levels of poverty and high cost of smartphones

Despite an overall decline in absolute poverty, 18% of Ugandans are chronically poor, living on less than USD 1.20 per day⁴⁴ and 43% of the population is poor or vulnerable to falling back into poverty.⁴⁵ In the rural areas, 70.2% of people remain poor or at risk of falling back into poverty, compared to 38.5% in urban areas. This makes the high cost of internet-enabled devices like smartphones – they cost an average of USD 50 – expensive for the majority of Ugandans.⁴⁶ A January 2015 survey by the Uganda Communications Commission found that rural and urban users still find internet access expensive.⁴⁷ Moreover, those living in more remote areas often lack electricity, and this makes it difficult to charge their devices unless they have access to solar energy panels, which are not always readily available. Access to electricity in the rural areas is only 7%.⁴⁸

Action steps

In order to harness the potential of the internet, government, civil society and private providers need to work together in the following ways:

Government

- Use the internet to disseminate health information in an easy-to-understand manner and in Ugandan languages.

- Regulate internet service providers, encouraging them to reduce cost and improve network efficiency. Encourage the private sector to deploy telecommunication infrastructure by adopting policies that lower barriers to market entry, and form public-private partnerships to establish critical networks.
- Invest in improving digital literacy by launching an “IT for the masses” programme, such as the one proposed in India⁴⁹ by the Ministry of Information Technology with the aim of improving digital literacy by 2020.⁵⁰ India designed this programme to target individuals between the ages of 14 and 60, to train them on how to use IT and related applications, including using video content for those who cannot read or write. A similar programme in Uganda could ameliorate the challenges faced in accessing the internet as a result of low digital literacy.
- Allow for a free and open internet. As noted in the African Declaration on Internet Rights and Freedoms, “unlawful surveillance, monitoring and interception of users’ online communications by state or non-state actors fundamentally undermine the security and trustworthiness of the Internet.”⁵¹

Civil society

- Invest in capacity building to increase digital literacy on internet platforms.
- Use social media to teach people about their rights.
- Harness the use of the internet in advocacy, with a particular focus on social media platforms.

44 Ibid.

45 National Planning Authority. (2015). Second National Development Plan, 2015-19. npa.ug/wp-content/uploads/NDPII-Final.pdf

46 Freedom House. (2015). Op. cit.

47 Uganda Communications Commission. (2015). UCC Access and Usage Survey 2014. www.ucc.co.ug/files/downloads/20150130-UCC-access-usage-dissemination.pdf

48 Ministry of Finance, Planning and Economic Development. (2014). Poverty Status Report 2014: Structural Change and Poverty Reduction in Uganda. www.finance.go.ug/index.php?option=com_docman&Itemid=7&task=doc_download&gid=423

49 54.169.94.27/img/frontend/letters/ndlm.pdf

50 See also: beta.nielit.gov.in/delhi/content/it-masses-scheme-women

51 africaninternetrights.org/articles

UKRAINE

HROMADSKJE TV: A NEW KIND OF MEDIA, A NEW FORM OF ACCOUNTABILITY



KEYWORDS: **culture**

Hromadske TV

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Introduction

On 22 November 2013, an internet television station called Hromadske.TV (or “Public.TV”) started operating in Ukraine. It was a joint initiative of 15 young Ukrainian journalists who wanted to provide objective and unbiased information about current affairs and political processes in the country. It is now the most popular non-profit internet television station in Ukraine.

It is important to understand that the station was launched the day after the Ukrainian government suspended preparations for signing the Ukraine-European Union Association Agreement.¹ Hromadske.TV soon became the biggest public eyewitness platform of the Maidan movement – the result of a political and social crisis that struck Ukraine in 2014,² and that is still visible today. The conditions of the Minsk Protocol,³ which was supposed to result in a ceasefire in the Donbass region, have not been met; the country’s young male population is still being mobilised; and the annexed Crimea is still under Russian rule.

However, despite the conflict, Ukrainian culture seems to be having its moment of revival,⁴ with Hromadske.TV playing an important role in this process. Hromadske.TV not only grew into a resource of political commentary and information, but also into a broader platform to talk about cultural and social issues – including refugees, gender rights, and lesbian, gay, bisexual and transgender (LGBT) issues – at a time when the country was still trying to rebuild its cultural and social identity after the painful events of 2014.

This was mostly only possible because Hromadske.TV is available on the internet – most Ukrainian TV stations are owned by the state or by oligarchs. Hromadske.TV “broadcasts” live, has a YouTube channel where its programmes can be watched, has a very busy social media presence, and its website is available in three languages: Ukrainian, Russian and English.⁵ It is a good example of how the internet helps Ukrainian citizens speak out about all sorts of economic, social and cultural issues and encourages them to define their own future.

Political context

Ukraine ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 November 1973 when still a part of the USSR, the former Soviet Union. However, despite the considerably early date of involvement with ESCR issues, Ukrainian policy regarding ESCRs today is quite weak.

Firstly, torn apart by the civil war and the political crisis, the country simply has no economic resources to take care of ESCRs. Secondly, the new parliament has prioritised political issues over social, cultural and economic ones. As a result, the internet has started playing an increasing role in influencing and educating audiences and preparing them for conscious choices in all aspects of cultural and social life.

1 This document was supposed to start the process of integrating Ukraine into the European Union; however, the process was frozen by President Viktor Yanukovich. This provoked public disapproval, resulting in the civil war. To read the whole document, please go to: mfa.gov.ua/en/about-ukraine/european-integration/ua-eu-association

2 Also known as the Ukrainian Revolution of 2014, the Euromaidan Revolution or Revolution of Dignity, a series of violent events that took place in the main square in Kiev (called Maidan – hence the name). The pro-European part of the population gathered to protest against the freezing of the EU-Ukraine integration process. The events involved riots, fights between protesters and the police, as well as snipers shooting (over a hundred civilians were killed). This resulted in the ousting of Yanukovich, and was followed by a series of changes in Ukraine’s sociopolitical system, including the formation of a new government, the restoration of the previous constitution, and a call to hold impromptu presidential elections within months. The events usually connected to the Ukrainian Revolution are the annexation of the Crimean Peninsula, as well as the civil war in the Donbass region.

3 Representatives of Ukraine, the Russian Federation, the Donetsk People’s Republic (DPR) and the Lugansk People’s Republic (LPR) signed the Minsk Protocol, an agreement to halt the war in the Donbass region of Ukraine, on 5 September 2014.

4 Lepeska, D. (2016, 31 August). Kiev’s New Revolution: Young Ukrainians spur cultural revival amid the conflict. *The Guardian*. <https://www.theguardian.com/cities/2016/aug/31/kiev-new-revolution-young-ukrainians-cultural-revival-amid-conflict>

5 en.hromadske.ua

Hromadske.TV appears to be the best illustration of this. It was formed by the journalists who stopped believing in the state-funded and state-ruled television, and who wanted to make a difference in society. However, television production and operation is an expensive enterprise, and the founders of the project say it was hard to imagine how they could raise enough money back in 2013 to start a television station.⁶ It is important to understand that the initial stages of the project were funded by the Embassy of the Kingdom of the Netherlands and the United States Embassy, as stated in the station's Annual Financial Report 2013.⁷ However, later that year the project managed to raise UAH 461,000 (USD 44,906) in the first 25 days of one of the most successful crowdfunding campaigns in the history of crowdfunding in Ukraine.⁸ This proved that an enterprise like this – the delivery of independent, unbiased information – was a necessity in Ukrainian society.

But has Hromadske.TV managed to meet people's expectations?

A new kind of media, a new form of accountability

It seems so. Hromadske.TV's YouTube channel had 325,704 subscribers with over 21 million views in 2013,⁹ and in November 2014 it was announced that its YouTube channel recorded its highest number of live-streaming hours.¹⁰ Its Facebook page now has more than half a million people subscribed to it. The founders of Hromadske.TV confess that this surprised them at first – they did not expect the figures to be so high so quickly.¹¹

Partly this success was due to Hromadske.TV's content: fresh independent investigations that offered reportage from the frontline of the war, and socially relevant content such as interviews with political prisoners and the military, as well as content on refugees and gender minorities – something that the state-funded TV could not afford to cover

OBTAINED FUNDING	
Head office and Hromadske.tv newsroom	
MATRA	793 000 UAH
US Embassy Media program	790 000 UAH
Renaissance Foundation	248 000 UAH
Internews	193 000 UAH
Crowd-funding	1 100 000 UAH
Individual donations (such amounts are not expected in future)	2 531 000 UAH
Auction House "Dukat"	207 000 UAH
Internews - for investigations (agreement signing stage)	3 000 000 UAH

Obtained Funds by Hromadske TV

politically. Partly it is to do with the platform it is shared on. Back in 2014, the president of tech company Internet-Invest called Hromadske.TV “a brand new kind of media that has not existed in Ukraine before, and that would influence the media future of the country.”¹²

It was indeed a new kind of media – a TV channel funded by viewers, shared via internet, and using social media as complementary platforms, which allowed direct, interactive communication with its audience. Much of this interaction draws on the potential for creative political expression. For example, Hromadske.Culture¹³ launched a project called “Creative Constitution” where artists and viewers depicted different chapters of the Ukrainian constitution using different media (graffiti, dance, music, theatre, etc.).¹⁴ “We use our constitutional rights to express our opinion,” says one of the artists who created a graffiti artwork based on the constitution's chapter on freedom of expression. This project aimed to stress the constant violation of basic rights in Ukraine.

Many Hromadske.TV initiatives were designed to incorporate internet users (or the audience) in this way. For example, they put out a call for stories to be collected by their audience in the outlying regions in Ukraine, and to publish these on social media. “There is too much bad news in this country, so we decided to change it and just look for the stories of little victories,” one user wrote on the

6 AIN. (2014, 9 February). What Hromadske.TV Is Made of: Figures, Money, People. *AIN.UA*. ain.ua/2014/02/06/511834

7 See the Cash Flow Statement of the Hromadske.TV Annual Financial Report 2013: hromadske.ua/finreports/Annual%20Fin%20report%20-%20ENG.pdf

8 Watcher. (2014, 20 May). Hromadske.TV has raised 461 thousand hryvnas on Internet in 25 days. *Watcher.com.ua*. watcher.com.ua/2014/01/20/hromadske-tb-za-25-dniv-zibralo-v-interneti-461-tys-hrn

9 teleprostir.com/news/companynews/show-21957-gromadske-tb-b-e-rekordi-pereghliadiv

10 ru.telekritika.ua/rinok/2014-11-26/100859

11 AIN. (2014, 9 February). Op. cit.

12 Ibid.

13 A recent cultural addition to the station's programming that is becoming more and more popular, and shows that Hromadske.TV has moved from being mainly concerned with political issues to a true socio-cultural platform that helps to define new Ukrainian culture. See: hromadske.ua/culture (All Hromadske.TV content is available in Ukrainian, Russian and English.)

14 hromadske.ua/posts/vidkryi-konstytutsiui-iak-osnovnyi-zakon-ukrainy-staie-mystetstvom

station's Facebook page after posting her story of a young girl who created an art gallery in her little village.

However, exposure on the internet and social media comes with responsibility – and even danger to the lives of those whose share stories or whose stories are shared. While the UN Committee on Economic, Social and Cultural Rights often receives reports from civil society about journalists who report on socioeconomic rights facing threats from authorities, a recent letter¹⁵ signed by 301 NGOs and addressed to the Committee highlighted the threats that human rights defenders face in the field. This letter followed the murder of Berta Cáceres, a Honduran indigenous and environmental rights activist. Journalists working at Hromadske.TV find themselves in a similar situation. Many Hromadske.TV journalists have reported threats on their lives in comments posted on their Facebook pages and other online accounts. Ekaterina Sergatskova, who has been a journalist at Hromadske.TV since 2014, shared the following with me in an interview conducted for this report:

I and many of my colleagues regularly get threats to our lives, but they usually come from individuals and rarely go beyond the virtual space. I can give you the latest example: Dmitry Korchinskiy, the famous provocateur and the founder of the “St. Mary Battalion”,¹⁶ wrote a Facebook post about me calling me an agent of the Federal Security Service [FSB, Russia's secret service], which I regard as a potential threat, because many of his soldiers may perceive it as a call to action: FSB agents must be destroyed.¹⁷

Ekaterina – and her colleagues from Hromadske.TV, Natalya Gumenyuk and Nastya Stasyuk, who are also two of the founders of the station – stress that threats often come from government officials, primarily Ukrainian Interior Minister Arsen Avakov, who calls the journalists “liberal separatists”, and

says their lives are less important than the lives of soldiers. These threats by the interior minister make the job of the Hromadske.TV journalists more difficult, and put their lives at risk, Ekaterina says.

Independent researchers seem to confirm what Ekaterina says. The authors of *Attacks on the Press: Journalism on the World's Front Lines*¹⁸ and *Beyond the Cold War of Words: How online media can make a difference in the Post-Soviet Space*,¹⁹ both list Hromadske.TV among the channels that have journalists who work under constant threats to their lives. However, this does not make the channel stop operating. On the contrary, it continues to fundraise, and its content is expanding to include talk shows with controversial figures, interviews with political prisoners, and an increasing number of cultural and social initiatives.

Many interesting cross-media collaborations have emerged. For example, even the state broadcasting channel *Suspilne Movlennya* (Public Speech)²⁰ has collaborated with Hromadske.TV, broadcasting some of its content. Another similar collaboration exists with an online channel in Russia called *Dozd TV* (TV Rain).²¹

Conclusions

Hromadske.TV is a non-profit crowdfunded project with transparent financial reporting. Since its launch, much of its programming has shown an awareness of human rights issues in the Ukraine, and how they impact on Ukrainian society.

The founders of Hromadske.TV – Gumenyuk, Stanko and Andrei Saichuk – say that when Hromadske.TV was founded back in 2013, a focus on ESCRs was an important part of the content. They are constantly aware of the problems of inequality, regularly report on economic issues, and develop the concept of Ukrainian culture as opposed to “global” or “post-Soviet” culture.²² At the same time, Hromadske.TV appeared to be a powerful platform that challenged traditional media.

However, history has shown that any new media innovation can be used for positive or negative ends. “I think that today Ukraine is the perfect place for the study of propaganda in the digital world of new media,” Natalya Gumenyuk says. “Whatever

15 “Situation of defenders of economic, social and cultural rights”, a letter initiated by the International Platform against Impunity, the International Service for Human Rights and the Global Initiative for Economic, Social and Cultural Rights, 24 May 2016. globalinitiative-escr.org/global-civil-society-alerts-un-committee-to-risks-facing-esc-rights-defenders

16 This is a territorial defence battalion established in mid-2014, during the early stages of the war in the Donbass. It consists of volunteer military units of the Armed Forces of Ukraine under the command of the Ukrainian Ministry of Defence in 2014-2015.

17 Here Ekaterina refers to the Russian-Ukrainian conflict in the Donbass which she reported on many times as an independent journalist. Interview conducted for this GISWatch report on 5 August 2016 via email.

18 Committee to Protect Journalists. (2015). *Attacks on the Press: Journalism on the World's Front Lines*.

19 de Jong, S., et al. (2015). *Beyond the Cold War of Words: How online media can make a difference in the post-Soviet space*. The Hague Centre for Strategic Studies.

20 1tv.com.ua/suspilne

21 <https://tvrain.ru>

22 Interviews conducted for GISWatch 2016.



ВІДКРИЙ КОНСТИТУЦІЮ: СТАТТЯ 65 В ІЛЮСТРАЦІЇ

"Open the Constitution" project by Hromadske.Culture. The caption says (in Ukrainian) "Open the Constitution: Article 65 in Illustration".

they say, the 20th century had never seen information being treated so cruelly by so many different sources: TV, radio, talk shows, tabloids, and on social media..."²³

Natalya is right. As the founder and the editor of Hromadske.TV she knows that this power of the internet has to be used wisely. And hopefully she will be able to lead her team in that direction.

Action steps

Taking the Hromadske.TV example into account, I suggest the following steps for internet activists dealing with ESCRs in Ukraine, and elsewhere in the world:

- *Crowdfunding is good.* No one at first believed that Hromadske.TV could be successful, but it turns out that the initiative is welcomed by the public, even in times of great turbulence, and particularly when the government does not take progressive steps to fulfil social and cultural rights.
- *Use the digital space to its limits.* Hromadske.TV is internet TV – a new type of television. Internet is young, Hromadske.TV journalists are young, their viewers are young. And that is your power. Keep exploring the digital space. Be proud of

Skype interviews and iPhone reportage. That's your world.

- *Let your viewers become more than just viewers.* Let them create the news themselves. Let them say what they believe in. Create no boundaries between you and your audience. Do not create impersonal content. Invite them to collaborate. Teach them. Be proud of them.
- *Let everyone know you believe in human rights, and do everything to show it.* Many people in Ukraine and elsewhere in the developing countries have literally forgotten what human rights represent. Constantly keep reminding them. Treat the constitution as a screenplay. Make it interactive. Sing it, dance it, as Hromadske.Culture did.
- *Protect yourself.* Threats to your life are common if you enter a public domain at a time of conflict. Name the threats when they occur. Talk about them and about the people who make the threats, so the public is aware of them. Take steps to legally protect yourself if necessary. In case of a serious threat to your life, approach the Committee to Protect Journalists²⁴ for help and protection.

²³ Argumentua. (2014, 10 October). Natalya Gumenuk: Donbass has lost fear. *Argumentua.com*. argumentua.com/stati/natalya-gumenuk-donbass-utrail-strakh

²⁴ <https://cpj.org>

URUGUAY

HOW SOCIAL ACTORS CONTRIBUTE TO THE EXERCISE OF ESCRS IN A DIGITAL CONTEXT



KEYWORDS: ICT access, education, informational development, human development

ObservaTIC

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Introduction

Over a 10-year period (2005-2015) Uruguay experienced growth in its gross domestic product and employment rates while poverty and extreme poverty decreased.¹ Access to and use of information and communications technologies (ICTs) spread significantly throughout the decade because of an improvement in consumer purchasing power, and, as a consequence of the economic growth, the cost of devices had declined. As a result of public policies put in place to combat the digital divide, connectivity also improved for the most excluded sectors of population.²

In 1967 Uruguay was among the first countries to sign the International Covenant on Economic, Social and Cultural Rights (ICESCR) and since then the country has guaranteed the exercise of these rights through the implementation of public policies. Old and new social organisations, including unions and youth movements, advocated strongly to promote the ESCR agenda and policies were created in order to mitigate social as well as digital inequalities.³

This report analyses the challenges, obstacles and positive outcomes resulting from the implementation of the One Laptop Per Child (OLPC) policy – known as the Ceibal programme⁴ – which was aimed at promoting access to and use of ICTs at school. We explore whether the implementation of OLPC as an ICT policy contributed to enabling ESCRs, and the role that civil society played in the roll-out of the programme.

Human development through the internet: A country strategy

Since 2005 Uruguay has implemented public policies aimed at reducing social, economic and cultural inequalities, constituting a shift in the country's development strategy. Special attention has been paid to the importance of reducing the digital divide – evidence of this is the creation and implementation of the Uruguay Digital Agenda in three stages between 2007 and 2015. New actors were involved, and equity and social inclusion, citizen engagement, state transformation, innovation and knowledge generation, and national and international integration became policy guidelines.⁵

The state-owned telecommunications company Antel laid fibre optic cables throughout the country among other initiatives to make internet access universal.⁶

These policies are part of the country's human and information development strategy which seeks to promote ESCRs in order to boost economic growth in the era of globalised economies. In this context, a strategy based on innovation is required. While public policies have been focused on the improvement of social conditions without addressing the issue of how economic growth will be sustainable, the policies have managed to successfully reduce the digital divide for socially excluded citizens.⁷

Access to ICTs and their contribution to ESCRs

The Ceibal programme was launched in 2007, providing a free laptop to every student attending public primary, secondary or technical schools and to their teachers. The roll-out of the programme

1 datos.bancomundial.org/pais/uruguay?view=chart

2 www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx

3 Pittaluga, L., & Rivoir, A. (2012). One Laptop per Child and Bridging the Digital Divide: The Case of Plan CEIBAL in Uruguay. *Information Technologies & International Development*, 8(4). itidjournal.org/index.php/itid/article/view/961/402

4 www.ceibal.edu.uy

5 www.agesic.gub.uy/innovaportal/v/447/1/agesic/agenda_digital.html?menuderecho=11

6 For example, Antel's "Universal Hogares" (Household Universal Access) plan offers 1 GB of internet access free of charge every month to every customer with a fixed telephone line. <https://tienda.antel.com.uy/plan/mdm:prdiff:id:1318>

7 Rivoir, A., Escuder, S., & Vázquez, G. (2016). El modo de desarrollo uruguayo: inflexión histórica o estancamiento estructural. In: F. Calderón (Ed.), *Desarrollo, Innovación y Multiculturalismo en América Latina*.

was gradual, with various technical applications and tools as well as educational content developed along the way.⁸

Given that one of the objectives of the programme was to contribute to social inclusion, promoting the exercise of ESCRs was concurrent to its implementation. Digital rights were part of the conceptual framework of the programme. Evidence of this can be found in the programme's operating guidelines with regards to access as a right: "Students should be able to access the internet (through Ceibal's network) within 300 metres from their homes."⁹

Nowadays 59.7% of Uruguayan households have internet access, 27.4% through a device provided by Ceibal. In the poorest households, internet access made possible by the Ceibal programme accounts for 53%.¹⁰ A total of 670,312 people are direct beneficiaries of the programme, and 99% of schools now have internet access. Ceibal also provides Wi-Fi to public spaces (such as public parks and recreational areas) and at least 3% of households have internet access due to their proximity to Ceibal's Wi-Fi.¹¹

Ceibal has been strongly supported by mainstream public opinion from the start. Public investment in the programme has never been a matter of controversy, as all major political parties endorse its implementation. Part of the national budget is allocated to finance the programme, so despite questions regarding its self-sustainability, its continuity does not depend on external donors or international cooperation.

According to data from Ceibal's 2014 Annual Evaluation¹² – where respondents were asked whether they agreed or disagreed with the programme's implementation – 67% of respondents declared they agreed and rated it as a very positive policy, while 79% of Ceibal's beneficiaries stated the programme would produce social change.

While most teachers initially agreed to be part of the programme's implementation, one of Ceibal's greatest challenges has been some teachers' lack of acceptance of the programme or their resistance to using the laptops. This may have come as a result of multiple factors: it was implemented as a top-down policy and it was not created within the public

schooling system.¹³ Because the programme was implemented as a top-down policy, it was enforced and efficient; however, it failed to involve key stakeholders such as teachers.¹⁴ Some analysts point out that the system faces problems beyond the challenges that the introduction of technology may involve, including the difficulties it has in innovating and transforming itself to meet new challenges.¹⁵

Civil society actors were directly involved in the implementation of the programme. Their main motivation was to promote social inclusion and consequently they contributed by distributing laptops in the early stages, and later organised activities to promote the use of the laptops and acceptance of the programme among students and teachers. There are three good examples of civil society contribution to the programme:

- In 2007 the Ceibal Support Network (*Red de Apoyo al Plan Ceibal*)¹⁶ was created. Through the network, 1,200 registered volunteers throughout the country supported the implementation of the programme, focusing their efforts on schools serving poorer areas. They conducted multiple activities in public places in order to promote the use of the laptops. Although the Ministry for Social Development and the Ceibal programme are supportive of the network's activities, volunteers are simply provided with a rulebook defining a code of behaviour as volunteers.
- CeibalJAM¹⁷ is a volunteer organisation created in 2008 in order to develop applications and content for the Ceibal programme. It has two aims: "to master and spread information technology through the Ceibal programme" and "to develop free software applications to boost the programme's educational outcomes". Most CeibalJAM volunteers are computer engineers or students taking a degree in computer science. They received the international Prix Ars Prize for three applications they developed for the programme, "Conozca America", "Soukoban" and "Pyfrogger".¹⁸

8 www.ceibal.org

9 Plan Ceibal Strategic Guidelines. www.ceibal.edu.uy/documents/informe%20plan%20estrategico%20ceibal.pdf

10 According to the National Statistics Institute's Household Survey.

11 Plan Ceibal 2014 Annual Evaluation. www.ceibal.edu.uy/Documents/Evaluacion-Anual-2014-final.pdf

12 Ibid.

13 Larrouque, D. (2012). *Plan Ceibal en Uruguay. Un exemple de bonne gouvernance*. Paris: L'Harmattan.

14 Pittaluga, L., & Rivoir, A. (2012). Op. cit.

15 Angeriz, E., Bañuls, G., & Da Silva, M. (2010). TIC, XO, y después: Nuevas relaciones con el conocimiento, nuevas construcciones de la subjetividad. Ponencia presentada en X Jornadas de Investigación de Facultad de Ciencias Sociales, Universidad de la República.

16 www.rapceibal.info

17 ceibaljam.org

18 ceibaljam.org/?q=node/892

- The Flor de Ceibo programme, created by the Universidad de la República (the national public university), is a research programme focusing on community building. Students enrolled in different degree programmes volunteer to take part in a wide range of cultural and social actions (art, the use of digital resources, the creation of audiovisual content, issues of cultural identity, etc.). Actions are coordinated with Ceibal's management and financed by the Universidad de la República (it covers teachers' salaries and travel expenses). More than 5,000 students and 100 teachers have taken part in the programme. Students work in groups led by a teacher who creates a work plan to achieve specific goals collaborating with local organisations.¹⁹

The positive impact of the Ceibal programme is that it has strengthened ESCRs in Uruguay. It has helped to develop communities, and given marginalised groups access to technologies and the internet. The participation of civil society and academics in the programme has presented an alternative to the development of public policy which traditionally was the result of a state-centric approach.

One of the greatest challenges faced by those involved in the programme's implementation was to encourage the families of the students to also use the technology, in this way helping to enable their socioeconomic rights. One of their main goals has been to ensure the responsible and meaningful use of the laptops in households – particularly in low-income households. Among families whose only access to the internet is through the Ceibal programme, the laptops are primarily used for communication (71.8%), searching for information (85.7 %) and entertainment (82.8 %). Only 11.5 % of families use them for structured, educational purposes.²⁰

Nevertheless, access to the internet and to technology enables them to access information about labour rights, social protection, culture and health and has the potential to improve their economic situation.

Conclusions

Based on our experiences we can conclude that the implementation of the programme designed to enable access to technologies for educational purposes has strengthened the exercise of ESCRs

by promoting digital inclusion as a crucial element of human development. The Ceibal programme was implemented in the context of economic growth and policy-driven human development, which facilitated the process of inclusion. However, the true scope of the programme's success can only be measured by analysing if it empowered its users, and through examining how it impacts on their economic and social opportunities over time.

The programme has managed to guarantee widespread access to the internet for Uruguayans. Ceibal consolidates digital skills and abilities which enable the ESCRs of individuals and communities. In the context of technologically mediated societies, this is a positive development for traditionally excluded and marginalised groups. However, the main challenge – when access is given – is to enable people to expand and create knowledge and to stimulate their use of internet access for educational purposes.

Action steps

The following recommendations and observations can be made when developing an ICT-for-schools programme such as Ceibal:

- When policy implementation requires multi-stakeholder participation – and stakeholder cooperation is crucial to success – efficiency cannot be the single guiding principle. Policy design should reconcile citizen engagement and technical expertise. This process might take time. The cooperation of teachers, who may at first be reluctant to engage, is critical when an educational policy has to be put into practice.
- A school-based programme, especially when students can take technology home, can be used to promote the use of the internet as a means to improve the economic opportunities of communities and their access to services and to culture, especially among those who are socially excluded.
- Civil society should contribute by training students and adults in the use of technology and the internet, enabling them to acquire digital skills and promoting their critical analysis of online information. This media literacy will contribute to the internet's potential to enable their ESCRs.
- Students should be trained to make good use of technology and innovative teaching strategies should be promoted. This strengthens the capacity of students to learn through ICTs and the capacity of schools to teach using ICTs.

¹⁹ www.flordeceibo.edu.uy

²⁰ Based on National Statistics Institute data.

VENEZUELA

THE USE OF THE INTERNET AND SOCIAL NETWORKS TO SECURE FOOD AND MEDICINE IN VENEZUELA



KEYWORDS: **health, food security**

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Introduction

This report is an exploratory investigation into the problem of food and medicine shortages in Venezuela in 2016. The impact of the use of the internet by the government to control and limit the purchase of goods was considered, as well as the use of social networks by civil society to help citizens access food and medicine. We identified the most important legal instruments impacting on the crisis, and suggest actions that are necessary to deal with the crisis to ensure that the economic, social and cultural rights (ESCRs) of the people in Venezuela are met.

Legal framework

The Venezuelan legal framework includes a number of laws that guarantee the ESCRs of citizens. These include Articles 3, 80, 83, 84, 85, 86, and 305 of the country's constitution,¹ which provide that the state must guarantee the right to health and food security, among others.² ESCRs are reflected in legislation protecting children and adolescents;³ legislation dealing with food security,⁴ including guaranteeing food at schools⁵ and food and medicines for pensioners and retirees;⁶ social security⁷ and social services laws;⁸ a special law on health crises;⁹ and the telecommunications law.¹⁰

The government has also implemented a “Socialist Productive Economic Model”, which has encompassed three plans: 1) the Plan for Economic and Social Development of the Nation 2001-2007,¹¹ 2) the Plan for Economic and Social Development of the Nation 2007-2013,¹² and 3) the Plan for Economic and Social Development of the Nation 2013-2019.¹³ These plans seek to create a balance in the country's economy, and to develop strategies and policies¹⁴ to ensure that the country's food and medicine supplies are not dependent on international food and pharmaceutical monopolies. These include: the Barrio Adentro Mission,¹⁵ the Food Mission,¹⁶ Great AgroVenezuela Mission,¹⁷ Great Mission of Sovereign Supply,¹⁸ the Local Committees of Supply and Production (CLAP),¹⁹ and the activation of 14 Productive Economic Engines.²⁰

Internationally, Venezuela is committed to defending ESCRs in a number of pacts, treaties and declarations such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),²¹ the Universal Declaration on the Eradication of Hunger and Malnutrition,²² the Declaration on the Right to Development,²³ the Millennium Declaration,²⁴ the

1 www.conatel.gob.ve/constitucion-de-la-republica-bolivariana-de-venezuela-2

2 Article 305 of the CRBV: Food security is understood “as the sufficient and stable availability of food at the national level and the timely and permanent access to it by the public consumer”.

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23 www.derechos.org/ve/pw/wp-content/uploads/desc_08.pdf

24 www.derechos.org/ve/pw/wp-content/uploads/desc_12.pdf

Quito Declaration,²⁵ the American Convention on Human Rights,²⁶ Amnesty International's Universal Declaration on Human Rights,²⁷ the Treaty of Vienna,²⁸ and International Labour Organization conventions, among others.

However, despite these commitments, in September 2012 Venezuela withdrew from the Inter-American Commission on Human Rights (IACHR)²⁹ of the Organization of American States (OAS),³⁰ and in July 2016 ruled against a request by the United Nations Human Rights Commission to protect internet access and the right to freedom of expression.³¹ The UN has also downgraded the Ombudsman of Venezuela to category "B" for not being prepared to defend human rights in Venezuela.³²

Analysis

Venezuela's recent shortages of food and medicine deepened alarmingly in 2016, seriously affecting vulnerable groups such as children, the elderly and indigenous peoples. There were cases of malnutrition and deaths in the Guajira,³³ infants and children died from the lack of medicines and medical supplies, including in hospitals,³⁴ and shelters for street children and the elderly that lacked food or medicine³⁵ became a daily reality in Venezuela.³⁶ According to Freddy Ceballos,³⁷ the president of the Pharmaceutical Federation of Venezuela: "Drug shortages in the country stand at about 85%, while the cost of some medicines has risen 75%." He

further states: "Patients are dying not because of the diseases that are occurring, but because of the lack of medicines." Moreover, Oscar Meza, the president of the Centre for Documentation and Social Analysis of the Venezuelan Federation of Teachers (CEDASFVM)³⁸ stated: "Food shortages increased from 31.03% to 43.10% between April 2015 and April 2016. The shortage is widespread and what we are seeing is people desperate for food everywhere in the country. This is an extraordinary situation, similar to a country after a war."³⁹

Meanwhile, international bodies put out statements on the situation in Venezuela, such as Erika Guevara Rosas, director of Amnesty for the Americas: "Venezuela is at a serious crossroad, a historic crossroad for the country, a crossroad that can lead to this serious crisis becoming a worse crisis, a catastrophic crisis."⁴⁰ The Special Rapporteur on health at the United Nations, in a statement dated 20 July 2015, said the following: "We would like to express our grave concern about the reported shortages of drugs and medical supplies in Venezuela, which has a serious impact on the right to health of the population, and in particular on the reported total lack of Prednisone, essential for transplant patients and for those with lupus, arthritis and cancer."⁴¹ The international media reported on the crisis as well.⁴²

The crisis also led to a response from various civil society sectors in the country in a number of ways, including staging public protests,⁴³ drafting statements to the authorities,⁴⁴ and using social networks to source both food and medicine.

In a shadow report during the Universal Periodic Review of Venezuela,⁴⁵ submitted to the ESCR Committee by the Venezuelan Observatory of Health,⁴⁶ Bengoa Foundation⁴⁷ and the ULA Centre for

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46 www.ovsalud.org

47 www.fundacionbengoa.org

Agrifood Research,⁴⁸ it was reported that: “The food situation in Venezuela is characterised by a significant contraction in domestic food production and... imports, which recorded a fall in recent years. These two features together produce a permanent shortage and, as a result, a situation of high vulnerability with regard to protection against hunger, since existing programmes are not able to reach the areas that need it most.” According to this report, the reason leading to the fall in domestic production⁴⁹ is a gradual dependence on commodity imports.

For its part, the Venezuelan government is engaged in an internal “economic war”, characterised by shortages and inflation that are driven by the political interests of some sectors seeking to destabilise the national economy and weaken the revolutionary model established in the country since 1999. In the study “Shortages and inflation in Venezuela”,⁵⁰ Pasqualina Curcio, an economist and professor at Simon Bolivar University, says that the causes of the decrease in the supply of essential goods in the domestic market resulting from the economic war include: a) a relative decrease in imports – the private sector is not using all the hard currency assigned to it by the state to import the goods; b) hoarding; and c) the smuggling of goods to other markets across the Colombian-Venezuelan border, among others. According to the manifesto⁵¹ issued by the Marxist Tendency of the United Socialist Party of Venezuela (PSUV), Chapter 1: “The economic war we are currently facing is nothing other than a new slow-motion coup carried out by the ruling classes to try to defeat and crush once and for all the revolutionary Bolivarian process.”

In this context, the government is implementing measures to address the economic emergency, including: a) an economic emergency decree,⁵² b) establishing Local Committees of Supply and Production (CLAP), which distribute food directly to

families,⁵³ c) fining stores for hoarding food,⁵⁴ d) assigning 18 senior officials of the National Armed Forces to handle the production, distribution and marketing of staple foods,⁵⁵ and e) distributing drugs through an outpatient network,⁵⁶ among others. The government has also set up computer systems connected to the internet to control the acquisition of and access to food and medicine in a number of different supermarket chains and pharmacies in the public and private sectors, such as:

- Biometric food supply system:⁵⁷ This is a state-controlled system which interconnects all public and private food distribution networks via the internet. It limits the purchase of products, and prevents hoarding. The government says this mitigates food shortages. Through this system the purchase of regulated products is only possible with an identity card.⁵⁸
- Integrated system for access to medicines:⁵⁹ This system prevents the hoarding of medicines with the aim of ensuring that medicines reach patients with diseases classified as “chronic non-communicable” diseases. To access the system the patient must register with a prescription and identity card at a pharmacy. After being registered, patients are sent a text message confirming their registration and will be alerted when the drug reaches the pharmacy. To take part in the system, pharmacies must be connected by the internet to the Ministry of Health.
- Comprehensive drug control system:⁶⁰ This is a system where the government and pharmacies share an interactive record of drug supply and receive early warnings when the supply of medicines is running low. Pharmacies must register product prices, which are regulated, and report on retail sales.⁶¹

48 www.saber.ula.ve/ciaa

49 Reasons for the decline in domestic production: a) price controls, a large amount of raw materials and goods, b) rising costs in domestic raw materials, c) the exchange control, d) the nationalisation of the main supplier (Agropatria), e) electricity rationing, f) the difficulty to access foreign exchange for new machinery, g) emphasis on the process of expropriation and “rescue” of land, among other things. Venezuela imports in 2011 were USD 5.139 billion, and in 2013 they were USD 9.756 billion, which decreased to USD 9.045 billion in 2015.

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61 www.sicm.gob.ve

While the government is implementing the measures described above, organisations such as the Venezuelan Episcopal Conference, through Caritas Venezuela, asked the vice presidency for permission to source the food, medicine and other supplies needed. It offered to undertake what was effectively a humanitarian mission to secure the supplies; however, no official response was received. According to Janeth Marquez,⁶² director of Caritas Venezuela: “We believe that cooperation has to happen right now on a large scale. However, the solution is not the Church’s responsibility. The solution is a change in state policies.” Similarly, the Health Commission of the National Assembly⁶³ took the initiative to ask the Strategic Revolving Fund at the World Health Organization (WHO) to help the country offer subsidised medicines. However, José Manuel Olivares, a parliamentarian, said: “The application must be made by the Executive, which has said it will not do it.”

Given their initiatives, the government has stated that there is no crisis and that the measures being implemented will ensure the supply of medicines and food. Luisana Melo,⁶⁴ the minister of health, told the IACHR that “if there were shortages in some medical category it was ‘a particular case’, but that overall access to medicines was guaranteed to all Venezuelans.” Delcy Rodríguez,⁶⁵ the foreign minister of Venezuela, told the OAS that “the corporate media have manipulated the issue of shortages in supermarkets, and there was photographic evidence that shortages do not exist.” She even said that “Venezuela imports so much food that it could supply three nations.”

With regard to other initiatives to secure food and medicine, NGOs and civil society organisations have created ways to do this using the internet and social networks. Here are some examples:

- Mobile applications: The NGO “Networks Help”⁶⁶ created an application for Android mobile devices that records the real-time availability of food and medicine in Venezuela.

- Using Facebook, Twitter and Instagram: Facebook and Twitter groups have been created to barter medicines and food, and even to help people locate places for treatment.⁶⁷ A report written by Andres Rodriguez for the portal El País in Spain explains that “social networks are the new pharmacy in Venezuela as a result of the alarming shortage of drugs that exists in the country.”⁶⁸ The phrase “Application for medicines” is a recurring one on Facebook, Twitter and Instagram, and campaigns to collect and donate medicines through Facebook have increased significantly. These include “One Medicine for Venezuela”⁶⁹ and “Donate your medication”.⁷⁰ Currently, employees of “One Medicine for Venezuela” work with the Coalition of Organisations for the Right to Health and to Life,⁷¹ in order to create ways to distribute medicines to those most in need.
- Using WhatsApp: Citizens are also kept informed about the delivery of essential products that the government supplies to different supermarket chains through WhatsApp. These include groups such as “LUZ Products”⁷² where teachers at the University of Zulia use WhatsApp to help locate products and avoid queues, and “Mommies and Daddies Looking for Diapers”,⁷³ a group where parents take turns every week to queue, making the purchases for the whole group. Among other initiatives, these kinds of groups have proliferated in recent years in Venezuela.

Social networks and mobile applications have been an efficient way to organise citizens, and have served as a channel to complain about ESCR violations. As noted above, various organisations have tried to engage international mechanisms to find solutions; however, the government claims that its measures are sufficient to deal with the crisis, and refuses international assistance.

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The growing economic crisis requires national consensus and commitment from the public and private sectors and civil society. The difficulties being experienced in Venezuela relate both to production processes and distribution, a situation which in many instances leads to public disorder. Between January and May 2016, looting occurred in supermarkets and vehicles that distribute food were hijacked in various states of Venezuela.⁷⁴ In some instances, people who were ill were queuing to buy food,⁷⁵ leading to disquiet among citizens. The National Assembly has held debates on the violation of the right to food,⁷⁶ organisations have issued reports on the risks of violating ESCR rights in Venezuela (such as PROVEA⁷⁷ and the Bengoa Foundation),⁷⁸ and Amnesty International has warned of the violation of human rights generally.⁷⁹ Civil society organisations have requested hearings at the IACHR, diplomatic missions at the OAS have presented cases of violations of ESCRs,⁸⁰ and the Secretary General of the OAS has presented a report on the Venezuelan crisis to its Permanent Council.⁸¹ Despite these interventions, Venezuelans are demanding even more effective solutions to the crisis, which continues to impact on the most vulnerable groups in the country.

Conclusion

Venezuela is experiencing one of the most difficult economic crises in its democratic history. In this context, various actors in society have spoken out against the violation of ESCRs, in particular when it comes to shortages of staple foods and medicine. Venezuelans have tried different ways to secure food and medicine, including the use of the

internet. Social networks and mobile applications offer an easy way to exchange and locate products, including expensive drugs for the chronically ill. Social networks have also allowed campaigns promoting the collection of medicines for distribution to the needy and the sharing of information through official campaign channels. Criticism of the handling of the crisis has also happened online, in various ways, including news articles, interviews and videos. These have been developed by citizens, human rights organisations and the media, with the aim of alerting the international community to the crisis.

For its part, the government has used the internet to control the access and distribution of food and medicine, and monitor the use and sale of products. The government is also implementing information campaigns on the economic crisis using both traditional media and the internet. For example, it uses online video to report on the measures being implemented, such as the effectiveness of CLAP. However, citizens are increasingly finding it difficult to obtain food and medicine, and are waiting for a concrete solution, which unfortunately remains to be seen.

Action steps

A number of steps need to be taken by both the government and civil society to deal with the crisis in Venezuela.

The government should:

- Promote a national dialogue with different actors and sectors in Venezuela. This dialogue should include both those who support the socialist model as well as those who resist a national agreement to overcome the crisis that threatens the ESCRs of citizens.
- Take into account the recommendations to address the economic crisis made by the National Assembly;⁸² the UN Human Rights Committee, regarding Venezuela's Universal Periodic Review;⁸³ the OVS, Bengoa and CIAAL in the shadow periodic review;⁸⁴ the Secretary of the OAS in the report submitted to the Permanent Council; as well as those contained in PROVEA annual reports, among others.
- Evaluate the implementation of laws and public policies that aim to mitigate the economic crisis,

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as well as the use of technology as an efficient way to reach citizens and promote economic emergency measures.

- Assess and periodically adjust the emergency measures that are being implemented to prevent corruption and favouritism by officials who produce, market and distribute food and medicine to the population.
- Establish formal channels of information using the internet (e.g. thematic portals) and social networks to inform citizens of the distribution of food and medicine through centres, parishes, and municipalities.
- Create online mechanisms (e.g. through relevant ministries and the ombudsman) that allow citizens to complain about violations of their ESCRs.
- Use the internet, including social networks, to share useful information with the public so that people can access food and medicines.
- Promote the development and use of mobile applications to help citizens access food and medicines.
- Be vigilant about the veracity of content disseminated by social networks and ensure timely and accurate information by fact-checking this content.
- Evaluate opportunities to organise various sectors in the country to create multisectoral groups that advocate for the protection of the ESCRs of citizens. A national project to promote the sustainable development of the country is necessary, with the internet as one of its fundamental pillars.

Citizens and organisations should:

- Document and establish mechanisms to report cases involving the violation of the ESCRs of Venezuelans and present them to local and international bodies concerned with citizen protection.

YEMEN

HOW THE INTERNET IS GIVING YEMEN A CHANCE IN ITS DARKEST HOUR



KEYWORDS: **labour, access, science & technology**

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Introduction

Yemenis have had more than their share of suffering since the last war broke out in late 2013. The death toll has recently exceeded 10,000,¹ and among the 27 million still living, about eight million are suffering from malnutrition, including three million women and children. The war has resulted in the mass displacement of over three million people.² Over half of the population is in need of immediate help due to food insecurity, with the majority lacking clean water and sanitation.³ Additionally, the economy, which was already quite weak before the war, contracted a further 28% in 2015, with annual inflation of 30%. Poverty has reached an unprecedented level, with over 37% of the population living on less than USD 2 a day.⁴

In other words, most Yemenis are deprived of the right to remain alive, let alone the right to health, education, employment and other fundamental economic, social and cultural rights (ESCRs).

That being said, some shining examples of resilience, creativity and innovation have defied the odds and have advanced those rights in one way or the other. At the core of all these examples is the internet. This article highlights stories of young Yemenis who took it upon themselves to use the global network to protect and advance ESCRs amidst the carnage of war. Showcasing those stories demonstrates the positive role the internet can play during times of conflict and to possibly serve as an inspiration to others living in difficult conditions across the globe.

The Yemeni context

Yemen's constitution has several references to the protection of ESCRs such as compulsory education for children, equal rights of women, and access to economic and commercial opportunity.⁵ However, when it comes to reality on the ground, much of what is found in the legislation is not reflected. There is a lack of economic opportunity, as well as corruption, gender imbalances and illiteracy; almost all human development indicators in Yemen are among the lowest in the world.⁶ Indicators on the gender gap, for example, have been consistently lowest in all aspects including the economy, education, health and political empowerment, placing the country at the very bottom for the last two years in a row.⁷

Despite having ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1987, Yemen has a poor record of implementing it. Being among the least developed countries in the world, it faces enormous challenges on several fronts ranging from food shortages to security, from corruption to social disparities. The situation has worsened since the popular uprising of 2011, which began a few months after the spark of the Arab Spring in Tunisia. The last official state report submitted by the state of Yemen to the UN Committee on Economic, Social and Cultural Rights was in early 2011. That report received substantial criticism by the committee for not addressing many of the demands requested in earlier committee reports.⁸

The Yemeni state's unwillingness or inability to fulfil its obligations stipulated in the ICESCR was manifested in the atrocities committed against peaceful protestors calling for better economic

1 Ghobari, M. (2016, 30 August). U.N. says 10,000 killed in Yemen war, far more than other estimates. *Reuters*. in.reuters.com/article/yemen-security-toll-idINKCN1150W4

2 UN News Centre. (2016, 25 August). UN rights chief calls for international probe into alleged violations in Yemen. *UN News Centre*. www.un.org/apps/news/story.asp?NewsID=54754

3 www.unocha.org/yemen/crisis-overview

4 www.worldbank.org/en/country/yemen/overview

5 www.refworld.org/pdfid/3fc4c1e94.pdf

6 UNDP. (2015). Briefing note for countries on the 2015 UNDP Human Development Report 2015: Yemen. hdr.undp.org/sites/all/themes/hdr_theme/country-notes/YEM.pdf

7 WEF. (2015). Yemen: Gender Gap Index 2015. *WEF Global Gender Gap Report 2015*. reports.weforum.org/global-gender-gap-report-2015/economies/#economy=YEM

8 CESCR. (2011). Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Yemen. www.refworld.org/country,COI,CESCR,CONCOBSERVATIONS,YEM,,52d673874,o.html

conditions and for addressing corruption and unemployment. On 18 March 2011, 50 peaceful protestors were killed in Sana'a's Tagheer Square. This led to a series of acts of violence that continued until President Ali Abdullah Saleh signed the Gulf Cooperation Council Initiative, which triggered a transfer of power to Vice President Abdo Rabbu Mansour Hadi through a one-candidate presidential election. Upon winning the election after a considerably high turnout, Hadi formed a new technocratic government and supported the ongoing inclusive National Dialogue Conference (NDC), whose mandate was to come up with a new constitution that would protect and advance human rights and enhance democracy, decentralisation and the rule of law.⁹

However, the NDC along with the whole transition were disrupted in 2013 when the Houthi Shiite movement, which refers to itself as "Ansarallah", used support from former president Ali Abdullah Saleh to overthrow Hadi and his government through a military coup that allowed them to take over the capital and most of the country. Hadi called upon Saudi Arabia and other willing countries to wage a military assault against the Houthis to reinstate his authority, leading to a prolonged war that led to the fragmentation of the country along political and sectarian lines.¹⁰ As is the case in most wars, truth was the first casualty, with dozens of websites blocked and media organisations shut down by the Houthis, who started a severe clampdown on dissidents.¹¹

Although the internet penetration rate in Yemen is just over 24%,¹² the Houthis have taken a rather hard-line approach against journalists and bloggers who used the internet to publish dissident content. According to an activist in Sana'a,¹³ anyone caught with digital content on their mobile phone, tablet or laptop criticising the Houthis risks extrajudicial actions from kidnapping to even outright assassination. A couple of journalists were killed by airstrikes when used as human shields in fortified military

compounds.¹⁴ It has been evident that most of the voices critical of the Houthis are either abroad or are based in territories loyal to the Hadi regime. Similarly, the activist said that those who express support of Houthis or Saleh in Hadi-controlled regions risk life-threatening repercussions.

Carmen Cakes: Women entrepreneurs refuse to give up

Articles 6 and 7 of the ICESCR deal with the right to work and working conditions. Those rights were severely impacted by the war in Yemen, which led to the bankruptcy of many businesses, and many people lost their only source of income. Among those threatened with closing shop was Carmen Cakes, an online business on Facebook selling all sorts of creative bakery products for weddings, birthdays and other occasions. Safa'a and Afnan Al-Aghbari, two young Yemeni sisters who live in the capital Sana'a, founded Carmen Cakes in 2011 to earn income online by using their creative baking skills. The company received good publicity when Safa'a gave a talk at TEDxSanaa describing how she and her sister started their business and what they had to go through to thrive in a rather culturally restrictive society.¹⁵

In February 2016, however, the businesswomen were forced to suspend their services due to the raging war. "The war has impacted our business severely. Exported material we used for our products had doubled in price. Additionally, leaving the house to get decoration items, for example, has become difficult given the state of insecurity that we lived through," Safa'a said in describing the difficulties her business had to endure.¹⁶

Yet the two entrepreneurs revived their business in July, as indicated in this strong and emotional Facebook post, through which they expressed their appreciation to all their customers for staying with them throughout the years: "At last, we came back again to receive your orders and be part of your happy occasions. We came back with persistence and enthusiasm to resume our service and give you our very best."¹⁷

9 Al-Saqaf, W. (2014, 7 April). *Breaking digital firewalls: analyzing internet censorship and circumvention in the Arab world*. Örebro Studies in Media and Communication. oru.diva-portal.org/smash/record.jsf?pid=diva2:710477

10 Sharp, J. M. (2015, 26 March). Yemen: Civil War and Regional Intervention. *Congressional Research Service*. digital.library.unt.edu/ark:/67531/metadoc700733/m1/1/high_res_d/R43960_2015Mar26.pdf

11 Ghattas, A. (2015, 30 March). News and Search Websites Blocked in Yemen as Conflict Escalates. *Global Voices Online*. <https://advoc.globalvoices.org/2015/03/30/news-and-search-websites-blocked-in-yemen-as-conflict-escalates>

12 Internet World Stats. (2016, 30 June). Yemen Internet usage, broadband and telecommunications reports. *Internet World Stats*. www.internetworldstats.com/me/ye.htm

13 Anonymous source, who requested to remain so for fear of repercussions.

14 RSF. (2015, 28 May). Two journalists killed in air strike while held hostage. *Reporters without Borders*. <https://rsf.org/en/news/two-journalists-killed-air-strike-while-held-hostage>

15 tedxtalks.ted.com/video/Sweet-success-doesnt-come-easy

16 Electronic interview with Carmen Cakes co-founder Safa'a Al-Aghbari, 15 August 2016

17 Ibid.

Instead of giving up and moving out of Yemen to a safe place like many others did, Safa'a and Afnan demonstrated resilience and proved that they could make it in the midst of the war in one of world's most impoverished countries. According to Safa'a, it is an obligation for citizens in such tough times to fight for their ESCRs despite the violence. And that meant resuming her business anyhow, knowing it would certainly not be easy.

She attributes her decision to resume her business activities mainly to the internet. She indicated that the internet and social media have indeed opened up opportunities for those who want to make a living under almost any circumstances. "Having a page on social media absolves you from having an actual shop while facilitating the process of paying and ordering," she said.

Not only was the internet a source of income for Safa'a and Afnan, but it was also a source of information about how to start a business and sustain it during the darkest of times in the country. Safa'a further stated that just as the internet helped empower her through Carmen Cakes, it also has the potential to empower other women who wish to initiate their own small business enterprises. Safa'a believes that she has the obligation to provide training, consultancy and advice to other emerging businesswomen so they can improve their managerial and online skills and have successful projects that serve them and their country well.

However, it is important to note that Safa'a and Afnan are rather the exception and not the norm in the Yemeni context. This is because they were supported by their family and given the opportunity to pursue higher education and, most importantly, have access to the internet. Most are not as lucky, given that 45% of the female population in the country remains illiterate and can therefore not use the internet effectively even if they were offered access.¹⁸

The example of Carmen Cakes shows that if given a chance, Yemeni women are capable of protecting their economic rights and pursuing a better life using available, albeit poor, internet services – which have been largely underestimated and underutilised for various reasons.¹⁹

Access to the internet as an ESCR

The situation in Yemen reached a critical point in early 2015. A country-wide internet shutdown for an hour and a half occurred on 2 April 2015, probably due to power outages or equipment failure.²⁰ A number of activists and engineers who found themselves on the brink of being disconnected from the world worked together to establish a network of nodes that could keep them connected using internet satellite services, which was possible even in the case of a nation-wide internet shutdown. The aim was to protect the rights of individuals to communicate and socially interact with people they care about. It was also to help preserve citizens' rights to access critical information needed for survival, such as nearby emergency centres, hospitals, pharmacies, and help units run by international humanitarian organisations such as the UN Refugee Agency (UNHCR), the International Committee of the Red Cross and Doctors Without Borders. The initiative later evolved into its own not-for-profit organisation named the Yemeni Organization for Development and Exchange of Technology (YODET), whose main objective is to provide free Wi-Fi internet access for emergency and humanitarian needs.²¹

YODET's founders seem to agree with the conclusions reached by Juan Carlos Lara, who said in a comprehensive study on internet access and ESCRs that the realisation of ESCRs, especially in a framework of progressive achievement, is closely linked to the internet.²² Having that as a point of departure, it is important to recognise and appreciate efforts such as those of YODET because they strive to keep citizens connected to the internet, especially during times of uncertainty.

Yemeni engineer Amr Mustafa, one of the founders and core YODET team members, said his organisation provides internet access as a way for Yemenis to benefit from technological advancements.²³ Amr is among a number of progressive minds that view internet access as a fundamental human right and providing access to it as a way to lead better lives. He pointed out the importance

18 CIA. (2015). *The World Factbook*. www.cia.gov/library/publications/the-world-factbook/fields/2103.html

19 Al-Saqaf, W. (2013, 25 November). The Internet as a Catalyst for Change in Yemen. *Global Voices Online*. <https://advoc.globalvoices.org/2013/11/25/the-internet-catalyst-for-change-development-ict4d-transparency-in-yemen>

20 Peterson, A. (2015, 2 April). Another casualty in Yemen: Internet stability. *The Washington Post*. <https://www.washingtonpost.com/news/the-switch/wp/2015/04/02/another-casualty-in-yemen-internet-stability>

21 www.ynext.org/heading/who-we-are

22 Lara, J.C. (2015, September). *Internet access and economic, social and cultural rights*. Association for Progressive Communications (APC). [https://www.apc.org/en/system/files/APC_ESCR_Access_Juan%20Carlos%20Lara_September2015%20\(1\).pdf](https://www.apc.org/en/system/files/APC_ESCR_Access_Juan%20Carlos%20Lara_September2015%20(1).pdf)

23 Electronic interview with YODET team member Amr Mustafa, 17 August 2016.

of YODET's projects to young girls in particular, because they can benefit from the free service to bridge the digital divide in Yemen.²⁴

In addition to providing internet access, YODET is also involved in training young Yemenis on how to use the internet to seek useful and timely information, such as first aid procedures and emergency protocols, which may be a matter of life or death during a conflict. While YODET does not work in the field of formal education, Amr believes that its training programmes align well with Article 13 of the ICESR on the right to education. "We perform training and capacity-building programmes that bridge the gap between the educational system outcome and the needed skills for work," he explains.

YODET's efforts seem to be filling a potential gap that emerges in situations of conflict where the telecommunication sector is at risk of total collapse. While this may be important for Yemen, other countries, including more stable ones, could benefit from such an example by empowering grassroots organisations to partially fulfil the role that should have been played by the authorities. Such a contingency measure is of immense value to protect citizens' right to communicate, for example, in the aftermath of an unexpected natural disaster.

Promoting the right to access science and technology literature

Article 15 of the ICESCR stipulates that the rights to access and pursue scientific research and creative activity are to be protected. Hashem Al-Ghaili, who is a 26-year-old prominent molecular biotechnologist from Yemen, clearly demonstrates through his Facebook page called "Science Nature Page", which has become known worldwide. Created in August 2015, the initiative shows that one person can have an enormous impact that aligns well with the aforementioned ICESCR article. Hashem saw his page grow in just over a year to be one of the world's most popular science pages on Facebook. By August 2016, the page had over 5.4 million fans and its videos were viewed a total exceeding a billion times by people from around the world. Hashem is based in Dubai and works for Futurism Media, a platform dedicated to sharing science and technology news with the general public. He produces many videos himself and many of his videos have over a million views.²⁵ Through his work, Hashem is advancing the mission of Futurism, which is to empower readers and drive the development of

transformative technologies towards maximising human potential.²⁶

While Hashem's work demonstrates a rather spectacular and remarkable Yemeni success story abroad, he acknowledges that he may have not been able to achieve the same had he been in Yemen. When asked whether he aims through his work to protect ESCRs in Yemen, he answered by saying that "currently ESCRs in Yemen do not exist. You can't protect something that doesn't exist."

As someone who works for a media company in Dubai, Hashem stressed that the private sector in Yemen, if given the opportunity, can help initiate programmes that educate the public about their ESCRs. Once people understand and realise their ESCRs, he believes that "they will choose to demand and protect them." He believes that social media and videos can serve as "powerful tools" that can assist him with such advocacy in the future.²⁷

While Hashem is already giving Yemenis the opportunity to learn about science and technology via his Facebook page, he hopes to do even more. He said that among his future plans is to pursue a project in which he can be involved in the training of Yemeni youth to acquire many of the skills he has in video design, research and presentation on social media. If an offer of a project grant comes his way, he said he is certainly willing to make it a reality.

In his own way – and by promoting access to science and technology research and ideas – Hashem is an example of the Yemeni potential in using the internet to advance ESCRs not only in Yemen, but across the globe.

Conclusion

The examples used in this article demonstrate that while, on the one hand, the war in Yemen has negatively affected ESCRs, on the other hand it has demonstrated how important the internet is in advancing those rights. This was clearly manifested by Carmen Cakes' ability to use Facebook to resume its business activity and by YODET's efforts to prevent a possible isolation of Yemen from the rest of the world. In addition, the use of social media in delivering science and technology content to youth in Yemen and the region was demonstrated by Hashem's popular Facebook page

As Yemen is undergoing a challenging time on all fronts, it is imperative to support such initiatives, even if they are managed by individual or small-scale organisations, because they have the capacity

²⁴ Ibid.

²⁵ www.facebook.com/ScienceNaturePage/about

²⁶ futurism.com/about

²⁷ Electronic interview with Hashem Al-Ghaili, founder of the Science Nature Facebook page, 21 August 2016.

to advance and protect ESCRs should the state fail to do so. Large-scale projects that are implemented on a national or regional scale via international development agencies or governments, albeit important, are certainly not enough to advance ESCRs, particularly during times of conflict.

Additionally, those initiatives cannot happen unless more people use the internet, which in turn requires developing infrastructure, raising literacy levels, and providing training opportunities. Doing so would naturally lead to a higher probability of using the internet, which in turn, can further advance ESCRs.

Action steps

Action steps that can be taken in light of these stories can be summed up in the following way:

- Provide funding opportunities so that successful entrepreneurs in Yemen can transfer their skills to others using the internet.
- Build the capacity of grassroots organisations dealing with internet access so that they continue to enhance their services and scale up the extent and quality of their coverage.
- Encourage female business entrepreneurs that use social media and other online tools to share their experiences by providing sufficient support in the form of material and fiscal resources.
- Have broader coverage in traditional and social media of success stories that demonstrate the use of the internet for the advancement of ESCRs so that they can inspire others to follow suit.
- Promote collaboration between competent Yemenis abroad and their counterparts in Yemen to share skills and experiences. This would eventually help create an ecosystem that encourages technological creativity and innovation inside Yemen.
- Help the government in its effort to provide greater access to the internet through a long-term ICT strategic plan that involves, as one of its pillars, the enhancement of ESCRs themselves.

Annexes



ANNEX 1: The International Covenant on Economic, Social and Cultural Rights

Source: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 3 January 1976, in accordance with article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international

economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. 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.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in

particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or

apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of

technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the still-birth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and

accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. 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.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations,

their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

ANNEX 2: Country reports grouped by theme

Access

Benin, Nepal, Romania, Rwanda, South Africa, Spain, Uruguay, Yemen

All economic, social and cultural rights

Colombia, Italy, Nepal, Russia, Switzerland

Culture and language

Argentina, Armenia, Bosnia and Herzegovina, China, Republic of Korea, Nigeria, Peru, Romania, Sudan, Syria, Ukraine

Education

Benin, Republic of Congo, Kenya, Kosovo, Macedonia, Morocco, Romania, Senegal, Uruguay

Gender

Armenia, Bosnia and Herzegovina, Cambodia, Costa Rica, Maldives, Morocco, Russia, South Africa, Spain, Sudan, Turkey, Uganda

Health

Bangladesh, Chile, Republic of Congo, India, Nepal, Philippines, Poland, Uganda

Housing

Maldives

Labour

Cambodia, Costa Rica, Democratic Republic of Congo, Panama, Rwanda, Serbia, Seychelles, Turkey, Yemen

Science and technology

Costa Rica, Morocco, Spain, Yemen

Social security

Argentina, Poland

Socioeconomic rights

Albania, Bangladesh, Costa Rica, Republic of Korea, Lebanon, Maldives, Poland, Spain, Venezuela

Vulnerable groups and minorities

Albania, Argentina, Benin, Colombia, Republic of Congo, Costa Rica, Italy, Nigeria, Peru, Romania

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.

GLOBAL INFORMATION SOCIETY WATCH

2016 Report

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