GLOBAL INFORMATION SOCIETY WATCH 2009

Focus on access to online information and knowledge
– advancing human rights and democracy

Global Information Society Watch 2009

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2009

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*Dedicated to A.K. Mahan - an activist who valued intellectual rigour and concrete outcomes.*

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CONGO, DEMOCRATIC REPUBLIC OF (DRC)

DMTIC (Dynamique Multisectorielle pour les Technologies de l'Information et de la Communication) and Alternatives
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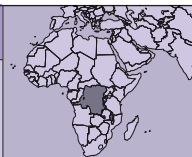
Introduction

Legislators in the Democratic Republic of Congo (DRC) have so far taken little interest in online access to information. However, the country's Constitution (2006) states:

> All people have a right to the respect of their private life and to the secrecy of their correspondence, telecommunication and all other forms of communication. (…) This right is inalienable except in cases described by the Constitution.

Notable laws that govern the sector are Law 013/2002 on telecommunications in the DRC, and Law 014/2002, which established the regulatory authority for posts and telecommunications, but largely ignored the online aspect of access to information — notwithstanding a few articles that allow for prosecution upon certain infractions.

Consultations, chiefly with civil society, raised questions around the right to access information and communications technologies (ICTs). The Ministry of Posts and Telecommunications finally solicited the aid of the Common Market for Eastern and Southern Africa (COMESA) to formulate the necessary policy and legislation. COMESA, which began the work with the help of the World Bank, in turn hired an expert to draft an ICT policy and new legislation.

Policy environment

The ICT policy that is being developed by COMESA and the World Bank aims to update existing legislation and to promote certain key initiatives. These include:

- Continuing to install a national backbone. The first section, stretching from Muanda to Kinshasa, should be completed by December 2009.

- Putting in place an e-government system.

- Developing and reinforcing competencies: training judges, magistrates and lawyers in order to render them expert in the application of the new legislation.

However, many questions remain unanswered, including those pertaining to rights to access.

Legislative environment

The key texts with implications for accessing online information in the DRC are the 2006 Constitution and the telecommunications legislation created in 2002.

The Constitution recognises the right to privacy in correspondence, telecommunications and other forms of communication. People are, therefore, protected to some extent regarding the privacy of their personal information, as well as their internet-based exchanges. If somebody obtains information without the knowledge of the owner of this information, they can be prosecuted. But there is still a need for laws that clearly define the crime and related crimes, and their subsequent punishment.

Regarding the legislation passed in 2002, the only penal stipulations related to these matters call for six months imprisonment and/or a fine of CDF 100,000 (around USD 120) for those who alter, copy or destroy any communications correspondence without authorisation, and who open or intercept communications passing through a public telecommunications channel.

Problems relating to the protection of privacy, freedom of expression, access to private or public information, and intellectual property rights have yet to be taken into consideration.

New legislation on the cards

The national backbone, on which work has already begun, aims to connect the four corners of the republic by using optical fibre, as well as satellite, digital radio transmissions, and potentially even WiMAX.

This infrastructure will allow the development of a government intranet to improve the interconnectedness of public services by giving them the ability to exchange the information they need in order to function more effectively. At first, this will apply only to the central and provincial services — to the *commune* level in cities and *territoire* level for other administrative areas. It is only much later that the system could be expanded to lower levels of government.

The e-government system also planned will digitise identity cards, the civil service, police records, commercial registration, and allow for taxes and tariffs to be paid online.[1]

All of these new services, however, will create innumerable legislative problems, particularly regarding the authentication of individuals, documents and signatures, and the protection of privacy, as the registration process will include the citizen's name, age, sex, tribe, nationality, address, telephone number, annual income, and known crimes and misdemeanours.

The possibility of retracing a citizen's life from birth to death, and establishing links between personal files, constitutes a great deal of power for those responsible for their management — and for anyone else who may access them, whether by accident or with fraudulent intentions.

The Ministry of Posts and Telecommunications recognises that the 2002 legislation has loopholes and lacunas. The new law proposed by the COMESA-financed consultant includes:

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1 ICTs have already been used successfully in the country's elections.

- Requiring service providers that make goods and offer services, as well as media archives available to the public (including texts, images, sound, video), to take measures to combat illicit content (including crimes against humanity, inciting race crimes, and pornography).

- Prohibiting every person, except users, from listening to, intercepting, compiling and distributing communications without the consent of the users. Excluded from this is the data storage necessary for the transmission of the communication.

- Relieving service providers of their legal obligation to monitor the information they transmit or store, as well as their general obligation to research the facts or circumstances of illicit activities without a temporary court order to perform the surveillance.

- Establishing an accessible and high-profile watchdog to allow anyone with knowledge of illicit activities to notify the proper authorities, and to make public the effort to counter these activities.

- Obliging ICT operators to erase or render anonymous all data traffic. However, in the interest of helping criminal investigations, these processes can be deferred for a maximum of one year. They can also be deferred for billing purposes, up until the end of the period of time when the bill can still be contested. This requirement also applies to data showing the location of a user's terminal.

- As a counter-terrorism measure, duly mandated police officers can demand access to saved data.

Nevertheless, the proposed new law has as many legal loopholes as its predecessors. It lacks a comprehensive treatment of ICTs, particularly with regard to the meagre protection afforded to civil liberties and privacy in the construction of governmental databases. It also focuses on legislating and standardising the technical aspects of ICT administration rather than on wider administrative transparency at all levels, which would allow for more rapid network development and, therefore, greater access.

Action steps

At a time when the state is striving to put into place broadband infrastructure, the governmental intranet and community telecentres, as well as attempting to digitise public services for its e-government initiative, it is imperative to, on the one hand, protect individual privacy, while on the other, guarantee the freedom (and wide access) to use information and tools.

The campaign we are undertaking to ensure these freedoms will consist of lobbying government bodies connected to the revision of the 2002 laws or the enshrinement of a new law. At the same time, civil society wishes to establish a supervisory body for ICT development in the DRC that focuses on the right to access in particular. ▪

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels

- **Encouraging** critical debate

- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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