

Spotlight on OER policy in the Global South



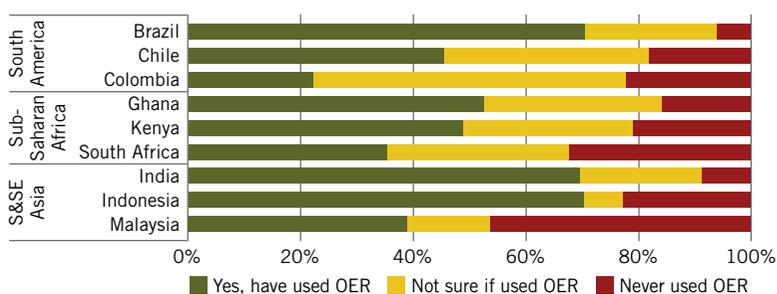
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Case studies from the Research on Open Educational Resources for Development (ROER4D) project

To understand how policies enable or constrain educators' adoption of Open Educational Resources (OER) in South America, Sub-Saharan Africa and South and Southeast Asia, the Research on Open Educational Resources for Development (ROER4D) project undertook a meta-synthesis of seven ROER4D studies conducted in four countries – Colombia, South Africa, Afghanistan and Mongolia – to illustrate the varied influence that policy has on OER adoption in these diverse national contexts. By “policy”, we refer not only to OER-specific policies, but to relevant international treaties and declarations that enable or constrain national copyright and “fair use” legislation and strategies, as well as institutional intellectual property (IP) regulations and Open Access policies.

Baseline figures for OER adoption in the Global South

To help put the country case studies into context, it is important to have a broader sense of OER activity in the Global South. The ROER4D cross-regional study by de Oliveira Neto, Pete, Daryono and Cartmill¹ provides data in this regard. This study was based on a survey of 295 randomly selected educators at 28 higher education institutions (HEIs) in nine countries across the three ROER4D regions. Just over half (51%) of the educators surveyed stated that they had used OER at least once; one-quarter (25%) had never used OER; and almost another quarter (24%) were not sure whether they had used OER. This suggests that, while a small majority have used OER and have some familiarity with it, a sizeable minority have never done so and/or are not aware of the concept. This lack of a clear understanding of what defines OER emerges as a key challenge for advocating and researching OER activity.



As the figure illustrates, the level of OER use appears to be slightly differentiated by region: 50% in South America, 46% in Sub-Saharan Africa, and 56% in South and Southeast Asia. The percentage of OER users (51%) was more than twice as high as the percentage of OER creators (23%). This is not surprising, given the relatively low barriers to OER use compared to OER creation. The study found no association between respondents' perceptions of their institutions' OER-related policies (or lack thereof) and their levels of OER use or creation. While policy may be an influencing factor in OER (in)activity, the study revealed no consistent pattern in this regard.

- **What is the state of OER policy development in the Global South?**
- **To what extent do developing countries need OER policies for OER adoption to flourish there?**
- **What are the key questions to ask about policy – international, national, institutional and individual – to support OER users and creators?**

ROER4D focuses on understanding the use, creation and impact of OER across three regions in the Global South – South America, Sub-Saharan Africa, and South and Southeast Asia – over the period 2014–2017. The project consists of 18 sub-projects with more than 100 participating researchers and research associates in Afghanistan, Brazil, Chile, Colombia, Ghana, India, Indonesia, Kenya, Malaysia, Mauritius, Mongolia, Pakistan, the Philippines, Somalia, South Africa, Sri Lanka, Tanzania, Uganda, Uruguay, Zambia and Zimbabwe.

Policy influence on OER adoption in Colombia

This meta-synthesis draws key insights from two ROER4D studies focused on OER in Colombia: the Sáenz, Hernández and Hernández² study on OER adoption in the basic education sector and Toledo's³ research on the higher education Open Access and OER policy landscape.

International policy context

- Signatory to Berne Convention: Yes⁴
- Creative Commons National Affiliate: Yes⁵
- Signatories to the Cape Town Open Education Declaration: 17 individuals and organisations⁶

“Colombian education policy does not promote or provide time for the creation of educational resources by teachers.”²

According to Toledo, the adoption of OER is still emerging in Latin America and has developed in the wake of regional Open Access activity. The Latin American Open Access network known as the Federated Network of Institutional Repositories of Scientific Publications (LA Referencia)⁷ has focused on creating technical and organisational infrastructure in order to build a network of institutional repositories. As useful as this framework is, Toledo reflects that the commitments of the Colombian government to LA Referencia “are yet to materialise in the form of policy or legislation on Open Access or OER”.³

National policy landscape

Colombia's copyright legislation “is framed in the tradition of European Continental law; meaning that legal protection in intellectual creation lies with the author”.² However, in cases where those works are created as part of one's employment for a public organisation, the works belong to the “public body” (the state employer). But there are exceptions for certain types of educational materials in specific educational contexts. Colombia's Copyright Law^{8,9} states:

The copyright in works created by public employees or officials in the exercise of the constitutional and legal obligations incumbent on them shall be the property of the public body concerned. This provision shall not apply to lectures or talks given by professors. Moral rights shall be exercised by authors in so far as such exercise is not incompatible with the rights and obligations of the public bodies concerned.

In addition, a number of specific copyright exceptions are allowed, including quoting fragments of a work, photocopying elements of a work for teaching or evaluation, or communicating a work in an educational institution to the educational community.^{8,9}

While these exceptions exist, they have not been updated for the digital era, as they do not address activities such as downloading images or videos from the internet and incorporating these into educational resources which are designed to be freely reused and redistributed. Neither do they address everyday practices such as electronic document sharing through online platforms such as blogs, or the modification and publication of a work as part of learning and teaching activities.² Typically, such a law would extend to those materials and practices by default (even though they are based on an analogue, print-based legacy), but when Colombian legislators updated the law in 2012, they seem to have eroded these educational exceptions for digital materials and made the path more difficult for embarking on OER activities. Less than a year later, this updated version of the law was ruled unconstitutional by Colombia's Constitutional Court and new efforts have since been made – especially by civil society groups and open advocates – to ensure a more equitable law which balances authors' rights with the public interest in the digital age.

Although there are no national OER-specific policies in Colombia, two OER initiatives have been implemented, one for the schooling sector and one for the higher education sector. Between 2014 and 2015, the national

government financed the development of digital OER for K–12 through Regional Educational Innovation Centers (CIER);² these resources are available through the preexisting *Colombia Aprende*¹⁰ portal that hosts a range of copyrighted and openly licensed materials.³ Sáenz et al. are of the opinion that this initiative does not necessarily foster Open Education and a sharing culture, as the notion of openness in these cases is “limited to producing resources which are free to the user rather than integrating open licensing and, by extension, promoting other characteristics of OER such as modification or remixing”.²

The higher education OER initiative in Colombia is expressed through the National Strategy for Digital Open Educational Resources (*Recursos Educativos Digitales Abiertos* [REDA]), adopted by the Ministry of Education (*Ministerio de Educación* [MoECo]) in 2012. Of Colombia’s higher education system consisting of 288 universities, professional technological institutions and technical-vocational schools, 23 HEIs (or 8% of the total) were connected to the REDA repository by 2016.¹¹

Toledo suggests that the REDA strategy is “unique in the region and focuses on higher education by establishing the roadmap for creating a national OER system”, which, according to a MoECo official, is “an investment project that is only possible with the technical collaboration of HEIs”.³

Institutional policy landscape

With respect to OER in Colombian higher education, Toledo suggests that despite the REDA framework, “there is still much work to be done in the policy development sphere, particularly at the institutional level”.³ She further reports that none of the four Colombian universities examined showed evidence of a uniform policy framework for addressing the creation and reuse of OER. Toledo highlights the work of the Centre for Innovation in Technology and Education at the University of the Andes which runs the *Conecta-TE*¹² portal that aims to connect educators with the broader academic community in order to guide educational practices and provide a repository of educational resources. This repository operates a variable licensing strategy, determined by the faculty or course for which the materials were created, suggesting that “there is no university-defined strategy to promote Open Education policy, particularly in OER”.³

Sáenz et al.’s study of school teachers in southwestern Colombia suggests that school principals play a key mediating role in determining how OER adoption might be enabled, or, as the following comment from one teacher participating in the study illustrates, constrained: “*Cuando llevamos la carta para poder trabajar como equipo [Carta o formulario para vincularse formalmente al proyecto], ella [La directora] fue muy enfática en decir que sí y solo sí nos reuníamos por fuera de clase, por fuera del horario académico, firmaba. Así que buscamos espacios entre los tiempos libres que tenemos para reunirnos y avanzar en el proceso.*” (When we took the letter [application form to the principal to work on the project] to work as a team, she [the principal] was very emphatic in saying that she signed it if and only if we met outside class, outside of school hours. So we found some free time to come together and advance the process.)²

Key insights

- Colombian copyright law is in a state of flux, and currently not conducive to OER activity for all educators.
- There are two promising national OER initiatives: one in K–12 and one in higher education.
- ROER4D studies did not reveal a high level of policy development in HEIs.
- A study of school teachers in southwestern Colombia suggests school principals play a key role in whether or how OER adoption may take place.

Policy influence on OER adoption in South Africa

This meta-synthesis draws key insights from three ROER4D studies focused on OER in South Africa: Cox and Trotter's¹³ research on OER adoption at three HEIs; Czerniewicz, Deacon, Walji and Glover's¹⁴ work on Massive Open Online Courses (MOOCs) and OER at the University of Cape Town (UCT); and Goodier's¹⁵ investigation into the financing of OER in basic education.

International policy context

- Signatory to Berne Convention: Yes⁴
- Creative Commons National Affiliate: Yes¹⁶
- Signatories to the Cape Town Open Education Declaration: 352 individuals and organisations¹⁷

"[O]wnership of this intellectual property is antithetical to what we are trying to do. We are not trying to own ideas, we are trying to disseminate ideas."
(UCT MOOC educator)¹⁴

National policy landscape

South Africa's OER-related policy landscape revolves around the Copyright Act of 1978.¹⁸ This law grants employers default copyright ownership over employees' work-based creations.¹⁸ This implies that all educational resources produced by school educators belong to their employers (i.e. provincial departments of education, school governing boards or private institutional management) and, in the case of college or university educators, to their HEIs. This has crucial implications for OER advocacy because it reveals that there are two potential agents of OER activity – the educator (user/creator) and the institution (default copyright holder). Hence, according to Trotter,¹⁹ if educators do not possess copyright over their teaching materials, it is difficult to encourage them to contribute OER when they have no legal standing to do so. At the time of writing, however, parliamentary hearings regarding a Copyright Amendment Bill were being conducted, which may alter the stringency of this law for educators.²⁰

The Copyright Act makes provision for "fair dealing" regarding literary and musical works, meaning that copyrighted materials can be used for illustrative purposes in teaching. In practice, this has meant that many educators take the same approach with a variety of easily accessible materials from the internet, using portions of them in their teaching. This flexibility may actually undercut the argument for OER, as educators feel that they are able to utilise many of the materials that they desire without regard for whether they are openly licensed or not. The fact that potential "fair dealing" infringements are rarely litigated in South Africa also suggests that educators are relatively free to use portions of a variety of materials in their teaching.

The South African government has shown some interest in fostering OER adoption activity, according to Goodier's study. This is evidenced by a nascent OER strategy on the part of the Department of Basic Education (responsible for K–12 schooling), which printed and distributed approximately 10 million openly licensed school textbooks produced by OER publisher Siyavula.¹⁵ This process was repeated with a series of "Mind the Gap"²¹ study guides for Grade 12s and the creation of a national website²² to share copyrighted materials commissioned by government as well as openly licensed materials.

These pro-OER intentions have been made clear by the Department of Higher Education and Training in its *White Paper for Post-School Education and Training*²³ (approved by Cabinet in 2013) and its *Open Learning Policy Framework for Post-School Education and Training*²⁴ (released for a second round of public comments in 2017).

Institutional policy landscape

While national legislation and the relevant education departments play an important role in enabling or constraining OER activity, South African HEIs can set their own IP regulations, which can further influence OER opportunities. Currently, 20 of the 25 universities in the country have IP policies that align with the Copyright Act, vesting copyright over educators' works with the affiliate institution. In most cases, this means that educators' teaching materials are unlikely to be released as OER, as many universities appear to lack any strategic intent to openly share these resources. Where they have

demonstrated strategic intent – as is the case at the University of South Africa (UNISA) – there exists the possibility that the university will harness some of its intellectual assets and share them as OER.²⁵ This is an affordance that all universities which hold copyright have.

One of the institutions that has assigned staff members copyright over their work is UCT, whose IP policy “automatically assigns” copyright to the authors, allowing them to relicence their teaching materials and share them as OER:

UCT automatically assigns to the author(s) the copyright, unless UCT has assigned ownership to a third party in terms of a research contract, in: scholarly and literary publications; paintings, sculptures, drawings, graphics and photographs produced as an art form; recordings of musical performances and musical compositions; course materials, with the provision that UCT retains a perpetual, royalty-free, non-exclusive licence to use, copy and adapt such materials within UCT for the purposes of teaching and or research; and film.²⁶

The policy goes on to explain what this means for lecturers in terms of how they might share their work outside of the classroom, stating: “UCT supports the publication of materials under Creative Commons licences to promote the sharing of knowledge and the creation of Open Education Resources. UCT undertakes certain research projects that seek to publish the research output in terms of a Creative Commons licence.”²⁶

This sentiment is reinforced by UCT’s Open Access Policy, which promotes “the sharing of knowledge and the creation of open education resources”.²⁷ More recently, UCT’s Strategic Planning Framework 2016–2020 expressed the intention to “maximise the use of ICT tools to make UCT’s research output and educational resources available as widely as possible”.²⁸

It is worth noting that OER activity at UCT preceded policy developments for some years and it was mainly donor-funded initiatives and the efforts of individual OER champions within a few departments that led to the establishment of an OER portal in 2009, and later an institutional repository²⁹ which hosts OER. Management of the OpenUCT repository formally shifted from a donor-supported project base to institutional ownership by the UCT Library in 2015. OER creation is supported through small donor-funded and institutional grants to educators and/or senior students, administered through the Centre for Innovation in Learning and Teaching, to transform existing teaching and learning materials into OER.

When the UCT MOOCs project was launched in 2014, it was initially not conceptualised as an OER initiative. According to Czerniewicz et al.,¹⁴ the institutional policy environment did, however, mean that the project was able to take a default position that MOOC materials should be OER where possible and to work with educators to expand their knowledge of copyright and open licensing.

In addition, Cox and Trotter¹³ argue that UCT’s “collegial” institutional culture – defined by a decentralised power structure and high levels of personal autonomy – empowers individual lecturers to act on their own volition regarding OER, thereby aligning the cultural ethos with the institutional IP policy and suggesting greater sustainability for OER activity.

Key insights

- South African copyright law grants employers default copyright over employees’ work-based creations; unless educators’ employers (i.e. government or institution) assign copyright to them, only the government or institution can legally share OER (not the individual educators).
- Departmental and individual OER activity is apparent in cases where institutions have assigned copyright to the author.
- Institutional support for OER creation, for instance in the form of a repository platform for sharing and small grants for those who want to turn their educational materials into OER, can play a powerful role in promoting OER activity.

Policy influence on OER adoption in Afghanistan

This meta-synthesis draws key insights from a ROER4D study focused on OER in Afghanistan:

Oates, Goger, Hashimi and Farahmand's³⁰ research on school teachers' use of the digital Darakht-e Danesh ("Knowledge Tree") Library for school teachers in Afghanistan.

International policy context

- Signatory to Berne Convention: No⁴
- Creative Commons National Affiliate: No
- Signatories to the Cape Town Open Education Declaration: No individuals or organisations³¹

Key insights

- Afghanistan copyright law grants employers default copyright ownership over employees' work-based creations.
- In spite of a national policy vacuum on OER, an NGO has established an OER repository and provides support to teachers on how to openly license materials they choose to share as OER.
- Many teachers, especially those lacking any formal teacher training or knowledge about open licensing, feel compelled to use only the traditional textbook for their lesson plans.

National policy landscape

Afghanistan's Copyright Law of 2008³² asserts that: "It shall be lawful to reproduce short Works or extracts of Works for teaching purposes in educational institutions the activities of which do not serve direct or indirect commercial gain." This is similar to "fair use" and "fair dealing" exceptions which are common elsewhere. The law also grants copyright of created works to employers if they are produced during the course of employment, which would likely include teaching materials. However, it suggests that employers are free to modify this arrangement: "Whenever an employee during the scope of his/her employment creates a work using the facilities of the employer, the work belongs and is owned by the employer unless there has been a different agreement on that."³²

Existing policy documents appear to focus on expanding access to education by increasing the number of schools, teachers and learners. Little to no mention of OER is made in official statements released by the Ministry of Education, which focus on increasing the number of traditional textbooks in circulation. There is mention of "free textbooks",³³ but, in general, OER-relevant terms such as "accessibility" and "quality" are framed in terms of increasing the number of textbooks in circulation, not their pedagogical openness or revisability.

Organisational OER initiative

Despite the lack of specific national OER policy direction, an NGO – Canadian Women for Women in Afghanistan (CW4WAfghan)³⁴ – established the digital Darakht-e Danesh Library (DDL) of open resources in 2014 on the premise that increased access to a growing collection of OER will improve teachers' subject knowledge as well as their teaching practice. According to Oates et al.,³⁰ the DDL is Afghanistan's first OER initiative, serving as an independent source of knowledge, information and pedagogical tools for Afghan teachers.

In spite of what appears to be a relative policy vacuum around OER, the DDL hosted around 2 000 resources and provides subject information, lesson plans, games, experiments and books in over 45 subject areas²⁹ in Dari, Pashto and/or English. To make the DDL accessible to educators in Afghanistan – the overwhelming majority of whom do not have access to the internet to discover and use the DDL independently – it can be downloaded as an application that is useable offline on a feature phone, smartphone or tablet, or be installed in a networked computer lab using one computer configured as a server, allowing the library to be accessed offline.³⁰

Oates et al.'s³⁰ study found that teachers' use of the DDL positively impacted upon their knowledge and helped them in lesson preparation. However, many teachers also persisted in using only the traditional textbook to prepare their lessons because they (especially those with no formal training as teachers) felt dependent on the textbook, which is often viewed as the curriculum itself. In addition, teachers were unsure of the exact meaning of "open", with most viewing OER as learning materials obtained from the internet, libraries or simply from outside of their school. Thus, while teachers who used OER appeared to benefit from these resources, the concept was new to them, representing a "disruption" to the familiar way of preparing and delivering lessons.

After Mongolia's transition in the early 1990s away from communism towards a free-market democratic system, the country (including its education sphere) opened up to new ideas and practices. OER awareness-raising activities began in 2010 with a series of national forums, seminars and workshops on OER driven by the international donor community. Continued advocacy took place with an OER preschool research project in 2013,³⁸ and the creation of a Mongolian Creative Commons Affiliate in 2014 as well as the Open Network for Education (ONE) Mongolia project, which introduced open practices, OER and training to the K–12 sector.

National policy landscape

The key law mediating Mongolian educators' (potential) OER activity is the Copyright Law of 2006,³⁹ which states that: "The author of a work created in the course of execution of his/her duties shall enjoy non-economic intangible rights; the employer may have the exclusive rights over the exploitation of the work created as part of the exercise of official duties if not otherwise stipulated in the contract." This suggests that educators should enjoy "non-economic intangible rights" over their teaching materials, while the institution or government (whichever is the employer) enjoys sole rights over the "exploitation of the work"; meaning that educators should be able to share their teaching materials as OER as long as they do not try to profit financially from the process.

The government's interest in OER is more explicitly expressed in the Policy on ICT in Education Sector 2012–2016, which includes plans for the following activities: "adopt Creative Commons license[s] and enable open source courseware; policy support for higher education institutions that are developing open courses, enabling access to open course wares, developing distance learning infrastructure for common use".⁴⁰

In addition, the Mongolian parliament adopted a National OER Program⁴¹ in 2014 to be implemented by the Ministry of Education, Science and Culture and the ONE Foundation.⁴² This programme has several components – including the ONE Academy for supporting open collaborative work, the development of an open university, and the development of policies that allow educators to release their materials openly – to be implemented in the period 2014–2024. Despite this initiative and action research in the preschool education sector,^{38,43,44} no significant activity has yet occurred regarding OER adoption in Mongolian higher education.

Institutional policy landscape

While institutional IP policies can typically provide more specific guidelines regarding the use or creation of OER, as they do elsewhere,¹⁹ Mongolian HEIs have yet to address open licensing in their IP policies. In no cases did Zagdragchaa and Trotter³⁵ find that OER was recognised or rewarded in Mongolian institutional policies. While the national government appears mildly positive towards OER, institutions have yet to respond to this opportunity by developing OER-related policies of their own.

Policy influence on OER adoption in Mongolia

This meta-synthesis draws key insights from Zagdragchaa and Trotter's³⁵ study on OER adoption in Mongolia's higher education sector.

International policy context

- Signatory to Berne Convention: Yes⁴
- Creative Commons National Affiliate: Yes³⁶
- Signatories to the Cape Town Open Education Declaration: One individual³⁷

Key insights

- Mongolian copyright law allows for employees, such as educators, to share their created works as long as they are not for commercial gain, which opens the possibility for them to share their educational materials as OER.
- With the assistance of international donors, the Mongolian government has supported some OER policy development and initiatives at the K–12 level.
- The Mongolian higher education sector has yet to show any activity regarding OER policy development.

Spotlight on OER policy in the Global South

Research on Open Educational Resources for Development (ROER4D) project

Key questions to ask about policy to support OER users and creators

International	National	Institutional	Individual
<p>Legal</p> <ul style="list-style-type: none"> • Is your country a signatory to the Berne Convention? • Does your country recognise open licensing mechanisms such as Creative Commons (CC)? 			
International	National	Institutional	Individual
<p>OER USERS</p> <p>Legal</p> <ul style="list-style-type: none"> • Does national copyright legislation provide exemptions for educators to use copyrighted materials for educational purposes (including “fair use” or “fair dealing” exceptions)? <p>Organisational</p> <ul style="list-style-type: none"> • Is there a government-supported repository or portal of educational materials for schools and/or HEIs? • Are there nationally available OER repositories hosted by NGOs? 		<p>OER CREATORS</p> <p>Legal</p> <ul style="list-style-type: none"> • Does national copyright legislation stipulate that creators (e.g. educators) of works keep copyright of their creations, or does copyright belong to the employer (e.g. government, institution)? <p>Organisational</p> <ul style="list-style-type: none"> • Does the country have national Free and Open Source Software, Open Access or OER strategies or policies? • Does the country have a national repository or portal for sharing OER for schools or HEIs? 	
International	National	Institutional	Individual
<p>OER USERS</p> <p>Legal</p> <ul style="list-style-type: none"> • Does the institution provide legal advice on interpreting use of open licensing mechanisms? <p>Organisational</p> <ul style="list-style-type: none"> • Do educators require permission from the institution (e.g. curriculum committees) to use OER in their own teaching and learning materials? 		<ul style="list-style-type: none"> • Does the institution provide legal advice on choosing open licensing mechanisms? <p>Organisational</p> <ul style="list-style-type: none"> • Has the institution signed the Cape Town Open Education Declaration? • Does the institution have an OER policy or strategy? • Does the institution have an IP policy, Open Access policy or a strategic plan that includes provisions regarding OER? • Does the institution have a repository where OER can be hosted? <p>Financial</p> <ul style="list-style-type: none"> • Does the institution provide direct funding or channel donor funds for OER creation? 	
International	National	Institutional	Individual
<p>OER USERS</p> <p>Legal</p> <ul style="list-style-type: none"> • Are you aware of the difference between CC-licensed and fully copyrighted materials? • Do you know how the different CC licences influence which materials you can legally reuse? <p>Organisational</p> <ul style="list-style-type: none"> • Do you have access to a repository or platform where you can contribute revised OER? 		<p>OER CREATORS</p> <p>Legal</p> <ul style="list-style-type: none"> • Are you the copyright holder of the materials you want to share as OER? • Do you know which open licences would best express the permissions on the materials you have created and wish to share? <p>Organisational</p> <ul style="list-style-type: none"> • Have you signed the Cape Town Open Education Declaration? 	

References and notes available at: <http://dx.doi.org/10.5281/zenodo.847169>

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