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

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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 Owens[5]

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 work[15] 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%20 Case%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

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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** [23]
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 Internet[27] 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.

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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.

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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://wearemigrants. net/2016/09/12/hk-fdw-to-address-un-assembly-for-first-time-on-rights-of-migrants-vs-exclusion-commodification-and-slavery

Economic, social and cultural rights and the internet

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

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

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

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