

# GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

*Focus on freedom of expression and association online*



*This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.*

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## CONGO, REPUBLIC OF

### VIOLATING PRIVACY ONLINE IN THE CONGO



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#### Introduction

The internet is revolutionising social, economic, cultural and political life across the world. It has brought an avalanche of opportunities to its millions of users, and has become a tool that we cannot do without; almost all services, administrative or otherwise, depend upon it either directly or indirectly. It also contributes positively to human rights in countries like our own, especially with regard to freedom of opinion and expression as set out in Article 19 of the Universal Declaration of Human Rights and Article 19 of the Constitution of Congo.

However, measures to prevent the abuse of the internet are lacking, and the absence of these measures impacts negatively on human rights.

There are many reasons for this, including the public's ignorance regarding its rights and how to demand them. There is also an absence of specific laws defining and punishing certain online violations of rights.

In this report we present some cases of human rights infringements, in particular those that relate to invasion of privacy on the internet.

#### Political and legislative context

The internet is governed by various laws that regulate information and communications technologies (ICTs) in the Congo. These include a 2001 law on freedom of information and communication; a 2009 law regulating the electronic communications sector; another law from 2009 which sets up a regulatory agency for the sector; and Decree No. 2010-554 (adopted in July 2010) which requires subscribers to landline and mobile telephone services to register with their identity documents, and deals with the storing of electronic communication data by service providers.

It is important to emphasise that this legal framework establishes and guarantees freedom of access to sources of information through the internet (Article 174 of the 2001 law, Article 3 of the 2009 law on electronic communications) and, by

extension, freedom of expression. However, its limitations regarding the protection of privacy and of personal data should be noted. In this environment, besides criminal activity, the invasion of privacy is common practice.

This situation is exacerbated by the fact that many in the Congo are new to the internet – and it is becoming more popular. There is a widespread lack of awareness of online rights and security, and little legal knowledge amongst the general population.

In such a context, it is no surprise to note serious violations of human rights.

#### The violation of privacy on the internet

The following two cases were widely reported.

##### Case 1

This involves the director of a well-known company in Brazzaville, the capital, and one of his secretaries, who were away on work together in an African country. They were both married and were having an affair.

During their trip they photographed their sexual encounters and uploaded them onto the director's laptop. When the director returned to Brazzaville, his laptop encountered a problem and he handed it in to be repaired. In the course of his work, the maintenance technician discovered the file containing the images of the director and his secretary. The technician, under the pretext that he would not have been paid by the director, circulated the images by email. These very intimate and somewhat pornographic images, which showed the faces of the two, were circulated to hundreds of email addresses.

##### Case 2

In a similar vein, the second case involves a young woman who was raped in the Mansimou district close to the Djoue River in a suburb of Brazzaville. She was photographed while unconscious. The image of the young woman stripped almost naked was sent to hundreds of people via email. The woman herself may never have known that her picture was circulated online and the perpetrator never cared.

Situations like this arise regularly but are not reported; and the victims are not even aware that they have rights which they can demand. These two

stories highlight the weakness in the regulation: public awareness.

### **The respect of the right to privacy amongst individuals**

Nowadays technology puts powerful surveillance tools in the hands of individuals – for example, a mobile telephone equipped with a camera and internet connection, or digital cameras, which can be used to invade the privacy of others.

On the other hand, the November 2009 law on electronic communications and the 2010 decree on identification of subscribers show that the state has seemingly unlimited power to invade the privacy of its citizens in the interest of security.

There are no precise descriptions of situations which justify intrusions of privacy by the state in the decree. It seems that the state can access personal data under any pretext without the consent of the individual concerned, who can do nothing to stop it from happening.

### **The general public's poor understanding of ICT issues**

Many people do not know that the publication of images in contexts such as those described above constitutes a serious infringement of their right to privacy, and that no one has the right to publish these images without the consent of the people involved. For various cultural reasons, it seems that people are not concerned about the protection of privacy on the internet.

There are lawsuits about defamation involving traditional forms of libel (particularly involving print and broadcasting media), but there are almost no cases of legal action for people whose privacy is invaded on the internet.

Roger Bouka, executive director of the Congolese human rights watchdog OCDH, says that:

We believe that the dignity of all human beings should be respected, and it is not right for people to violate the privacy of another person. At the very least we believe that measures aimed at the protection of the individual, their privacy and their physical and moral integrity on the internet are necessary.

What happens is this: due to the fact these technologies are new and therefore not yet fully understood by the general public, people are still only interested in the advantages of the internet and are not concerned about the damage the internet can do in society.

Many of the people interviewed for this report recognised that the protection of personal privacy

on the internet is still a worrying issue in the Congo, which in part is explained by the lack of stringent regulations.

The violation of people's privacy on the internet is also to an extent synonymous with violence, as Sylvie Niombo, executive director of AZUR Développement, points out:

There is an intersection between the violence perpetrated against women and young girls and the manipulation of the use of information and communication technologies. A person forwarding emails which explicitly talk of or allude to violence incites violence in exactly the same way as publishing private images of a young girl or woman. This is the case when it comes to the circulation of images showing women committing adultery – this is like being lynched naked in public on the internet.

There have been cases reported of violence against women and young girls after their partners, husbands or fathers have read private email messages. Cases of this sort are discussed in the issue paper on the use of ICTs and perpetration of violence against women and young girls in the Congo, written by Niombo in 2009 and published online by the Women's Networking Support Programme of the Association for Progressive Communications (APC WNSP).<sup>1</sup>

A large majority of the people interviewed in this study think that the general public is very unaware of these sorts of privacy issues. The general public has a poor understanding of the risks and their rights in relation to the handling of their personal information. "There are currently no laws relating to the protection of private information that explicitly guarantee respect and sensitivity in the handling of personal data. However, such legal protection and rights are only useful to people who are aware of their existence and know how to use them to their advantage," says Davy Silou, an IT consultant.

The lack of awareness also explains the lack of stringent regulations relating to the protection of private information. Alain Ndalla, director of new technologies at the Ministry of Post and Telecommunications, admits that a large part of the telecommunications sector is not regulated. He states that a series of measures are in the process of being introduced in order to guarantee better protection of individuals on the internet. He highlighted that "texts on cyber security and cyber

<sup>1</sup> [www.genderit.org/content/violence-against-women-and-information-communication-technologies-congo-country-report](http://www.genderit.org/content/violence-against-women-and-information-communication-technologies-congo-country-report)

crime will be made available to users of ICTs and will therefore protect the consumers and users. Punitive measures will also be put in place to punish those who commit acts of internet crime.”

### **Internet regulations do not sufficiently protect human rights**

One must recognise that in the Congo the applicable law on privacy generally falls under Article 9 of the French Civil Code, which is not the result of a Congolese legislative process and does not take into account the reality of the local situation, in particular the general public’s illiteracy and lack of access to ICTs.

Although the law that was brought into effect in 2009 makes provisions for the protection of the privacy of internet users, it does not provide precise descriptions of what we mean by privacy on the internet and the measures guaranteeing its protection. Article 124 of the law stipulates that “online communication between members of the public is free. The exercise of this freedom can only be limited if it violates respect for human dignity, freedom and other people’s property.”

With such legislative and regulatory imprecision, victims of privacy violations are to an extent disarmed. In both cases highlighted earlier in this report, the victims have not sought reparations.

In addition to this legislative and regulatory imprecision, the judicial authorities and police forces have a poor record of investigating and prosecuting acts that infringe people’s dignity on the internet. Very few in the police force or even judiciary are well informed on the types of internet crime that affect Congolese citizens: this is in part because these crimes are not reported. However, there is also a need to reinforce the capacities of the judiciary and police.

It is also important to note that the general slowness of legal proceedings make the public reluctant to pursue legal action against infringements of their dignity, as they have little confidence that their case will be pursued..

The problem of ICT governance in the Congo cannot be ignored.

The government, the private sector and civil society must commit to increased investment in the field of the protection of personal privacy on the internet. This is all the more important given the high number of people – the majority of them young adolescents – with mobile phones in the Congo, and with increased numbers accessing the internet at internet cafés.

### **Conclusion**

This report has highlighted several problems linked to the internet and human rights. If the government is in the process of enabling the development of a true information society, it is clear that in the Congo the balance between the individual’s freedom of expression and the protection of human rights still has not been found.

This is explained by the absence of adequate regulation of the issue of privacy as well as a lack of public awareness of the risks linked to ICTs.

It is therefore imperative that all the parties involved (NGOs on ICTs and human rights, the government and international organisations) further commit themselves to actions that will lead to the protection of privacy and human rights in general.

### **Action steps**

In order to improve the protection of privacy and personal information on the internet, it is necessary that certain measures be taken by different stakeholders.

#### *Civil society*

- It is necessary that NGOs working on ICTs launch publicity campaigns on the various kinds of privacy and personal information violations and the legal measures that can be taken to redress them.
- A collaborative effort between various NGOs working on ICTs and human rights is necessary in order to encourage the authorities to adopt more proactive measures that protect human rights on the internet.
- Increased cooperation between the judiciary and police force and organisations working on ICTs and human rights is necessary.

#### *Government*

- It is necessary that the authorities adopt laws that adequately protect human rights on the internet.
- Members of the judiciary and police administration need to be educated on the issues relating to the protection of human rights on the internet.

#### *International organisations*

- International organisations should make more financial contributions to public awareness campaigns on the use of ICTs and individual privacy rights. ■

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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**GISWATCH 2011** is the fifth in a series of yearly reports that critically cover the state of the information society from the perspectives of civil society organisations across the world.

**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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