



# **Internet access and economic, social and cultural rights**

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Derechos Digitales

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# 1. Background

Human rights are recognised through several international declarations and covenants signed by states,<sup>1</sup> but while they are recognised as universal, inalienable, indivisible and interdependent, not all rights enjoy the same consideration by states and individuals.

One of the most important conceptual distinctions consists of the “generations” of rights.<sup>2</sup> The first generation recognises basic liberties and political participation (for example, the right to life, the right to vote, freedom of expression), and a second generation relates to life in society, beyond mere survival (for example, the right to health, the right to education, the right to social security, basic labour benefits). A third generation of rights is less universally recognised and more related to a broad array of specific objectives, such as the rights to a healthy environment, to natural resources, and to the self-determination of nations.<sup>3</sup>

This second group is labelled as economic, social and cultural rights (ESCRs), considered by many as aspirational in nature as they are linked to availability of resources and established as goals, especially for developing nations, rather than moral imperatives, influenced by ideological stances of governments. The lack of clarity or consensus about the pathways to their realisation would lead many scholars to downplay their status as rights. For example, if for every rights holder there are those with the correlative duty such as states to respect or fulfil each right, the identification and allocation of the resources to fulfil such duties cannot be reasonably expected to be supplied at once. The notion of progressive realisation<sup>4</sup> tends to address the problem of resources by highlighting the step-by-step nature of realising these rights. However, at the same time it highlights the lack of visceral immediacy that threats or violations to these rights carry.

Such categorisation can lead to inaction by both rights holders and duty bearers. Under the assumption that governments or societies in their whole cannot provide the resources to sustain the costs of providing economic and social rights, their status as rights is compromised. Differences in national statutes, including constitutional bills of rights, can also affect the perception and advocacy of ESCRs. This can prevent social demands for the provision of services by the perceived duty-bearers, as advocacy and activism for these rights becomes more complex. While the theoretical indivisibility of human rights remains, there is a correlation between the conceptual categorisation and the practical manifestation of action and policy related to rights different than those of the so-called first generation, enacted in law. This is also troubling from other perspectives. The proliferation of information and communication

<sup>1</sup> Most importantly, the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights adopted in 1948, the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), in force since 1976.

<sup>2</sup> Vasak, K. (1977). Human Rights: A Thirty-Year Struggle: The sustained efforts to give force of law to the Universal Declaration of Human Rights. *UNESCO Courier*, 30(11), 29.

<sup>3</sup> This theoretical division relies in part on the broad notion that recognition of certain rights demands predominantly negative action, while others require realisation through positive action by governments, which in turn requires allocation of scarce resources. However, it is important to note that the realisation of all human rights requires such allocation, as well as all having a negative action component (the obligation to respect), regulatory action (the obligation to protect), and positive action (the obligation to fulfil).

<sup>4</sup> “The concept of progressive realization constitutes a recognition of the fact that full realization 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” towards the objective of the CESCR, which is “to establish clear obligations for States parties in respect of the full realization of the rights in question.” UN 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](http://www.refworld.org/docid/4538838e10.html)

technologies (ICTs), and particularly the internet, has shifted part of the concerns on human rights towards both their threats and their exercise online, as issues raised by civil society<sup>5</sup> and recognised increasingly as a specific focus of attention by official entities.<sup>6</sup> Concerns about violations and threats to freedoms of opinion and expression<sup>7</sup> and, more recently, to privacy,<sup>8</sup> have dominated the conversation in multilateral venues, while keeping the focus on so-called first generation rights.

The World Summit on the Information Society (WSIS) was one of the first stages where there was recognition at the multilateral level that ICTs may facilitate enjoyment of a broad number of human rights, and of the need for inclusion of all people into the digital age to take advantage of all the new possibilities. Before and after, civil society, academia and governments have highlighted those possibilities and the aforementioned threats to rights. Changes in policy have raised digital inclusion as a goal to be achieved, and a number of case studies show the importance of policy on technology, both private and public, both national and international, for the realisation of ESCRs.

However, the key to that potential is still provided by access to the internet. Those with internet access are more likely to enjoy that potential full realisation of certain rights, and those without access lack such potential, and are therefore denied the chance to realise those rights. At the same time, the control of technologies is not necessarily in the hands of traditional duty bearers in human rights law. States either do not have, or have progressively abandoned, monopolistic control or ownership of crucial technology for access, and any discussion regarding duty bearers becomes immediately more complex, as market forces may interact with the recognition of human rights.

In such a scenario, questions such as whether or not access to the internet (the right) should be provided to all, how this is achieved (the duties), and by whom (the duty bearers), remain controversial, with advocates for and against considering internet access as a human right either in current or in future law, either as hard law or as soft law.

Following this background section, this paper addresses the relationship between access to the internet as a key to facilitate and enjoy ESCRs, comparing discourses surrounding internet access, and the frameworks to allow internet access as a right within the larger context of access to different economic, social and cultural rights. The second section summarises the analysis of internet access as a right, concluding with a list of key arguments in favour of and against the recognition of the right to access the internet, as well as the framework for the perceived full realisation of such a right. The third section briefly reviews some access frameworks developed for human rights, while the fourth section attempts to tie such frameworks to advocacy for access to the internet. Sections five and six contain implications and recommendations.

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<sup>5</sup> For example, see the Association for Progressive Communications (APC) project "Connect Your Rights: Internet Rights Are Human Rights" at: <https://www.apc.org/en/projects/Internet-rights-are-human-rights> See also APC's previous work developing the human rights framework into a rights framework for the internet, the APC Internet Rights Charter, available for download in English and 18 other languages at: <https://www.apc.org/en/pubs/about-apc/apc-internet-rights-charter-download>

<sup>6</sup> LaRue, F. (2011). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Geneva: United Nations. [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf)

<sup>7</sup> Ibid.

<sup>8</sup> Pillay, N. (2014). The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37). [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf)

## 2. The discourse on internet access as a right

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. However, there is no consensus regarding the status of internet access as a right, and whether a country's population may demand action from their state that permits access to the internet on that basis. So, what kind of access can be demanded from states?

### 2.1. Public perception and international human rights law

In May 2011, during the Arab Spring, then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue declared: "Given that the internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the internet should be a priority for all states."<sup>9</sup> Beginning in June 2011, news outlets were quick to bring to the public's attention that, officially, the UN had declared access to the internet as a human right, even if the report did not use such language, nor did it say that access was being considered as a potential human right.<sup>10</sup> The Human Rights Council's July 2012 Resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet, which "[c]alls upon all States to promote and facilitate access to the Internet,"<sup>11</sup> received similar attention.

The public perception of these reports did little to bring a clear answer to an argument that began several years earlier. There is a wide range of answers between the positions of internet access as a human right and something different than a right. In many cases, those answers do not directly tackle whether access is to be considered as a right, but rather, whether there is a human rights framework that would demand access, or what is the type of regulation that would allow for public policy promoting access.

At an international level, debate was initiated by UN bodies, calling in 1997 to "embrace the objective of establishing universal access to basic communication and information services for all."<sup>12</sup> Years later, this was made more explicit by government declarations willing to recognise the importance of ICTs. The 2003 WSIS Declaration of Principles includes the intergovernmental "commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilise and share information and knowledge"<sup>13</sup> with states in charge of addressing the challenges of global communications. However, the importance given to ICTs is linked to development objectives, rather than individual interests.

A similar trend is detected in Europe. In 1997, the Council of Europe called upon states to provide "universally accessible and affordable computer facilities that cover all the possibilities offered by national

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<sup>9</sup> La Rue, F. (2011). Op. cit.

<sup>10</sup> Borg Psaila, S. (2011, 10 June). 'UN declares Internet access a human right' – does it really? *Diplo*. [www.diplomacy.edu/content/%E2%80%98un-declares-Internet-access-human-right%E2%80%99-%E2%80%93-does-it-really](http://www.diplomacy.edu/content/%E2%80%98un-declares-Internet-access-human-right%E2%80%99-%E2%80%93-does-it-really)

<sup>11</sup> United Nations Human Rights Council. (2012, 6 July). The Promotion, Protection and Enjoyment of Human Rights on the Internet (A/HRC/20/L.13). [ap.ohchr.org/documents/E/HRC/d\\_res\\_dec/A\\_HRC\\_20\\_L13.doc](http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_20_L13.doc) (The resolution was expanded to give special consideration to different rights in Resolution 26/13 from 14 July 2014.)

<sup>12</sup> United Nations Administrative Committee on Coordination. (1997). ACC Statement on Universal Access to Basic Communication and Information Services. [www.unites.org/acc1997.htm](http://www.unites.org/acc1997.htm)

<sup>13</sup> International Telecommunication Union. (2003). Geneva Declaration of Principles, World Summit on the Information Society. [www.itu.int/wsis/docs/geneva/official/dop.html](http://www.itu.int/wsis/docs/geneva/official/dop.html)

and international networks." In 1999, a Council of Europe Committee of Ministers recommendation included in its appendix the principle that states "should foster the creation and maintenance of public access points providing access for all to a minimum set of communication and information services in accordance with the principle of universal community service."<sup>14</sup>

These ideas were picked up by the European Union, first by the Universal Service Directive (EU Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services), amended in 2009 by Directive 2009/136/EC, which obliges all member states of the EU to provide access to the internet. However, this is an obligation established as duties of states from an economic perspective, and not within the human rights framework of the European Union, as it "does not start out from the premise that all EU citizens have a fundamental right to internet access but obliges those undertakings providing publicly available electronic communications networks and services to include certain mandatory services (which happen to include internet access)."<sup>15</sup>

But none of this is enough to confirm that access to the internet is a human right. Related legislation establishes public policy objectives with the internet as part of universal services and not as a right, and no international court has confirmed access as a right.<sup>16</sup>

## 2.2. Against internet access as a right

Regardless of opinions on what *should* be recognised in connection with access to the internet, commentators broadly agree that the right of access is not presently recognised in either international law or in international human rights law.

Stating that "technology is an enabler of rights, not a right itself,"<sup>17</sup> Vint Cerf makes a clear argument against the consideration of internet access as a human right on the basis of the differentiation between ends (human rights) and means (the tools that facilitate their exercise), with access to the internet not counted as an end in itself. Cerf recognises the possibility of enacting a civil right to internet access by law, but viewed more as a public policy decision than an act of recognition of human rights. Cerf nevertheless calls for "improving" the internet for its users. Some commentators deny the consideration of human rights, fleshing out detailed criticism against different arguments that favour access as a right. In broad terms, arguments for access based on the value of the internet are discarded as the notion of "value" does not make a human right, noting that it is unclear that the internet is necessary for autonomy, freedom of expression or freedom of assembly, as they can still be exercised without the internet.<sup>18</sup> Also recognised within critiques of the advocacy of access as a right, is the risk of "inflation" of

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<sup>14</sup> Council of Europe Committee of Ministers. (1999). Recommendation No. R (99) 14 on universal community service concerning new communication and information services.  
[www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec\(1999\)014&ExpMem\\_en.asp](http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Rec(1999)014&ExpMem_en.asp)

<sup>15</sup> Mellakauls, A. (2012). *Access to the Internet - A Human Right?* Council of Europe.  
[www.coe.int/t/dghl/standardsetting/media/belgrade2013/CDMSI%282012%29Misc3Rev\\_Internet%20Access%20as%20a%20Human%20Right\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/CDMSI%282012%29Misc3Rev_Internet%20Access%20as%20a%20Human%20Right_en.pdf)

<sup>16</sup> Haugen, H. M. (2014). Is Internet Access a Human Right – for Everyone, or only for Persons with Disabilities? *Kritisk Juss*, 40, 26-51.

<sup>17</sup> Cerf, V. (2012, 4 January). Internet Access Is Not a Human Right. *New York Times*.  
[www.nytimes.com/2012/01/05/opinion/Internet-access-is-not-a-human-right.html](http://www.nytimes.com/2012/01/05/opinion/Internet-access-is-not-a-human-right.html)

<sup>18</sup> Skepys discards arguments based on the value of communication and autonomy, and the instrumental value of the internet for such interests, stressing that "just because something is valuable ... does not mean it is a human right" and arguing that it is unclear that the internet is necessary for autonomy. The equality argument (i.e. the closing of the digital divide) is equally rejected, based on the "parochial and paternalistic" nature of asserting equality of options as a uniform value in decidedly diverse cultural contexts. The assembly argument (attached to the need of

the number of human rights, the danger of the “practice of fragmentation and constant increase of human rights.”<sup>19</sup> In this view, recognising new human rights is “only justified if there is a substantial added value to the protection offered by existing rights and when there is a consensus that a high level of protection is strictly necessary.”<sup>20</sup>

If the possibility of the future recognition of internet access as a right remains open, the challenges must be considered, including realisation costs, infrastructure, quality, and issues such as affordability and consent. For one author, the right of access to the internet would have to be a qualified and accompanied by public interest exceptions and limitations, which take into account other rights like privacy and intellectual property and competing interests like public order and national security.<sup>21</sup>

### 2.3. Favouring internet access as a right

Arguments grounded in freedom of expression alone or as a main basis for fostering universal access can be best represented by the joint declaration by the Special Rapporteurs on freedom of expression in June 2011, who argue in favour of “an obligation on States to promote universal access to the Internet” to give effect to freedom of expression, and also as necessary for promoting other rights.<sup>22</sup> The declaration asserts that “States are under a positive obligation to *facilitate* universal access to the Internet” (emphasis added).

Tim Berners-Lee, recognised as the creator of the World Wide Web, has made the claim that access to the internet is a right, not unlike the right to water. This is not because it is essential to life, but because the difference between those who are connected and those who are not, in the context of the information society, is growing larger.<sup>23</sup> While the argument is centred on the ability to participate in the connected society (that is to say, the rights facilitated by the internet), Berners-Lee’s argument seems to focus on the protection of the conditions of access (neutral, affordable, unfiltered, respectful of privacy, secure) for optimal realisation of other rights, rather than its mere recognition as a right.

However questionable, Berners-Lee’s comparison of access to the internet with the right to water can be explored as an argument to construct a right to access within the context of economic, social and cultural rights as construed from existing official instruments.

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assembly to participate in a political community) is rejected, among other reasons, because it is factually not true that the internet is necessary for assembly, and it is certainly not equally important for public participation in different countries. The rejection of the expression argument, in similar fashion, is based on the idea that it is not clear that the internet is necessary for freedom of expression, and that it would be only “if there was no other place” for expression. Skepys also advocates for the recognition of “urgent threats to more basic human rights, those instrumentally necessary for membership in a political community,” with *denial* of access to the internet among those threats. See: Skepys, B. (2012). Is there a human right to the Internet? *Journal of Politics and Law*, 5(4), 15-29. [www.ccsenet.org/journal/index.php/jpl/article/view/22541/14534](http://www.ccsenet.org/journal/index.php/jpl/article/view/22541/14534)

<sup>19</sup> De Hert, P., & Kloza, D. (2012). Internet (access) as a new fundamental right. Inflating the current rights framework? *European Journal of Law and Technology*, 3(3).

<sup>20</sup> Ibid.

<sup>21</sup> Tully, S. (2014). A Human Right to Access the Internet? Problems and Prospects. *Human Rights Law Review*, 14(2), 175-195.

<sup>22</sup> United Nations Special Rapporteur on freedom of opinion and expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression, & African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. (2011). Joint Declaration on Freedom of Expression and the Internet. [www.oas.org/en/iachr/expression/showarticle.asp?artID=849&ID=1h](http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&ID=1h)

<sup>23</sup> Berners-Lee, T., & Halpin, H. (2012). Internet Access is a Human Right. In J. Bus (Ed), *Digital Enlightenment Yearbook 2012*. Amsterdam: IOS Press. [www.ibiblio.org/hhalpin/homepage/publications/def-timbl-halpin.pdf](http://www.ibiblio.org/hhalpin/homepage/publications/def-timbl-halpin.pdf)

In 2002 the UN Committee on Economic, Social and Cultural Rights (CESCR) issued its General Comment No. 15 on the human right to water, defining access to drinking water and sanitation as a human right.<sup>24</sup> This document argued that access to water would be considered as implicitly contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) within the right to an adequate standard of living (Article 11), and the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12).<sup>25</sup> There is criticism that this would open the gates to the recognition of several different services that could be considered within the “adequate standard of living”, including access to the internet and postal delivery services.<sup>26</sup> But this approach of deriving human rights from other human rights can be understood as an innovation not constitutive of creation, but discovery.<sup>27</sup> An Amnesty International blog, in response to Vint Cerf’s rejection, argues that “Information Technologies (yes, the Internet) are *inseparable* from the rights themselves” (emphasis in original),<sup>28</sup> and therefore, the right to a certain standard of living is interwoven with connectivity.

The argument of means and ends as parts of a whole of human rights has been made earlier, strongly linking access to technology as part of access to free expression and information. In order to secure free expression, there is need to access the information technology, which becomes part of this information right. “[A] symmetric information right to some extent requires the internet, and thus access to the internet itself has become a human right.”<sup>29</sup>

This close link between the right and its facilitating mechanism appears as a trend in discourse, under the idea that access is not only convenient, but also crucial for the exercise of several other rights.<sup>30</sup>

From a different perspective, it has been argued that both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) already protect access to the internet – in the first case as shown by the legislative history and its intention to embrace future technologies within Article 19(2) of the ICCPR (freedom of expression), and in the second through interpretation of Article 15 of the ICESCR in a twofold manner: as the right to take part in cultural life (interpreted by the UN as participation, access and contribution to cultural life), but also as a benefit of scientific progress.<sup>31</sup> Both negative and positive aspects must be addressed, with

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<sup>24</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). (2003). General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) (E/C.12/2002/11). [www.refworld.org/docid/4538838d11.html](http://www.refworld.org/docid/4538838d11.html)

<sup>25</sup> Bulto, T. S. (2011). The Emergence of the Human Right to Water in International Human Rights Law: Invention or Discovery? *Melbourne Journal of International Law*, 12(2).

<sup>26</sup> Tully, S. A. (2005). A Human Right to Access Water? A Critique of General Comment No 15. *Netherlands Quarterly of Human Rights*, 23(1), cited by Bulto, T. S. (2011). Op. cit.

<sup>27</sup> Bulto, T. (2011). Op. cit.

<sup>28</sup> Edwards, S. (2012, 10 January). Is Internet Access A Human Right? *Amnesty International Human Rights Now Blog*. [blog.amnestyusa.org/business/is-Internet-access-a-human-right/](http://blog.amnestyusa.org/business/is-Internet-access-a-human-right/)

<sup>29</sup> Best, M. (2000). Can the Internet be a Human Right? In S. Hick, E.F. Halpin, & E. Hoskins (Eds.), *Human Rights and the Internet*. New York: Palgrave Macmillan.

<sup>30</sup> It is worthy of note that the Council of Europe’s Committee on Culture, Science, Education and Media, in a 2014 report, declares that “[g]overnments should recognise this as a right, both in law and in practice, and lay down universal service requirements that service providers must comply with, drawing on United Nations and European Union standards” and that “universal service obligations also qualify Internet access by ensuring universal access, namely access for everyone at a reasonable price and a defined level of technical quality, irrespective of location.” See: Pelkonen, J., & Council of Europe Committee on Culture, Science, Education and Media. (2014). *The Right to Internet Access*. [assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20535](http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20535)

<sup>31</sup> Tenenbaum, J. (2014, 6 June). Is There a Protected Right to Access the Internet? *Blog of the International Journal of Constitutional Law and ConstitutionMaking.org*. [www.icconnectblog.com/2014/06/is-there-a-protected-right-to-access-the-Internet](http://www.icconnectblog.com/2014/06/is-there-a-protected-right-to-access-the-Internet)

interplay between government action and the free market.<sup>32</sup> For example, this is a perspective that would allow access to the internet for communicating with other, distant members of marginalised groups.

Even if such an interpretation is not widely shared, it is however true that the Convention on the Rights of Persons with Disabilities (CRPD) does include explicit mention of the internet. As Hans Morten Haugen has pointed out, "For persons with disabilities, Article 21 and Article 30.1(a) of the CRPD must be read as specifying an individual human right, both as regards physical access and accessibility or usability" of the internet, to allow their enjoyment of human rights.<sup>33</sup> State obligations are detailed in the CRPD, further confirming the status as a right in this specific context. In the case of other vulnerable individuals, states at least must identify how to provide better access to scientific progress and to take positive measures in that direction, to allow such vulnerable groups to enjoy basic rights on equal footing with others.<sup>34</sup> So, demanding that government services allow access by people with disabilities would be required, at least in this context.

From a different perspective, there is also the possibility of recognising a right to access the internet in a similar manner to access to different public goods. That is, if the internet can be considered a public good, access cannot be denied.<sup>35</sup> But this faces some theoretical problems as well, such as what part of "the internet" can be considered a public good, and whether one can differentiate layers of equipment, telecommunication infrastructure, protocols, services and platforms,<sup>36</sup> software and applications, and content and information. Also, how can this be made operable if there are also private interests involved in all of these layers, and what would be the policy implications of ensuring access to such a public good? The notion deserves exploration;<sup>37</sup> however, from an economic, social and cultural rights access point of view, the notion of demanding or promoting access to the internet as the common resource that allows enjoyment of human rights can already be helpful.

Finally, there is strong public support for a right of internet access. A global survey in 2010 showed that 87% of internet users felt access should be "the fundamental right of all people," and 71% of non-users felt that they should have the right to access.<sup>38</sup> A different poll in 2012 showed that 83% of internet users considered that "access to the internet should be considered a basic human right"<sup>39</sup> and a 2014 global survey showed that 83% of internet users believe that "affordable access" to the internet should be a basic human right.<sup>40</sup> Each poll can be debated on its own biases and merits, but there appears to be an

<sup>32</sup> Ibid.

<sup>33</sup> Haugen, H. M. (2014). Op. cit.

<sup>34</sup> Ibid.

<sup>35</sup> In economic theory, public goods are a class of goods that (1) cannot be withheld from one consumer without withholding from all consumers (non-excludable), and (2) cost little or nothing for an extra individual to enjoy (non-rivalrous).

<sup>36</sup> For instance, there is already an argument for the internet physical backbone as a "global public good", with the extremes of the net (privately owned equipment) connecting to it. See: Broeders, D. (2015). *The public core of the internet: an international agenda for internet governance*. The Hague: The Netherlands Scientific Council for Government Policy. [www.wrr.nl/fileadmin/en/publicaties/PDF-WRR-Policy\\_Briefs/WRR\\_Policy\\_Brief\\_\\_2015\\_\\_The\\_Public\\_Core\\_of\\_the\\_Internet.pdf](http://www.wrr.nl/fileadmin/en/publicaties/PDF-WRR-Policy_Briefs/WRR_Policy_Brief__2015__The_Public_Core_of_the_Internet.pdf)

<sup>37</sup> The DiploFoundation is currently exploring the topic in depth, as presented at the WSIS 2015 Forum, in the project "The Internet as a Global Public Resource". See: [www.diplomacy.edu/sites/default/files/Internet%20as%20global%20public%20resource%20-%20concept%20note%20-%20final%20version.pdf](http://www.diplomacy.edu/sites/default/files/Internet%20as%20global%20public%20resource%20-%20concept%20note%20-%20final%20version.pdf)

<sup>38</sup> BBC World Service Press Office. (2010, 7 March). Four in five regard Internet access as fundamental right: global poll. BBC. [www.bbc.co.uk/pressoffice/pressreleases/stories/2010/03\\_march/07/poll.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2010/03_march/07/poll.shtml)

<sup>39</sup> Global Internet User Survey 2012. [www.Internetsociety.org/sites/default/files/GIUS2012-GlobalData-Table-20121120\\_0.pdf](http://www.Internetsociety.org/sites/default/files/GIUS2012-GlobalData-Table-20121120_0.pdf)

<sup>40</sup> CIGI-Ipsos Global Survey on Internet Security and Trust. [www.cigionline.org/Internet-survey](http://www.cigionline.org/Internet-survey)

overwhelming trend in public perception.<sup>41</sup> As it has been pointed out, "Perhaps the real point is not whether or not access to the internet is a human right, but rather that ordinary people now simply demand it."<sup>42</sup>

Key arguments as to whether access to the internet should indeed be considered a human right (either construed from existing text or in need of explicit recognition) can be summarised as follows:

- *Necessity.* There is a certain consensus on not only the usefulness of the internet but its crucial role as an "indispensable tool" for human rights and development in the current century. In order to demand access policies from states, access to the internet should be recognised as a basic human right.
- *Implied existence under current international human rights law.* Freedom of expression, participation in cultural life and enjoyment of scientific benefits require access to the internet. Current standards of living include participation in the broader community in different ways, through the connection to the internet. It is an underlying right that lacks explicit recognition in text, but not in fact.
- *Inevitability.* A number of countries including Greece,<sup>43</sup> Estonia, Finland,<sup>44</sup> Spain,<sup>45</sup> Costa Rica<sup>46</sup> and France<sup>47</sup> have asserted or recognised some right of access in their constitutions, legal codes, or judicial rulings. A unifying framework that brings together the core tenants of access as a right is the natural course of international regulation of internet issues.
- *Inseparability.* Technological progress changes how people enjoy their rights and governments should address the link between those rights and their current methods of enjoyment.
- *Progression.* The notion of rights themselves has the ability to change, as social contexts change. The growing importance of the internet in changing social contexts makes it necessary to ensure access to it.
- *Public support.* Worldwide surveys show a single predominant attitude towards access to the internet: that it should be recognised as a right. It is up to states, acting individually or together, to represent the will of the people.

Key arguments against internet as a human right can be summarised as:

- *No international treaty directly creates a right of access to the internet.* In simple terms, it is not a human right if the international community has not recognised it as such in a binding instrument, and there is no discussion of a new treaty to do so in any forum.

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<sup>41</sup> Interestingly, the 2014 poll showed stronger support for the right of affordable access in Latin America, Africa and the Middle East, regions of predominantly developing countries.

<sup>42</sup> Liddicoat, J. (2012). *The Internet, Freedom of Expression and Democracy - Connecting Our Rights. MIND 4 - Human Rights and Internet Governance.* Berlin: Internet & Society Co:laboratory. [en.collaboratory.de/w/The\\_Internet,\\_Freedom\\_of\\_Expression\\_and\\_Democracy\\_-\\_Connecting\\_our\\_Rights](http://en.collaboratory.de/w/The_Internet,_Freedom_of_Expression_and_Democracy_-_Connecting_our_Rights)

<sup>43</sup> Constitution of Greece, Article 5A.2. Official translation to English: [www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf](http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf)

<sup>44</sup> Communications Market Act, 363/2011 Section 60C(2). Unofficial translation to English: [www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf](http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf)

<sup>45</sup> Law 2/2011, 4 March, on Sustainable Economy, Article 52. Official text in Spanish: [www.wipo.int/wipolex/en/details.jsp?id=11977](http://www.wipo.int/wipolex/en/details.jsp?id=11977)

<sup>46</sup> Constitutional Court decision No 12.790, Exp. 09-013141-0007.

<sup>47</sup> Conseil Constitutionnel, 10 June 2009, 2009-580. Official text in French: [www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/2009/decisions-par-date/2009/2009-580-dc/decision-n-2009-580-dc-du-10-juin-2009.42666.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/2009/decisions-par-date/2009/2009-580-dc/decision-n-2009-580-dc-du-10-juin-2009.42666.html)

- *Analogy to other forms of media.* There is no right to the telephone, the television, the printed press (either for publishing or receiving it) or any other similar medium that has imposed a duty on states to provide it to its citizens and cover its costs.
- *Universality.* Access to the internet is not an economic right that can be construed from Article 11 of the ICESCR and Article 25 of the Universal Declaration of Human Rights, for they are representative of standards of living that cannot be considered on the same scale for countries in much different stages of development.
- *Nature as a right.* Even if there is a legal consideration of access, it is established not as much as an individual right but as an obligation for states, in an economic key, to provide populations with opportunities for development. In the same sense, access to technology does not appear to merit the level of protection of human rights.
- *Means to an end.* Access to the internet is a key component for the enjoyment of several human rights, but it consists of technology. Technology is a tool, and while access to tools can be assured, they do not represent rights themselves.
- *Access to the internet is not absolutely necessary for participation in a political community.* A big part of the world's population is without internet access, but there is little outcry if states are unable to provide access. It is only when such participation already exists and is taken away that it deserves attention in order to protect the human rights exercised through the internet, as long as those rights are affected.
- *Inflation.* Claiming that an interest is a basic, fundamental or human right, without considering the conditions under which it can really be realised, inflates the number of rights, diminishing the forcefulness of core traditional human rights, negating their individual importance and that of the status of human rights themselves. A right of access to a certain communication technology would only contribute to that negative process.
- *Flexibility of existing human rights.* It is not necessary to "create" new rights aside from those already recognised, but to ensure their exercise and enjoyment in changing technological contexts.
- *Side effects.* Digital inclusion policies carry concerns regarding the true beneficiary. On one hand, access policies will benefit those users with devices with the ability to access the internet, therefore exacerbating inequalities. On the other hand, lack of control by governments would lead to the need for investment in private telecommunications companies, therefore granting them economic benefit before citizens.

## 2.4. Frameworks for access to the internet

A common element in almost all arguments for and against the recognition of internet access as a right is the perceived importance of the internet as a catalyst for the exercise of human rights. The challenges faced make it clear that access to the internet is a complex, multi-layered concept, which includes physical access, but also optimal conditions for its usefulness to enable rights and empower people. Therefore, the conditions for access are not without importance from a human rights perspective.

There are several different human rights frameworks for internet regulation broadly concerned with threats like surveillance, censorship, filtering and throttling, blocking, takedowns, cyber attacks, etc. Special consideration is given to internet access as a condition for the broadest reach possible of the internet as an enabling tool.

The *Real Access/Real Impact Framework* appears as a framework for measuring ICT impact and potential, decidedly focused on development, thus outlining 12 factors that affect ICT projects and policy.<sup>48</sup> These include analysis of the following issues, what affects them, and what can be done to address their challenges:

- Physical access to technology and availability to people and organisations
- Appropriateness of technology for local needs and conditions
- Affordability of ICT and ICT use for local people, within their context
- Human capacity and training, including the availability and the inclusion of ICT in people's lives
- Locally relevant content and applications and services in local languages, considering context
- Integration into daily lives as part of the routine or as a burden
- Socio-cultural factors, like usage limitation because of gender, race, disability, age or other factors
- Trust in technology and understanding of issues like privacy, security or cyber crime
- Local economic environment, including impact and sustainability
- Macroeconomic environment, including general economic policy issues
- Legal and regulatory framework
- Political will and public support.

In a more strongly political approach, the APC-La Rue framework<sup>49</sup> considers several issues which must be addressed to assess the challenges of freedom of expression on the internet. These include general protection for freedom of expression, restrictions on online content, and access to the internet. Regarding access, the framework specifically asks whether a state has:

- A national plan of action for internet access.
- A concrete and effective policy developed with the public and private sector to make the internet available, accessible and affordable
- Development programmes and assistance policies that facilitate universal internet access
- State support for production of local multicultural and multilingual content
- State support for initiatives for meaningful access by marginalised groups
- The existence and accessibility of digital literacy programmes, including primary school education and training to use the internet safely and securely.

The Internet Rights and Principles Dynamic Coalition's Charter of Human Rights and Principles for the Internet has presented a set of principles for access, as can be seen in its most recent, fourth edition.<sup>50</sup> While not strictly a human rights framework, the inclusion of the right of access as the very first of the rights established in the charter is a show of the commitment to set the agenda towards a right of access. Building on previous covenants, declarations, reports and frameworks, the charter declares that "everyone has the right to access to, and make use of, the Internet" and all other rights are underpinned

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<sup>48</sup> Bridges.org. (2005). Concept Note: The Real Access/Real Impact Framework for improving the way that ICT is used in development. [pasdbp.files.wordpress.com/2008/04/bridgesorg\\_real\\_access\\_real\\_impact1.pdf](http://pasdbp.files.wordpress.com/2008/04/bridgesorg_real_access_real_impact1.pdf)

<sup>49</sup> APC. (2013). *Monitoring freedom of expression: The APC-La Rue Framework*. APC. [www.apc.org/en/pubs/internet-freedom-index-draft-checklist](http://www.apc.org/en/pubs/internet-freedom-index-draft-checklist)

<sup>50</sup> [internetrightsandprinciples.org/site/charter](http://internetrightsandprinciples.org/site/charter)

by it. These rights include quality of service, freedom of choice of system and software use, ensuring digital inclusion, net neutrality and net equality.

Other rights in the charter take into account several other issues raised by the previously mentioned frameworks, such as consideration for marginalised groups or affordability. Thus, the 10 Internet Rights and Principles<sup>51</sup> derived from the charter rights serve as the key components for the whole of internet regulation.

A more detailed and comprehensive framework connecting several technical, economic and political issues under the right of access can be found in an older document, the APC Internet Rights Charter,<sup>52</sup> which also begins with the right of universal access, including:

- The right to access to infrastructure irrespective of the place of living
- The right to the skills to use the internet
- The right to interfaces, content and applications accessible to all, including people with disabilities, people who are not literate and people who speak minority languages
- The right to equal access for men and women
- The right to affordable access
- The right to access in the workplace, including for the purposes of worker education programmes and to protect workers' rights
- The right to public access, in points such as telecentres, libraries, community centres, clinics and schools
- The right to access and create content that is culturally and linguistically diverse.

Again, these rights do not contradict other rights or sets of rights.

Of course, these are not the only frameworks that can be brought up on access and conditions. However, the study of these frameworks presents a clear picture of the broad diversity of issues that these frameworks are trying to cover, the broad range of public or private policy decisions that can be made to address each concern, and the costs (social, economic or otherwise) that their creation and implementation can carry.

Therefore, it is important to separate these variables, in order to establish an access framework and the possible contours of a right to access the Internet. One way of separating these is as follows:

- General regulatory issues such as the rights of freedom of expression, education, intellectual property, privacy, and others
- ICT-specific regulatory issues such as net neutrality, intermediary liability, online data protection, and others, including rules for content restriction
- Infrastructure issues, dealing with technical availability of the technology for access<sup>53</sup>
- Affordability issues, including pricing schemes, communal access, competition regulation
- Social issues, which extend to inclusion of vulnerable groups in the broadest sense, linguistic and cultural disadvantages, local content, etc.

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<sup>51</sup> [internetrightsandprinciples.org/site/wp-content/uploads/2014/06/IRPC\\_10RightsandPrinciples\\_28May2014-11.pdf](http://internetrightsandprinciples.org/site/wp-content/uploads/2014/06/IRPC_10RightsandPrinciples_28May2014-11.pdf)

<sup>52</sup> <https://www.apc.org/en/pubs/about-apc/apc-internet-rights-charter-download>

<sup>53</sup> Whether public policy aims to provide universal access to the internet or universal internet service must also be taken into account.

Issues and rights from the different frameworks can be sorted in a similar way. The importance of separating and differentiating groups of rights is related to the relevant stakeholders and decision makers. Framing a right to access involves decisions regarding how to implement it, with a broad set of challenges matching its possibilities.

### **3. Access frameworks in economic, cultural and social rights**

Their status as human rights notwithstanding, the recognition of economic, social and cultural rights by governments does not immediately translate into their full enjoyment by people, especially where resources are scarce. This is more clearly visible in the developing world, where protections for civil and political rights (CPRs) may be fully implemented, but positive action towards realisation of ESCRs may be lacking. But because of the complexity of defining public policy objectives for realising ESCRs, there is a need to define concrete objectives within each larger right, with a special focus on access. The development of access frameworks helps to guide and control the efforts of fulfilment of rights, and in the case of access to the internet, efforts have been made to promote digital inclusion. In this section, some of the more traditional access frameworks are described, along with how they relate to the development of internet access frameworks.

It is common for UN bodies to establish and define the minimum conditions under which there is a degree of compliance with economic, social and cultural rights. In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights (CESCR) identified a number of factors which bear upon the right to adequate housing, including availability, affordability, accessibility and cultural adequacy. In its General Comment No. 12, the committee identified elements of the right to adequate food, such as availability, acceptability and accessibility. In the case of the right to health (Article 12 of ICESCR, "enjoyment of the highest attainable standard of physical and mental health"), it is openly conceptualised in terms of access to health care, rather than the ideal of health as something that could be demanded from states. CESCR's General Comment No. 14 defines its elements as availability, accessibility, acceptability and quality.

The right to education, according to Article 13 of the ICESCR, includes the right to free, compulsory primary education for all [Article 13.2(a)], an obligation to develop secondary education accessible to all [Article 13.2(b)], an obligation to develop equitable access to higher education [Article 13.2(c)], and duties to facilitate completion of primary studies and constantly improve general conditions. When establishing obligations related to the different levels of education, in particular secondary and higher education, the ICESCR directly establishes the goal of "the progressive introduction of free education." Consensus on the importance of education, especially at primary level, contrasts with the ability of its rights holders (children) to demand its realisation. For this reason, the right should be supplied by organised society, either directly by governments, or by private institutions (Article 13.4) with academic freedom and institutional autonomy.

Former UN Special Rapporteur on the right to education Katarina Tomaševski developed a framework for governmental human rights obligations concerning education, establishing the "4 A's" model. The model focuses on making education available, accessible, acceptable and adaptable.<sup>54</sup> Availability refers to funding universal, free and compulsory education, with proper facilities, qualified staff and quality

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<sup>54</sup> Tomaševski, K. (2001). *Human rights obligations: Making education available, accessible, acceptable and adaptable*. Right to Education Primers No. 3. Gothenburg: Novum Grafiska AB. [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski\\_Primer%203.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf)

learning materials. Accessibility refers to equal access regardless of individual, socioeconomic or geographical conditions, and affordability of learning supplies including textbooks and uniforms. Acceptability refers to quality, and the objective teaching of relevant contents, detached of specific religious or ideological views. Adaptability refers to flexibility and adjustments of programmes to the changes in society, respecting cultural differences, and adapting to disabilities where they exist.<sup>55</sup> This framework was recognised in CESCR General Comment No. 13 which highlighted three overlapping dimensions for the accessibility feature: non-discrimination (equality),<sup>56</sup> physical accessibility, and economic accessibility (affordability).

This framework was one of the pillars for further work by UNESCO and UNICEF.<sup>57</sup> In the UNESCO/UNICEF framework, which organises diverse international human rights obligations,<sup>58</sup> the right to education is summarised as containing the right to access education, the right to quality education, and the right to respect in the learning environment. In the case of access to education, the framework establishes three requirements: education throughout all stages of childhood and beyond; availability and accessibility of education (including physical and economic accessibility); and equality of opportunity.

The way these frameworks show material expression is not only through free school for children, but through each element in education, at any stage, receiving attention to comply with all criteria. Modern textbooks present in one school and absent in another for pricing reasons separate all aspects of one right by affecting equality, availability and economic accessibility. Access to education itself is therefore affected.

A much different view appears in the case of the right to enjoy the benefits of science and technology, as established in Article 15.1(b) of the ICESCR. There is no clear or specific normative content to the right,

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<sup>55</sup> Ibid.

<sup>56</sup> CESCR General Comment No. 13 refers to formal equality, and is specific that equal treatment for access is "subject to neither progressive realization nor the availability of resources." See page 31 of: UN Committee on Economic, Social and Cultural Rights (CESCR). (1999). General Comment No. 13: The Right to Education (Art. 13 of the Covenant) (E/C.12/1999/10). [www.refworld.org/docid/4538838c22.html](http://www.refworld.org/docid/4538838c22.html)

<sup>57</sup> UNICEF/UNESCO. (2007). *A Human Rights-Based Approach to Education for All: A framework for the realization of children's right to education and rights within education*. [www.unicef.org/publications/files/A\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Education\\_for\\_All.pdf](http://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf)

<sup>58</sup> The UNESCO/UNICEF framework recognises the following as obligations derived from international law:

- Provide free and compulsory primary education.
- Develop forms of secondary education that are available and accessible to everyone, and introduce measures to provide free education and financial assistance in cases of need.
- Provide higher education that is accessible on the basis of capacity by every appropriate means.
- Provide accessible educational and vocational information and guidance.
- Introduce measures to encourage regular attendance and reduce drop-out rates.
- Provide education on the basis of equal opportunity.
- Ensure respect for the right to education without discrimination of any kind on any grounds.
- Ensure an inclusive education system at all levels.
- Provide reasonable accommodation and support measures to ensure that children with disabilities have effective access to and receive education in a manner conducive to achieving the fullest possible social integration.
- Ensure an adequate standard of living for physical, mental, spiritual, moral and social development.
- Provide protection and assistance to ensure respect for the rights of children who are refugees or seeking asylum.
- Provide protection from economic exploitation and work that interferes with education.

though a general comment by the CESCR on the matter is in development.<sup>59</sup> There is also no consensus whether to treat this right separately from cultural rights, as they are recognised jointly from a broad, formal perspective in both the Universal Declaration of Human Rights (Article 27) and the ICESCR (Article 15).<sup>60</sup> Plenty of scholarly work has focused on the tension between this right (or these rights) and intellectual property rights and the practical effects of such tension. When trying to define the policy implications of the right to enjoy the benefits of science and technology, scholars and commentators have adopted language already developed in terms of other economic, social and cultural rights, including a triple typology of state obligations to respect, protect and fulfil each right, and the criteria of availability, accessibility, acceptability, quality and adaptability.<sup>61</sup> Defining the normative content of the right to science as recognised within the Universal Declaration of Human Rights, Special Rapporteur in the field of cultural rights Farida Shaheed considered that the right includes:

(a) Access by everyone without discrimination to the benefits of science and its application, including scientific knowledge; (b) opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research; (c) participation of individuals and communities in decision-making and the related right to information; and (d) an enabling environment fostering the conservation, development and diffusion of science and technology.<sup>62</sup>

In terms of the content of the right, Shaheed specifically addresses access to three areas: scientific knowledge, scientific information, and scientific advances.<sup>63</sup> Notably, the scope goes beyond the mere products of scientific progress into the notion of participation which “includes science popularisation, participation in scientific creation and in scientific policy, citizen science, gender equality, the freedoms of those doing science,” and other aspects.<sup>64</sup>

Because enjoyment of science may mean different things for professional scientists than for the general population, the idea of “access” has different implications for different commentators. The American Association for the Advancement of Science (AAAS) acknowledged this “fluid and bi-directional continuum of access” between both groups,<sup>65</sup> as both the development of science and its benefits are part of the same right.

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<sup>59</sup> Mancisidor, M. (2015). Is There Such a Thing as a Human Right to Science in International Law? *ESIL Reflections*, 4(1). [www.esil-sedi.eu/sites/default/files/Mancisidor%20Reflection%20%28Word%29.pdf](http://www.esil-sedi.eu/sites/default/files/Mancisidor%20Reflection%20%28Word%29.pdf)

<sup>60</sup> See, for instance: Shaver, L. (2010). The Right to Science and Culture. *Wisconsin Law Review* 2010, and Shaheed, F. (2014). Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on copyright policy and the right to science and culture (A/HRC/28/57). [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_57\\_Add\\_1\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_57_Add_1_ENG.doc)

<sup>61</sup> UNESCO. (2009). *The Right to Enjoy the Benefits of Scientific Progress and its Applications*. Venice: UNESCO. [unesdoc.unesco.org/images/0018/001855/185558e.pdf](http://unesdoc.unesco.org/images/0018/001855/185558e.pdf)

<sup>62</sup> Shaheed, F. (2012, 24 May). Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, The right to enjoy the benefits of scientific progress and its applications (A/HRC/20/26). [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26_en.pdf)

<sup>63</sup> Ibid.

<sup>64</sup> Mancisidor, M. (2015). Op. cit.

<sup>65</sup> Weigers Vitullo, M., Wyndham, J., & AAAS Science and Human Rights Coalition. (2013). *Defining the Right to Enjoy the Benefits of Scientific Progress and Its Applications: American Scientists' Perspectives*. [www.aaas.org/sites/default/files/content\\_files/UNReportAAAS.pdf](http://www.aaas.org/sites/default/files/content_files/UNReportAAAS.pdf)

Cultural rights, either in conjunction with the right to science or separately considered, may also come into tension with intellectual property rights.<sup>66</sup> However, the ICESCR includes strong collective implications related to cultural heritage and identity, albeit without losing areas of tension with intellectual property rights or other private economic interests, as the relevant case study will discuss. Access to culture and participation in cultural life has been a big part of civil society advocacy on the internet, especially in the first decade of the 21st century, in part under the key moniker of “access to knowledge”.<sup>67</sup>

The CESCR’s General Comment No. 21 delves deeply into the right to take part in cultural life, recognising the same components that exist in the right to benefit from scientific progress (in line with views of a single right): participation, access, and contribution to cultural life.

Following classic ESCR language, the necessary conditions are availability, accessibility, acceptability, adaptability and appropriateness, all from the perspective of both individuals and communities. Availability refers to the presence of cultural goods and services in the widest sense, from streets to mountains and from history to sports. It includes special consideration for the “productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory.”<sup>68</sup>

Acceptability requires public policy to be acceptable, and there should be consultations to ensure acceptable measures to protect cultural diversity. Adaptability refers to flexibility and relevance of policy, including respect for cultural diversity. Appropriateness, in this context, refers to realisation in a way pertinent and suitable to a cultural modality or context, and respectful of the culture and rights of individuals and communities, including minorities and indigenous peoples. In terms of accessibility, General Comment No. 21 notes that:

*Accessibility* consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person’s choice, and the access of communities to means of expressions and dissemination.<sup>69</sup>

In each access framework, it is the duty of governments not only to provide services directly, but also to generate conditions to allow private institutions to provide them as well. This could be seen as a middle point between two competing political and economic systems in the middle of the 20th century (the

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<sup>66</sup> “Cultural participation and the protection of authorship are both human rights principles designed to work in tandem. Striking an appropriate balance between the two goals is thus essential, even if challenging”. Statement by Ms. Farida Shaheed, Special Rapporteur in the field of cultural rights at the 28th session of the Human Rights Council, Geneva, 11 March 2015.

<sup>67</sup> Kapczynski, A. (2008). The Access to Knowledge Mobilization and the New Politics of Intellectual Property. *Yale Law Journal*, 117(5), 804-885. [digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4296](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4296)

<sup>68</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). (2009). General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/21). [www.refworld.org/docid/4ed35bae2.html](http://www.refworld.org/docid/4ed35bae2.html)

<sup>69</sup> Ibid.

historical post-war framing of the negotiation and signature of the most important international human rights instruments), allowing private enterprise to take part in public interest areas. In this sense, while their duties might differ from those of states, it could be argued that private entities are duty bearers regarding the realisation of human rights, regardless of their nature, where states do not provide access to enjoyment of rights more directly.

#### **4. Internet access and human rights frameworks**

It has been argued that the internet is useful for the full realisation of human rights, or at the very least their fulfilment. It seems evident that free expression can be exercised online, but at the same time, internet access can help people obtain information, coordinate action and demand or campaign for the fulfilment of all other rights, such as seeking access to water. Yet, this does not guarantee consensus on access to the internet as having or even deserving the status of a human right. There are common points between frameworks for access to the internet (created to assess the full potential of the net for human rights) and for access to enjoyment of human rights. As a policy objective promoted by different sectors, access to the internet is expected to follow criteria not unlike those of ESCRs. In turn, complying with these criteria ensures that the internet remains the sort of technology that can help achieve full realisation of different rights.

To apply an access framework for the internet, the requirement of availability demands the existence of available equipment (computers, tablets or phones) and network infrastructure. In a global context, the realisation of any single right that can be fulfilled through the internet would at the very least require such basic availability. Accessibility, in turn, would require that all possible rights holders have equal possibilities of use, in terms of the physical or material ability to reach the available infrastructure (either from school, a public library, or one's own home).<sup>70</sup> Furthermore, requirements include economic accessibility or affordability, with free services for those who cannot afford basic connection costs; basic skills and motivation to be able to use these technologies, providing the tools and means to attain those skills; and usability of the technologies themselves. Just as the right to information requires accessibility in terms of available information being understandable to be of use, information technologies should be usable. In terms of adaptability, the use of technologies by persons with disabilities is not only something that flows from their special needs, but from explicit international obligations.

Another nexus point between economic, social and cultural rights and access to the internet worthy of special attention is the requirement of acceptability, sometimes mixed with quality in some ESCR frameworks. Considering key differences between civil and political rights and economic, social and cultural rights, acceptability or quality would require both negative and positive obligations from states. From a negative point of view, as highlighted by the La Rue framework, access to the internet and services would require no arbitrary blocking or filtering, no special criminalisation for content online, no intermediary liability schemes that place censorship duties on private entities, no disconnection of users, and no state action against information systems. From a positive point of view, the Real Access framework emphasises the need for locally relevant content, applications and services, in local languages, considering context and integration into daily lives. This positive framework mirrors ESCR frameworks regarding the enjoyment of scientific progress, the right to education and its acceptability, and, more

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<sup>70</sup> The idea of "universal service" as services in people's homes is recognised in certain legal frameworks, such as Estonian and Spanish laws.

explicitly, the right to participate in cultural life. This includes participation in the broadest sense, and also the right to seek, receive and share information on all manifestations of culture in the language of one's choice. While it is unlikely that the state itself would hold the role of curator or leader in conservation for certain groups' culturally relevant content, it is still its duty to at least *facilitate* through policy the conditions which allow this kind of exercise. As such, optimal internet access policy becomes inextricably intertwined with ESCRs.

As a consequence of all of the above – the fact that human rights are a group of indivisible, interdependent rights, along with the need for access to the internet for their realisation – it can be argued that internet access must be guaranteed, either as a right or as the necessary means to realise those rights. Access should be guaranteed not only for competitive economic advantages, and not only for facilitating activities of communication, but because access is key to the full range of exercise of the broadest spectrum of human rights. As technical possibilities grow, so does the internet's ability to achieve the potential for full realisation of rights. Likewise, public policy may allow the best possible realisation by dedicating public efforts, or facilitating private initiatives, that go beyond setting the stage for this "potential". Policy aimed at the internet or optimised for its use in cyberspace could efficiently facilitate the full exercise of human rights. Internet access could thus be framed within the steps to realise all human rights, not only civil and political, but also (and especially) economic, social and cultural. It can be argued that when provided with such a crucial tool for empowerment, societies could not properly fulfil the rights of people without paying attention to the tool.

This is not to say that internet access should be recognised as a human right, nor that it should not. Even acknowledging that the internet is but one technology in human history, and that it serves its rights-related purposes as a *means* to those ends, guaranteeing internet access is neither the need nor the duty, based on the internet in itself. In a deeper sense, the duty is to guarantee the best possibilities available for the full realisation of rights and in many instances that possibility is provided by the internet. Should a different technology become equally crucial in the future, it should enjoy the same special treatment advocated for the internet.

While still the means to an end, its importance as "means" should not be downplayed, but emphasised. The internet is not *a* tool, but is currently *the* tool, and proper, full internet access allows for a potential worldwide reach that no other technology has allowed on the same scale. The linkage between internet access and the exercise of ESCRs can better be understood through examples. For instance, one can imagine cultural participation online by way of connecting with other people in an indigenous group and preserving cultural heritage by way of actions as simple as recording a traditional song and posting it online. One can imagine the search for information on a physical ailment and its treatment when professional health care is not immediately available for reasons of distance or the need for transportation, or participation in cultural life, or taking advantage of the benefits of scientific advances. Denying access where access is possible hampers the ability to exercise such rights. Even connecting with other people in search of clean water sources with geolocation tools is possible with adequate internet access. Specific studies within this project aim to present concrete examples where internet use and the exercise of ESCRs are linked, and in all of these stories access to the internet is but one of several starting points.

In summary, even though it may be difficult to legislate in order to recognise access to the internet as a human right, the progressive realisation of all rights facilitated by the internet demands that governments take continuous, clear and progressive steps towards realising the goal of universal access, either through direct provision or by facilitating private infrastructure. Thus, cooperation between duty bearers will help better define each one's responsibility.

## **5. Implications**

Attempts to study the development of these rights within the broader framework of human rights have to take into account certain implications of the close relationship between access to the internet and enjoyment of economic, social and cultural rights.

There is a difference in the understanding of human rights content between different groups of people from the perspective of their exercise online and offline that seems to mirror the conceptual differences between civil and political rights and economic, social and cultural rights. While the academic community, policy makers or civil society groups may have deeper experience and familiarity with international human rights instruments, it is common for regular people not to be familiar their rights beyond basic liberties such as life, free movement or voting rights.

The promotion and development of rights on the internet by human rights organisations have focused primarily on civil and political rights. It is debatable whether this derives from a lack of knowledge of the normative content of ESCRs or from the pressing immediacy of violations of CPRs related to online activity. Policy analysis frameworks, such as the APC-La Rue framework, tend to focus precisely on CPRs. However, rights linked to development tend to be left out of superficial human rights discussions. This runs parallel to the understanding of human rights by the general public. Human rights defenders are not necessarily development advocates, even if government action towards development counts towards the realisation of economic, social and cultural rights.

As a consequence of the above, the understanding of civil and political rights as the basis for the development of different sets of rights may not be immediately or intuitively understood, even if, for instance, the basic right to life can logically lead to the right to a certain standard of living. These layers of rights deserve more attention, and continuous attention from governments and not only civil society organisations. This may lead to better policy making where civil engagement becomes more effective at translating basic rights into more developed, detailed rights, and those into more useful entitlements.

There is the need to provide arguments to solidify the idea that small components of basic rights are indeed rights themselves, as parts of a whole but just as inalienable and interdependent as other rights of a higher layer. For instance, access to textbooks is a right in itself, as part of the much broader right to education. Studies that focus on limited or small parts of public or private policy making must take into account that each narrow focus does indeed affect each broader right, and the full indivisible system of human rights.

If the internet facilitates the exercise of human rights in the broadest sense, access to the internet is convenient for that exercise. But that mere convenience becomes a necessity in the face of the growing importance of the internet (and ICTs in general) for global interaction, and for the exercise of human rights beyond basic liberties. The internet is therefore a key for development beyond its economic competitiveness aspects.

Because ESCRs are limited in their full enjoyment by the lack of availability of resources to facilitate their realisation (either immediate or progressive), the exercise of ESCRs through ICTs itself will be limited where access to ICTs is limited. Therefore, high levels of internet access in the developed world accentuate the gaps between rich and poor countries. This makes advocacy for internet access as a tool for development especially necessary. That there are concrete tools for the realisation of human rights does not mean that such means or tools are necessarily the only ones to be considered, let alone promoted or implemented. Realisation of rights cannot become such a burden on the rights holders that they cannot exercise rights in any other manner than through a certain tool. In terms of internet access, this means that its promotion cannot mean its imposition, in a way that closes the door to the realisation of rights through other means, or the prevention of full social participation to those without access. Thus, digital inclusion cannot be forceful. For example, if a government allows for transparency online but excludes it offline, or only provides tools on the internet, those without access have a much lower degree of information. In this regard, access and inclusion could be available, but also renounceable.

As a consequence of the above, there will be places where, at first glance, the exercise or denial of enjoyment of human rights will be specific to those contexts. For instance, generic top-level domain name registration with implications in cultural heritage and linguistic diversity will naturally be of interest only online. In the case of political and civil rights, exercise would still be a concern only for those with the privilege of internet access. However, if the indivisible relationship between human rights and access to the internet is true, specificity of context will be apparent. If enjoyment and realisation of ESCRs in the 21st century is best served by the internet (and therefore access to the internet must be guaranteed), then the full range of rights must be protected, respected and fulfilled to the largest extent and for the largest possible number of people. This should occur regardless of context, taking into consideration the interplay between all rights and the promotion, conservation and diffusion of culture into the future.

## **6. Conclusions and recommendations**

The internet is currently a critical tool for exercising, mobilising, demanding or seeking information about human rights. Because of its broad spectrum of possibilities, the internet allows people to address demands not for just one category of rights, but for all of them. This does not mean that there is currently an obligation to provide or facilitate access to the internet in international human rights law, as communication tools and technologies are means to the end of enjoyment of human rights, and not the end themselves.

However, the importance of the internet as a tool is not that of other communication technologies of times past. The potential for interaction with a global audience, the almost-limitless possibilities to engage with governments and citizens, to mobilise, or to receive or provide information or education enabled by mere access, qualifies the internet as a crucial tool, yet to be matched by a new technology. In this sense, in order to avoid further discrimination between those with and those without access, it can be argued that access to the internet is crucial and necessary, for each individual right, and for the group of them as an indivisible set of imperatives. Because of this necessity, access to the internet must either be facilitated or provided by states to all populations, even before the demand for such services appears, not because of our opinion of the technology itself, but because of what it means for rights in the current global context.

The realisation of ESCRs, especially in a framework of progressive achievement, is thus closely linked to the internet. The continuing obligation of duty bearers is to adopt measures (legislative, economic or other) in those key areas where ESCR realisation should be acted on, which encompasses digital inclusion for many developing countries. But it is important to note that governments are central stakeholders, but not the only ones. It can be argued that private entities and companies have a responsibility, as much as each context allows, to provide and to not prevent or hinder provision of goods and services central to ESCR realisation, fulfilling the roles demanded by society and by statute. Who those stakeholders will be, as either duty bearers or rights holders, will depend on each goal. At the same time, it is important that each stakeholder be held accountable for their action or inaction in the enforcement of ESCRs in the relevant venues and relative to what can be enforced. The UN Guiding Principles on Business and Human Rights provide a framework for such responsibility, relying on business to, at the very least, avoid adverse human rights impact through their activity.<sup>71</sup>

It is recommended that, because of the difficulties in assessing achievement or steps for the progressive realisation of ESCRs, language in advocacy efforts be used carefully to frame each advocacy goal in the context of each right. While each right is not in any way separable from the indivisible set of human rights, certain rights require progressive realisation, and each step can be individually considered and must be treated as a right subject to direct demands. Once each right is translated into more specific measures, each of those measures, as part of the same objective (in interplay with other rights in different layers or levels), can be demanded as a goal. Different steps must be taken on the long journey to full realisation, but each step is an effort that can and should be advocated.

This approach has consequences. Firstly, because human rights are an indivisible system, advocacy goals related to any of them should always keep in mind that they belong to a broader, but single system of imperatives. Access to the internet may not belong to the higher, broader layers, but it is definitely part of the concrete, more specific measures related to the complete system. Therefore, it is necessary to engage human rights advocates for collaboration or coordination of their work with internet rights defenders, highlighting this linkage between rights, and the layers affected by the internet beyond pressing concerns for expression or privacy. Secondly, because this linkage may be theoretically understood but without the immediacy of more clear violations of civil and political rights, it is necessary to rely on examples and studied cases, as the other papers in this project will provide. Also, focus should be placed on the necessity to achieve access to the internet as part of that exercise, as a basic condition for participation in the global community, even while conserving local interests.

Because access to the internet is crucial, assessing access to the internet and ESCRs requires all to take into account several variables that include the level of penetration of ICTs, both in a broad sense, and more narrowly. This includes factors such as the reach of ICTs within certain groups or territories, including marginalised and indigenous people, the level of education in their use, their importance in local economy, the development of local platforms and content in local languages, and the provision of connectivity outside commercial channels, especially for those who cannot afford home connections. Also, the general legislative framework regarding the ability of states to take over the provision of certain goods and services (from connectivity to learning materials and research data) should be taken into

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<sup>71</sup> The principles were proposed by UN Special Representative on business and human rights John Ruggie, and endorsed by the UN Human Rights Council in June 2011. See: [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

account, especially where some restrictions may apply for some governments. Moreover, legislative frameworks that open the door for restrictions after access (such as filtering or blocking) which might hinder the whole system of human rights should be identified.

For human rights to be enjoyed by all, all must enjoy the same basic conditions. This includes access to the available tools for the exercise of all rights, not only ESCRs. For human rights to be enjoyed by all, real access to the internet must be available to all.

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