

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

This report focuses on the policy, legislative and regulatory environment governing online access to information in the context of advancing human rights and democracy. Zimbabwe may have a real opportunity to bring vibrancy and life to its citizens by improving their access to information, freedom of expression and human rights. This hope is pinned on the Government of National Unity (GNU)¹ agreement signed in September 2008, with a new government that took office in February 2009 and has promised to prioritise economic recovery and growth. It has published the Short Term Emergency Recovery Programme (STERP) which will cover the period February to December 2009.

A key priority of STERP with relevance to this report is the focus on the constitution and constitution-making process, media and media reforms, and legislative reforms aimed at strengthening governance and accountability, promoting governance and rule of law, and promoting equality and fairness, including gender equality. In this quest, the GNU has a new Ministry of Information and Communication Technologies (ICTs) that is responsible for ICT development in Zimbabwe. The Ministry of Media, Information and Publicity has the responsibility of reforming media laws that have been described variously as draconian, repressive to civil liberties and stifling to the growth of media in Zimbabwe.² The hope is that those legal clauses that hindered Zimbabweans' freedom of expression and their rights to be heard will be repealed and help "send a message to the international community that the GNU has turned from the past and is leading the country towards an open, tolerant society."³

Policy environment

In 2004 an e-readiness survey⁴ was "carried out to assess Zimbabwe's readiness to become an information/knowledge-based society." Zimbabwe's e-readiness is 1.4 on the Harvard University Guide (HUG) scale of 1 to 4.⁵ According to Brilliant Mhlanga, the results of the survey were used to formulate the country's national ICT Policy and e-strategy and plot the roadmap towards a

knowledge-based society.⁶ The ICT Policy⁷ was officially launched in 2007. Jameson Mukaratirwa summarises the salient points of the ICT Policy⁸ as:

- An emphasis on convergence
- The establishment of a National Information and Communication Technology Authority (NICTA) that will ensure policy coherence across all sectors of the economy
- The establishment of a single regulator for the ICT sector
- The need to develop a legislative framework to guide the ICT sector in its totality (i.e., including online transactions, telecommunications, postal and broadcasting services).

Legislative environment

Zimbabwe has five laws that govern the terrain of information and communications:

- Postal and Communications Act (2004)
- Broadcasting Act (2001)
- Access to Information and Protection of Privacy Act (AIPPA) (2002)
- Interception of Communications Act (ICA) (2007)
- Criminal Law (Codification and Reform) Act (Criminal Code) (2004).

However, no one law addresses issues of online access to information. This is one major reason why the GNU seeks to harmonise the legislative terrain in response to the convergence of technologies and to table an ICT Bill in parliament. This section looks closer at the AIPPA, ICA, and Criminal Code, laws that have clauses that closely relate to access to online information.

AIPPA has three components: the first deals with access to information, the second prohibits misuse of personal information held by public bodies, and the third has clauses that regulate and restrict the media and journalists.⁹

Although the first component gives everyone the right to access recorded information held by the government and public bodies, the enjoyment of this right is very difficult as the type

1 Government of Zimbabwe (2008) Global Political Agreement, Ministry of Constitutional and Parliamentary Affairs.

2 www.bbc.com, www.cnn.com, www.misazim.co.zw

3 Bill Watch, Legislative Reform Series No. 1: AIPPA, email communication 17 June 2009 (bill-watch@veritas.co.zw).

4 MISA Zimbabwe (2004) *Zimbabwe e-Access to Information: A Comparative Analysis of Zimbabwe's Media Laws with Other Jurisdictions*. www.ict.org.zw

5 HUG is an internationally recognized scale for measuring e-readiness in developing countries, on which 1=very low and 4=ideal state of e-readiness.

6 Mhlanga, B. (2006) ICT Policy for Change and the Mask for Development: A Critical Analysis of Zimbabwe's E-Readiness Survey Report, *Electronic Journal of Information Systems in Developing Countries*, 28. www.ejisd.org/ojs2/index.php/ejisd/article/view/339

7 National ICT Policy Framework 2005. www.ict.org.zw

8 Mukaratirwa, J. M. (2008) Review Report of the Findings on the Existing Legal and Regulatory Framework Related to ICT in Zimbabwe, distributed by email.

9 Bill Watch, email communication 17 June 2009, op. cit.

and nature of information available is restricted and procedures for disclosure are cumbersome. One has to lodge an application through the Zimbabwe Media Commission (ZMC). Additionally, there are no provisions requiring the government to be open and transparent and to assist the public by publishing information regularly and making it widely accessible.

The second part prevents the misuse of personal information contained in databases of public bodies, but does not include commercial and private bodies. Moreover, as Mukaratirwa notes, there is a need to expand this section to include clauses that relate to “individual privacy, security, cyber crimes, ethical and moral conduct, encryption and digital signatures,”¹⁰ amongst others.

The third section controls the media and the conduct of journalists and has been much criticised. According to VERITAS this portion of AIPPA could be regarded as “the cornerstone of the repressive Zimbabwean State,”¹¹ while the Media Institute of Southern Africa (MISA) argues that “AIPPA, through the MIC [Media Information Commission], imposes statutory regulations in breach of the Banjul Declaration on the Principles of Freedom of Expression in Africa.”¹² It says the greatest threat to online access to information lies in securing the independence of the sector’s regulatory framework. Meanwhile, Reporters Without Borders say “AIPPA has been used by government to crack down on dissent within the media by controlling the licensing of journalists and the jamming of radio stations critical of government.”¹³

The ICA provides for the lawful interception and monitoring of certain communications in the course of their transmission through any telecommunication, postal or other related service or system in Zimbabwe. This law requires operators of telecommunications companies to install software and hardware to enable them to intercept and store information as directed by the state. The Minister of Transport, Communications and Infrastructure¹⁴ has power to issue warrants for interception. Supporters of the ICA argue that Zimbabwe has the right to defend itself from terrorism and other unwarranted acts of sabotage, and that the government should protect the territorial integrity of the nation. MISA argues that this law infringes on an individual’s constitutional right to “freedom of expression [and] freedom to receive and impart ideas without interference.” The Supreme Court ruled in 2004 that the sections of the law that permit monitoring violated the constitution.¹⁵

For its part, the Criminal Code contains various clauses that warn journalists against publishing false statements prejudicial to the state.

Put together, these clauses in the current legislative framework on access to information have led to self-regulation¹⁶ by many journalists, poets and musicians for fear of criminalisation.

The need to grow access

To date, Zimbabweans have limited access to online information for many reasons: low income levels, declining economic conditions and (as a consequence) a declining quality of life, high tariffs, unreliable electricity supply, narrow bandwidth, and so on. In such circumstances, the demand for luxury goods such as computers is low,¹⁷ as is internet use (only 10%).¹⁸ Due to limited infrastructure in rural areas where the majority of Zimbabweans live, there is very little access to online information.

The country has only one internet gateway through Te-LOne, and the Ministry of ICTs aims to increase bandwidth to the internet gateway by 40% by 15 July 2009. Increased bandwidth will greatly improve access to online information for users. Currently, a Zimbabwean online experience is expensive and frustratingly slow due to dial-up connectivity that has deteriorated as a result of vandalism of the telecommunications infrastructure. It is very difficult to access certain sites due to the narrow bandwidth. A recent study conducted by the OpenNet Initiative (ONI)¹⁹ reports that “despite the country’s highly repressive regime, ONI found no evidence of website [filtering] in Zimbabwe.” The report continues to say that “[although] the ZANU-PF regime is very repressive, this is not an unexpected finding. Internet use in Zimbabwe is generally limited to email rather than web browsing. As a result, Zimbabwe’s main efforts toward control of the internet are email focused. A large-scale internet filtration system in all likelihood does not hold much value to the Zimbabwean government relative to the price of its implementation.”

Another topical policy and legislative issue is the independence of the regulator. Lydon Nkomo argues that “the independence of any public regulatory utility body is a necessary *sine qua non* for the success of the utility sector it governs.”²⁰ Several provisions in the Postal and Telecommunications Act authorise the minister to interfere with the decisions or actions taken by the Postal and Telecommunication Authority of Zimbabwe (PORTAZ) board. During the validation workshop on the draft ICT Bill, stakeholders discussed ways to ensure the independence and accountability of the proposed single regulatory body.

10 Mukaratirwa, J. M. (2008) op. cit.

11 Bill Watch, email communication 17 June 2009, op. cit.

12 MISA-Zimbabwe (2008) Statement on proposed ICT Bill. www.misa.org/mediarelease/2008archievel/proposedictbill.html

13 Reporters Without Borders (2007) Zimbabwe Annual Report 2007. www.rsf.org/article.php3?id_article=20744&Valider=OK

14 This is a different Ministry to the Ministry of ICTs, frequently resulting in turf wars.

15 Reporters Without Borders (2004) Zimbabwe Annual Report 2004. www.rsf.org/en-rapport49-id_rubrique416-Zimbabwe.html

16 Eyre, B. (2001) *Playing with Fire: Fear and Self-Censorship in Zimbabwean Music*, Freemuse, Copenhagen. www.freemuse.org/sw1252.asp

17 Wines, M. (2007) Economic free fall in Zimbabwe, *International Herald Tribune*, 6 February. www.iht.com/articles/2007/02/06/news/zim.php?page=1

18 Charlesworth, A. (2007) Global online censorship rising fast, *vnunet.com*, 18 May. www.v3.co.uk/vnunet/news/2190232/online-censorship-rising-fast

19 OpenNet Initiative (2007) Zimbabwe country report. opennet.net/research/profiles/zimbabwe

20 Nkomo, L. (2008) Does the Current Regulatory Framework Support Regulatory Independence in Zimbabwe? Article published by the Association of Africa Communication Lawyers distributed by email (aaclcoordinator@gmail.com).

Another pending issue is devolving the government's stake in the ICT sector. Calls have been made for government to significantly reduce its equity or completely exit as a player from the ICT industry in order to create a level playing field amongst all ICT operators.²¹ Nkomo says, “[W]e now expect central government to loosen its grip on its seriously undercapitalized businesses and allow fresh capital to resuscitate them.”²² Currently, TelOne, NetOne and PowerTel are institutions in the telecommunication industry receiving government funding. However, these institutions all perform similar work, and there is a need to remove this duplication of function and effort.

New trends

There is general optimism regarding the role and importance of ICTs for development and their role in alleviating poverty. The GNU has realised the need to improve infrastructure and increase bandwidth to facilitate access to online information. The emerging trend in the ICT arena is a review of the ICT Policy²³ and the tabling of the draft ICT Bill before parliament. As a result there is a need for civil society organisations to understand what is in the current ICT Policy so they can meaningfully engage in the review process and also make inputs into the draft ICT Bill.

The political climate is conducive to these kinds of interactions. A recent report by CAJ News says that despite the tough times Zimbabweans have gone through, there is a spirit of optimism, positive attitude and sense of humour dubbed the “Zim Spirit” within the ICT sector.²⁴ There are also a number of investment opportunities in the sector given that Zimbabwe is on its way to a rapid economic recovery and is expected to overtake many of its neighbours in a very short period. The new political dispensation, the new approach to doing government business, the use of several currencies and the flow of funds into the country has led to a slow but sure resuscitation and the zeal to get Zimbabwe working again. Change is taking place at the individual, family, community and national level and affordable and appropriate access to online information can greatly facilitate and promote this change process.

Action steps

It is essential to undertake activities that facilitate transparency and inclusion in the ICT Policy and ICT Bill review processes. As we undertake these activities, it is important to work with national and regional experts. The activities should include:

- Holding discussion forums where ICT policy, regulatory and legislative issues are discussed. A special focus should be on removing those clauses that infringe on civil liberties. Discussions should highlight the gender impact on access to information, and get various critical groups involved in the policy and legislative reform process. These groups should include civil society groups, academia, media practitioners, parliamentarians and the general public, especially those living in rural areas.
- Visiting the ICT Ministry and making the positions and outcomes of the above discussion forums known to them.
- Publishing discussion papers in the local press.
- Running a radio discussion or television programme using local languages to bring issues to the general public and solicit feedback in the form of phone-ins or using short message service (SMS).
- Holding an ICT policy and advocacy workshop for civil society organisations and other interested players to build capacity. ■

21 Nkomo, L. (2008) op. cit.

22 Ibid.

23 Although the ICT Policy was recently passed, there have been rapid technological changes that need to be taken into consideration. In addition, the drafting of the converged ICT Bill must have prompted the need for a revision of the ICT Policy.

24 CAJ News (2009) Zim ICT sector's prospects bright, *Sunday Mail*, 21-27 June. www.herald.co.zw

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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2009 Report

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