

GLOBAL INFORMATION SOCIETY WATCH 2009

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



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

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

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Introduction

South Asia, one of the most populous regions in the world, is also home to half of the world's poor population. In the last decade some of the countries in South Asia have experienced impressive economic growth; but that growth was not inclusive and did not make any significant impact in reducing the number of poor people in those countries. Income and distribution inequalities in the region are putting the brakes on future growth and poverty reduction. Many academics tend to argue that the lack of access to information has a direct relationship with these inequalities.¹

Countries in the region stand at different points, both in terms of performance and legislative arrangement, in relation to the issue of access to information. Despite all variances in online access to information between countries, one trend is common: governments in general have been slow to take up the regulatory challenges inherent in this process. For the most part, they have been more reactive than proactive and have responded only when civil society, media and other interest groups make up a convincing voice. In some countries (such as India, Pakistan and Sri Lanka) the judicial system has also played an important role. Waqar Mustafa, editor of *South Asia Media Monitor*, in 2008 broke down the countries into three broad categories: those with no or imperfect laws on access to information (Afghanistan and the Maldives); those with proposals but no legislation yet (Bangladesh – as it stood at the time – Bhutan, Sri Lanka and Nepal); and those with laws, but lacking their effective implementation (Pakistan and India).

To discuss access to online information, we need to understand the “right to information” (RTI) scenario, along with the e-government² and ICT policy landscape in different countries of South Asia. For instance, countries have tackled or settled the right to information and online access to information with different sets of rules and regulations which often seem to be connected to e-government policy and action plans. The following countries illustrate this trend.

Some examples of policy and legislative trends

India

India is considered the pioneer in the region in moving forward RTI legislation and implementing initiatives that enable digital access (or e-access) to government information and services. The Indian RTI movement, started in Rajasthan, is the root to all advocacy efforts around this issue. In 1995, the Supreme Court of India ruled that there was a public right of access to the airwaves. The court said: “The airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights.” Although dealing with access to airwaves, this judgment gave a powerful boost in other areas, particularly in the struggle for equal access to the internet, and to online information and services.

The government passed a RTI law in May 2005, which came into effect in October 2005. Under this law, information concerning the “life and liberty” of a person is required to be provided within 48 hours, and other information within 30 days. As for the enforcement mechanism, a commission that is headed by a high-profile chief information commissioner has been created to oversee compliance. To deliver this information and to facilitate access to information, the e-government programme has been accelerated.

The country's Information Technology Act (2000) was enacted to provide legal recognition for transactions carried out electronically, and also facilitated the electronic filing of documents with government agencies. The National Policy on Open Standards for e-Governance provides a set of guidelines to ensure seamless interoperability of various solutions developed by multiple agencies. The central government has gone some way towards implementing the policy, helping government departments throughout the country exchange information effortlessly by using royalty-free software and adopting technologies and solutions that are interoperable or work with multiple vendors.

There are 5,149 government websites in India,³ including the country's e-gateway, which is developed and maintained by the National Informatics Centre.⁴ This provides a single window for access to information and services provided by the various government entities.

1 See, for instance, Robert Chambers' argument in the Bangladesh country report in this edition of GISWatch.

2 Both government-to-citizen and government-to-government programmes are included in the use of this term.

3 This number includes all central, provincial, municipal and local government websites, as well as their service websites. Directory of Indian Government Websites: goindirectory.nic.in

4 home.nic.in

Pakistan

A Freedom of Information Ordinance (2002) was implemented in Pakistan through a presidential decree. Interestingly, the categories of information that the public was given access to are fewer than those envisaged by the Act. In particular, the definitions of “information” under the law are too restrictive, barring disclosure of several broad categories of records, including records of internal deliberations and Cabinet papers and records relating to law enforcement and defence.

The country’s IT Policy and Action Plan (2000), on the other hand, has made a certain degree of online presence mandatory for the government. The Information Technology Commission (2000) was dissolved to form the Electronic Government Directorate (EGD) in 2002 to follow up the actions set by the Action Plan.

Some developments did take place. For instance, 90% of government authorities from local, district, provincial to federal level are now online. However, they are not that interactive. Pakistan’s National Database & Registration Authority (NADRA) has a database of driving licences and can track vehicles, search national identity cards, as well as records of the latest biometric-enabled machine-readable passports.

There are certain pieces of legislation that are important for accessing e-services and information in Pakistan. For example, the Electronic Transactions Ordinance (ETO, 2002) covers information and communication transactions; the Electronic Crimes Act (ECA) promulgated in 2004 covers crimes in the electronic domain; the Data Protection Act (DAT) promulgated in 2005 covers the issue of data, particularly data centre activities that provide information on citizens; and the Internet Banking or eCommerce Act, promulgated in 2005, covers information on financial payment and transfer of funds.⁵

Bangladesh

The presently elected government in Bangladesh has approved a RTI Act (2008), gazetted in April 2009. As the country report in this issue of GISWatch shows, the law requires all but eight intelligence and law-enforcement agencies to provide information on a person’s life and death, criminal record, and various institutional records of public concern, such as development programmes and public policy. Article 19 of the Act also includes the positive feature whereby it can override inconsistent provisions in other laws, specifically in Official Secrets Act 1923.

A lot of government information is now available online: 50 of the most important or sought-after government forms (such as birth registration, passport application, trade licence application, etc.) are now available online, and more than 200 government agencies now have their presence online. As in India, a national web portal⁶ provides one-stop access to government information and e-services. Others, including a portal on policy and legislation,⁷ government gazettes,⁸ cabinet discussions,⁹ and an Election Commission website,¹⁰ are just some examples of the ubiquity of online government information in the country.

Sri Lanka

In contrast to the countries just discussed, Sri Lanka does not have a freedom of information law or even strong provisions in other laws that facilitate information disclosure. A 2004 draft Freedom of Information Act has not been passed. Moreover, there are worrying signs that the government is trying to reintroduce harsh media controls to curb the free flow of information. While the right to information is not specifically defined in the country’s constitution, some judgments of the Supreme Court have held that the right to information is implicit in the freedom of speech and expression.

Despite this dismal picture, some legislative arrangements and initiatives have made access to online information possible to an extent. For example, Sri Lanka’s eDevelopment strategy, “e-Sri Lanka: An ICT Development Roadmap”, which was officially launched by the prime minister, looked at the national strategy of implementing e-government in the country. There were some core strategies for re-engineering the government programme that included bringing about a new governance framework enabled by ICTs and making public service more “citizen centric”. The Electronic Transactions Act, which became effective in October 2007, recognises and facilitates the formation of e-contracts, the creation and exchange of electronic documents, electronic records and other communications in electronic form, and allows for digital certification. The Computer Crimes Act, which became effective on 15 July 2008, provides a legal means to identify computer crimes and a procedure for the investigation and prevention of these crimes.

All these have led to the presence and delivery of government information online. A central government website¹¹ carries links to all other government websites, including its

6 www.bangladesh.gov.bd

7 www.bdlaws.gov.bd

8 www.bgpress.gov.bd

9 www.cabinet.gov.bd

10 www.ecs.gov.bd

11 www.priu.gov.lk

5 Sarfaraz, H. (2007) E-Governance: A Case for Good Governance in Pakistan. papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1415689_code634203.pdf?abstractid=1415689&mirid=1

ministries and semi-government institutions. People can now easily get birth, death or marriage certificates from any district secretariats using the government web services.

Nepal

Nepal's 1990 Constitution provides everyone the right to be informed on government or non-government public activities, except when the law explicitly says otherwise. This is backed up by the Nepalese Right to Information Act (2007).

With the penetration of the internet, more and more citizens are seeking services and information online. Several actions and pieces of legislation have paved the way in this direction. These include the Telecommunications Act (1997) and related regulations (1998); the Information Technology Policy (2000) that established a National Information Technology Center (NITC) to oversee the implementation of the policy; the establishment of a National Telecom Authority (NTA) in 1998; and the Electronic Transaction Ordinance (2004) and Electronic Transaction Act (2006) that made electronic transactions and digital signatures legal.

Online information and services in Nepal include tax filing,¹² e-procurement,¹³ cottage and small industry business registration,¹⁴ postal services,¹⁵ government accounting systems,¹⁶ a health management information system,¹⁷ customs,¹⁸ immigration control,¹⁹ and criminal records.²⁰

Conclusion

It is clear from the practices and legislative arrangements of different countries that the right to information does not come alone. The role of civil society, particularly the role of media (both electronic and print), is extremely important not only to make people aware of their rights, but also for them to practice their rights. In almost all the countries in South Asia, the media have played a critical role in advocacy efforts to bring best practices to the region, lobby for more access to information in the public interest, and hold the bodies responsible that are in denial.

The regulatory environment in most countries of South Asia remains ill-defined, especially for the rapidly growing electronic media, which have penetrated the entire region:

What had been for decades a state-controlled monopoly broadcasting system operating within national boundaries has been transformed into a multi-channel, largely commercially driven, media environment, in which global and cross-border influences have acquired far greater salience. Some of the issues thrown up by this dramatic transformation have legal implications: such as the issues of public interest, citizen's rights, accountability of broadcasters, freedom of information and expression, censorship, copyright, etc.²¹

Interestingly, the media and civil society have to engage the judicial system in many countries to interpret these issues, as was seen in the 1995 Indian Supreme Court judgment. Similar litigation on public interest was seen in Pakistan, a result of joint action by 60 private television channels, approximately 100 radio channels and dozens of newspapers, journals and periodicals. In Bangladesh, the Supreme Court directed the Election Commission to make eight kinds of information (such as information on property, criminal charges, educational background, etc.) mandatory for an election candidate. In Sri Lanka, the media community went to the Supreme Court last year (2008) when the government allowed the regulatory authority to cancel licences if any broadcasting, print or multimedia messaging service (MMS) content seemed to be detrimental to the interest of national security. As mentioned, not long ago, judgments of the Supreme Court in Sri Lanka held that the right to information is implicit in freedom of speech and expression.

The convergence of telecommunications and broadcasting or print media technologies is bringing another regulatory challenge. The Nepalese government acted early to combine both under one Communications Ministry. India initially thought to keep both under the Telecom Regulatory Authority (TRAI), but the establishment of the broadcasting commission proposed in November 2006 has removed the regulation of cable channels from TRAI. The satellite TV media in India, as relative newcomers on the media stage, have been able to operate under looser restrictions compared to their counterparts in print media or radio. Pakistan has set up a Pakistan Electronic Media Regulatory Authority (PEMRA) which is separate from the Telecom Regulatory Authority, both in terms of its mandate and area of work.

Almost all governments in South Asia have been challenged by new media, because they are ubiquitous, influential and have changed the face of reporting. With convergence, citizen journalism is emerging and is providing a grassroots perspective that was unknown before. There is a need for the regulatory authorities of these countries to become aware of this, and to protect the interests of democracy by allowing pro-people policies. ■

12 www.ird.gov.np

13 www.bolpatra.gov.np

14 www.company-registrar.gov.np

15 www.nepalpost.gov.np

16 www.fcgo.gov.np

17 www.healthnet.org.np

18 www.customs.gov.np

19 www.immi.gov.np

20 www.nepalpolice.gov.np

21 Media South Asia: www.mediasouthasia.org

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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