

# GLOBAL INFORMATION SOCIETY WATCH 2013

Women's rights, gender and ICTs



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

# Global Information Society Watch

## 2013

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# SOUTH AFRICA

Women, secrecy, freedom of expression and access to information



## Right2Know and Women'sNet

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[www.r2k.org.za](http://www.r2k.org.za) and [www.womensnet.org.za](http://www.womensnet.org.za)

## Introduction

The past three years in South Africa have been rich in debates in the media and information landscape. More particularly the submission of the Protection of State Information Bill, dubbed by activists as the “Secrecy Bill”, has seen the creation of a multi-sectoral campaign, rallying civil society groups and press bodies demanding the “right to know”. On the premise that strong democracy must be responsive and accountable, and therefore must be transparent and guarantee the free flow of information, the campaign has demanded that the bill be rewritten in order to be in line with the values of the South African constitution.

The Right2Know campaign has developed a broad analysis of the media and information landscape over the past two years, simultaneously organising its advocacy in terms of access to telecommunications, and in particular mobile communications. Having inherited a telecommunications network shaped by apartheid, where formerly white areas were prioritised in terms of service delivery, South Africa, although one of the most connected countries in the sub-continent, still faces enormous challenges in terms of access to communications and information and communications technologies (ICTs).

This report is based on the experiences of the Right2Know campaign and attempts to question the implications of the Secrecy Bill as well as the current communication landscape for women in South Africa.

## Policy and political background

Despite being the largest economy on the continent, more than half of the South African population still lives in poverty. Notwithstanding the efforts of post-1994 governments to redress social, economic and political inequalities, the country is still facing enormous disparities between rich and poor, a direct consequence and legacy of the apartheid regime, where access to social services, employment

and education were based on racial classification. According to Statistics South Africa, 56.8% of the population lives in poverty, with women being more impoverished than men (58.6% for women, 54.9% for men).<sup>1</sup>

Aside from the various acts regulating ICTs and media, the past two years have seen information activists increasingly concerned with new legislation that could potentially threaten the right to freedom of expression and access to information entrenched in the post-apartheid South African Constitution – often seen as one of the most progressive in the world.

On freedom of expression, the constitution states that everyone has the right to freedom of expression, which includes:

- Freedom of the press and other media
- Freedom to receive or impart information and ideas
- Freedom of artistic creativity
- Academic freedom and freedom of scientific research.

And on the right of access to information, the constitution establishes that everyone has the right to:

- Any information held by the state
- Any information that is held by another person and that is required for the exercise or the protection of any rights.

## The right to know and the Protection of Information Bill

The Protection of Information Bill, published publicly for discussion in 2010, was drafted with the intent of keeping state secrets safe. However, as the Right2Know campaign has argued over the past two years, since its inception, the bill, which was passed in parliament at the beginning of 2013, has been flawed in the way that it will impede the public from accessing crucial information under the guise of national security. In effect the Bill now criminalises the public for possessing state information and poses

<sup>1</sup> [beta2.statssa.gov.za/?page\\_id=739&id=1](http://beta2.statssa.gov.za/?page_id=739&id=1)

a threat to the South African public's right to know. Despite making some gains, the campaign still notes that the current bill includes flaws in terms of:

- The delegation of powers in terms of classification of information: the current bill is too broad in defining who can classify information as being restricted to state security services.
- The actual definition of what constitutes “national security” is still open to loopholes that could lead to abuse, and classifiers are not compelled to justify their reasons for determining information as state secrets. The classification review panel which will be created will not be sufficiently independent, as the selection of members and the rules of the panel will be reviewed by members of the state security apparatus.
- The definition of national security includes “the exposure of a state security matter with the intention of undermining constitutional order”. This remains extremely broad and could result in the State Security Agency classifying all activities as secret.
- The bill makes possession and disclosure of classified information by any person a crime, without the provision of a “public-domain” defence. The Right2Know campaign sees this as hindering the balance between citizens' rights to access to information and freedom of expression and national security. The exemptions in terms of public interest disclosures do not go far enough as, for example, whistleblowers, journalists or activists who disclose classified information in the public interest could still be found guilty of espionage, or of receiving state information unlawfully.<sup>2</sup>

In essence, the Protection of Information Bill is worrisome for women and sexual minorities in South Africa. Coming from the understanding that guarantees to the right of freedom of expression and access to information are the basis for a strong democracy and active citizen participation in democratic processes, including the participation of the marginalised and of minorities, the Secrecy Bill as it stands will restrict people's capacity to monitor and to hold governments to account for decisions.

Despite South Africa's commitment to women's empowerment and gender equality through its national policy framework,<sup>3</sup> challenges to the patriarchal order and the expression of

non-heteronormative positions are often met with intolerance and violence. In its report on freedom of information and women's rights in Africa, FEMNET argues that there are no major women's rights organisations championing access to information.<sup>4</sup> FEMNET here identifies a critical gap for the future activities of the Right2Know campaign in making a clear link between women's rights in South Africa and access to information. The capacity for South African women to monitor the government's efforts to fulfil commitments that affect women's rights, such as the Millennium Development Goals and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW,) and to effectively advocate women's social, economic and political rights and mechanisms that take action against violence against women, will be effectively compromised if the Secrecy Bill enables government bodies to restrain access to information under the guise of national security.

### The right to communicate, access to communications and censorship

Due to various factors in the South African telecommunications sector, namely the failures of Telkom (the state, partly-privatised phone operator), and poor infrastructure in previously “black” areas, mobile phone usage has taken over most of voice communications in the country. Introducing the prepaid option for mobile communication, allowing users with no airtime on their mobile phones to still receive calls, and the availability of low-denomination airtime cards have led to exponential growth in the penetration of mobile phones in the country. In 2012, 87% of the population used a mobile phone, with the majority of users being on prepaid plans. However, this incredible pervasiveness of mobile technology in the country does not translate to affordability for users. Compared to similar countries, studies have shown that the cost of SMS and calls in South Africa are amongst the highest. The Right2Know campaign emphasises that “the lack of transparency about pricing has allowed operators to continue these practices [high user costs] relatively unchallenged.”<sup>5</sup>

Gillwald, Milek and Stork<sup>6</sup> note that due to their more precarious economic situation, women in Africa

<sup>2</sup> [www.r2k.org.za/2012/11/28/guide-why-secrecy-bill-fails/](http://www.r2k.org.za/2012/11/28/guide-why-secrecy-bill-fails/)

<sup>3</sup> [www.info.gov.za/otherdocs/2000/gender.pdf](http://www.info.gov.za/otherdocs/2000/gender.pdf)

<sup>4</sup> Hambuba, C. and Kagoiya, R. (2009) *Freedom of Information (FOI) and Women's Rights in Africa*, FEMNET and UNESCO, Nairobi

<sup>5</sup> Right2Know (2013) *The Right 2 Communicate: Activist Guide*.

<sup>6</sup> Gillwald, A., Milek, A. and Stork, C. (2010) Gender Assessment of ICT Access and Usage in Africa and Stork, C., Calendro, E. and Gillwald, A. (2012) Internet going mobile: Internet access and usage in eleven African countries, in *19th ITS Biennial Conference, Bangkok, Thailand: Moving Forward with Future Technologies Opening a Platform for All*.

and in South Africa, and by extension rural women, are still the most marginalised when it comes to access to mobile communications. South African women spend on average more than 8% of their monthly income on their mobile phones, spending more of their disposable income than men on such expenses. Women tend to use the free features of their mobile phones essentially to receive calls or to send missed calls, or “please call me” SMSes, even though more women than men own mobile phones.

While access to ICTs is limited by income, literacy, level of education and gender, less than 20% of the population in South Africa has access to the internet, with a larger proportion of men being internet users. On the African continent – and South Africa is no exception – mobile phones are considered a key entry point for internet access, as owners of “feature-phones” or smartphones are more numerous, with the use of social media platforms such as Facebook or Mxit often surpassing or on the verge of replacing email.<sup>7</sup> Although connecting to the internet through mobile phones seems like an important breakthrough for the country and the continent, the lack of access to a fixed broadband connection for most users brings into question the type and the quality of content that women are able to access. While limits to access curtail the freedom of expression of everyone, they impede more particularly the ability of women to access information that would be difficult to discuss for some due to persistent taboos, such as accessing information on sexual and reproductive rights.

Furthermore, the potential of the internet to act as an alternative public sphere where power can be contested and rights advocated on a global scale is under threat for women’s rights activists. According to Jane Duncan<sup>8</sup> and Shereen Essof,<sup>9</sup> many laws that have been promulgated in South Africa for the purpose of protecting children, national security or intellectual property have the potential to surface to censor controversial content. In the past year, at least two cases of censorship of artwork (a painting and a movie) under the pretence of morality and child pornography by the Film and Publication Board can easily be seen as the precursor of censorship that could extend its tentacles in the realm of the internet, with the board having been given jurisdiction over internet content. This essentially gives the government powers to potentially exercise censorship on content it judges too critical or morally unacceptable.

As information that can contain “sensitive” content (for example, sexual health content) is intrinsic to the realisation of women’s rights, the potential power of the state to censor internet content is alarming.

## Conclusion

The Right2Know campaign has been able in recent years to garner incredible support from the public and extensive media coverage. However, it has not specifically addressed how the Protection of Information Bill and issues relating to the costs of communications and the regulation of content will affect women in particular. In a context where mobile communications are used pervasively in women’s and sexual health organisations to mobilise, inform and organise, and where the internet can become a viable space to discuss sensitive topics in South African society such as homosexuality or access to land for women living under traditional leadership, the Right2Know campaign must make sure that women’s voices are heard in the debate. Women’s organisations that have not been extremely vocal in the debates surrounding the recent Right2Know campaign must also discuss and ultimately express their opinions on the right to communicate and access to information in this fast-changing technological landscape.

Ultimately, the structures and mechanisms that form the legislative framework and the commercial practices of our communications and information system must be debated and (re)structured in a way that promotes universal access and fosters dialogue.

## Action steps

As the Right2Know campaign embarks on a new chapter of its advocacy, broadening its scope from the Secrecy Bill and targeting more specifically questions in regards to access to ICTs and communication rights, the campaign proposes to go along with the following principles:

- Communications must be universal. Everyone has a right to communications that are available, affordable and accessible.
- Communications must be ubiquitous. Currently, users are restricted in their choice on how to access information they need, either at home or on the move.
- Communications must be dialogic: users should have the ability both to receive and impart communication.
- Everyone has the right to privacy and anonymous communications, which includes the right to encrypt their communications. ■

7 Stork, Calendro and Gillwald (2012) Op. cit.

8 Duncan, J. (2012) The Turning Point for Internet Freedom, *SACSIS*, 12 June. [sacsis.org.za/site/article/1329](http://sacsis.org.za/site/article/1329)

9 Essof, S. (2009) *South Africa, Violence against Women and Information and Communication Technologies*, Association for Progressive Communications.