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Environmental Scan Report

Free Access to Law
Is it Here to Stay?

“Free Access to Law – Is it Here to Stay?” Research Team

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INTRODUCTION

[1] The Environmental Scans are the first component of the “Free Access to Law – Is it Here to Stay” global study on the sustainability of FAL initiatives.

[2] The overall goal of this research is to respond to a need to study what free access to law initiatives do and how they do it. This will lead to an understanding of the effects FAL initiatives have on society and to an exploration of the factors determining their sustainability. The general hypothesis is that *success* leads to *sustainability*. That is, if the free access to law initiative is successful, it will have greater chances of securing funds and ensuring sustainability.

[3] The project covers the following regions: (1) Southern and Eastern Africa, (2) Western Africa, (3) Asia and the Pacific and (4) Canada. In order to complete a cross-case comparative analysis, countries have been selected to represent multiple legal traditions with FAL initiatives at various stages of development.

[4] In order to fully achieve its goals and specific objectives, the study will produce the following outputs:

- Collection of free access to law Case Studies, including a series of Environmental Scans
- Free access to law Best Practices Handbook
- Free access to law Online Library

[5] For the Environmental Scans, Local Researchers were asked to collect data according to the Environmental Scan Matrix (see Appendix 1) and draft a synopsis of the data, highlighting the trends, risks and opportunities for the field of online legal research publication in general and for the FAL initiative in particular. In sum, the researchers looked at how the individual indicators listed in the Environmental Scan Matrix work together to impact free access to law.

[6] The results of the Scans provided the local researchers with rich knowledge on the field of law and informatics in their respective countries as to customize the study’s interview guides according to local context.

EASTERN AFRICA

KENYA

By Esther Nyaiyaki Onchana

KENYA'S LEGAL SYSTEM

[7] Kenya is a country lying on the East African Coast; it is bordered by Tanzania, Uganda, Somali, Sudan and Ethiopia. The country's population is estimated at 38.7 million (Kenya National Bureau of Statistics, 2009). Its legal and political structure is anchored on the 1963 independence Constitution which was amended in 1964, so as to establish a Republic with a President as the Head of State. Although there have been several amendments to the document the country has been struggling to create a new constitution for over last twenty years (Mugonyi, 2004).

[8] The three arms of the government are the Executive, Parliament and the Judiciary. The Executive arm of government consists of the President, Vice-President, Prime Minister and Deputy Prime Ministers. In its law-making role, Parliament is the primary source of the Acts of Parliament which comprise the Laws of Kenya.

[9] Kenya is a member of the Commonwealth and its legal system bears strong historical and contemporary similarities with the English Common Law system. The mandate of the Judiciary is administration of justice. It does this through the Court of Appeal, the High Court, the Magistrates' Courts, Kadhis' Courts and the Judicial Service Commission (Constitution of Kenya, § 60-68). The Court of Appeal is the highest court in the land and its function is to hear appeals from the High Court in certain matters. The court mostly sits in the capital Nairobi, but travels on circuit to hold sessions at various principal towns in Kenya. The High Court is the second court in the hierarchy. It has unlimited original jurisdiction in both civil and criminal matters and is may also hear appeal from magistrate courts and administrative bodies. The High Court is also the final arbiter in matters concerning the interpretation of the Constitution. There are fifteen High Court stations in the country. Sixty judges preside over the Court of Appeal and High Court (11 at the Court of Appeal and 49 at the High Court) (Office of the Registrar to the Judiciary, personal communication, July 14, 2010).

[10] The Law Society of Kenya is Kenya's only bar association and it has a membership of about 8,000 advocates (The Law Society of Kenya, 2010). There are five chartered institutions that offer law as a degree programme. Since 1983, to be duly qualified, a person requires a university degree in law that is approved by the Council for Legal Education.

[11] After completion and approval of the Council of Legal Education, the applicant then petitions the Chief Justice of Kenya for admission as an Advocate of the High Court of Kenya. Once admitted to the Roll of Advocates he becomes an officer of the High Court of Kenya (The Advocates Act, 1992).

BACKGROUND OF THE NATIONAL COUNCIL FOR LAW REPORTING

[12] The Court of Appeal and High Court are superior courts of record meaning that all their decisions ought to be recorded, published and made available to the public. The National Council for Law Reporting (NCLR) has been given this mandate. The National Council for Law Reporting Act, (1994) outlines the mandate as:

- the preparation and publication of the reports to be known as the Kenya Law Reports, which shall contain judgments, rulings and opinions of the superior courts of record;

- undertake such other publication as in the opinion of the Council are reasonably related to or connected with the preparation and publication of the Kenya Law Reports; and
- to perform any other function conferred on the Council by or under the provision of any other written law.

[13] By virtue of Legal Notice No.29 of 2009, the Attorney General’s office delegated the power of law revision conferred on it by the Revision of Laws Act (Cap 1) to NCLR to ‘revise, update and publish the Laws of Kenya.’ NCLR’s flagship publication is the Kenya Law Reports an annual publication containing reportable cases of the High Court and the Court of Appeal. An online version of the reported and unreported case law has been available for free since 2007 on www.kenyalaw.org.

[14] Having been in operation for close to a decade, the possible opportunities and threats that face the organisation are easily recognisable.

OPPORTUNITIES

[15] The Council draws its mandate from an Act of Parliament. This has turned out to be the organisation’s greatest strength and opportunity. Under the Act, the exchequer is required to appropriate moneys to the Council for purposes meeting its operational costs (Nat. Coun. Law Rep. Act, §14, 1994). The financial allocation is not always adequate but at the beginning of every financial year, the Council is guaranteed to pay its members of staff and to achieve a number of its strategic objectives.

[16] The legal backing places the Council at advantageous position that allows it obtain legal information emanating from various public institutions, particularly the Judiciary, Attorney General’s office and Parliament, with ease. The Act specifically enjoins all judges of the High Court and the Court of Appeal, to make available as soon as practicable, all the decisions they delivered to the NCLR secretariat (Nat. Coun. Law Rep. Act, §19, 1994).

[17] The Council’s leadership is vested in a Board that draws its membership from a cross section of the stakeholders among them; Judiciary, Attorney General’s office, Law Society of Kenya and the University of Nairobi (Law School) (Nat. Coun. Law Rep. Act, §4, 1994). The Council has leveraged on this diverse representation to create new partnerships and to nurture existing partnerships aimed at accessible publication and dissemination of publishing legal information and to meet its financial and technical needs.

[18] Approval of the Council’s Strategic Plan for 2009-2012 by the Board in July is a great opportunity for the organization to concisely map and implement key activities. This is Council’s first Strategic Plan; for a long time, it mistakenly aligned its activities with the Judiciary’s strategic plan. One of the Council’s strategic objectives for this period is to “timeously collect, analyse and provide affordable access to accurate and relevant case law in order to aid the administration of and access to justice, the knowledge and practice of the law and development of jurisprudence.”(NCLR, 2009)

[19] The hope for a new legal, social and economic order from the conclusion of the process for the review of the Constitution of Kenya promises to bring with it new opportunities for the Council. The proposed Constitution that will be subjected to a referendum on August 4, 2010 establishes the right to access information (Mzalendo, 2010). It also provides that the official languages shall be English and Kiswahili (Mzalendo, 2010). The current Constitution does not guarantee the right to access information and only recognizes English as official language. Under the draft Constitution, the state will be required to publish and publicise any important information affecting the nation. It can be safely assumed that these provisions will have potential implication for the field legal publication in Kenya. The state, through the Council will be required to publish legal information in English and Kiswahili languages and to make this information widely available. This will be a departure from the current practice where all the legal information is published only in English and can only be obtained from the Government Printer office based in the capital Nairobi.

[20] Current and emerging technological tools for re-engineering business operations, improving productivity and customer satisfaction are an additional opportunity available to the Council. According to the International Telecommunications Union (ITU), there were 3.5 million internet subscribers in Kenya by the end June 2009 (ITU, 2010). The official regulatory body the Communications Commissions of Kenya (CCK) estimated that there were 2 million internet subscribers as at December 2009. Although internet penetration is low, CCK reports that most of the internet subscribers are mobile users. Kenya had 17.4 mobile phone subscribers by the end of June 2009 (Communications Commission of Kenya, 2010). According to ITU this accounted for 7% of mobile subscribers in sub-Saharan Africa. A separate report by Pyramid Research, estimated that mobile penetration in Kenya's telecom market will grow by 95% over the next five years (Pyramid Research, 2009). To exploit this growth the Council is currently engaging premium rate service providers to explore how to deploy various forms of legal information through short message texting.

THREATS

[21] The Council's greatest opportunity can at the same time be viewed as its greatest threat. There is a risk that the legal mandate to publish legal information may be taken away if parliament decides, for one reason or another, to dissolve the state corporation. Woeful financial allocation by the Treasury continues to be a risk, more so, after the Council resolved to make all the online legal information accessible for free thereby cancelling one of its means of revenue.

[22] Competition from the private sector in the provision of public legal information poses a threat to the Council. The competitors range from established commercial legal publication houses to individuals composed of court clerks and paralegals. The Council's major competitor is LawAfrica, a commercial publisher that combines print publication of legal texts, case law and legislation from the three Eastern African countries of Tanzania, Uganda and Kenya and online publication through www.lawafrica.com. Individual publishers are ordinarily current or former paralegal staff attached to law firms or the courts. They compile case law on specific subjects and avail it to their clientele, mostly practising lawyers and law students in hard bound booklets or on CD-ROM at a fairly priced cost.

[23] There are various legal risks associated with publishing and dissemination of legal information. These risks may arise where the identity of certain persons such as children or sexual offences victims involved in judicial proceedings is not protected. In Kenya, the law specifically prohibits publication of the particulars of a child or a sexual offences victim, including publication in a law report. Contravention of this requirement is an offence punishable through payment of a fine or imprisonment or both (Children Act, p.XIII, 2001). There is also the potential liability of defamatory suits that may emerge where the summarised law report fails to accurately capture the facts, parties or the final decision of the court.

[24] The threat of political, social and economic instability at witnessed by the 2007 post election violence pose a threat to all public service sectors including the Council. Kenya was ranked as 14th on the Failed State Index based on various social, economic and political indicators (The Fund for Peace, 2010). The country's high levels of poverty and illiteracy have a negative impact on the demand for legal information services. Kenya National Bureau of Statistics census conducted in 2006 showed that Kenya had a national adult literacy rate of 61.5 % and a numeracy rate of 64.5 %. The critical finding was that on average 38.5 % (7.8 million) of the Kenyan adult population was illiterate (Kebathi, 2008). Sustainability of free access to law initiatives in Kenya will depend on efficient management of the above threats.

UGANDA

By Robert Kirunda

THE STRUCTURE OF UGANDA'S LEGAL SYSTEM: OPPORTUNITY AND RISK

[25] Having been a British colony, Uganda's legal system is largely influenced by English Common Law. This is tempered with statutory law enacted by parliament and African customary law. Customary law, however, only applies when it does not conflict with statutory law. Ugandan legislation is available in print in the color-coded volumes of the Laws of Uganda. Principal legislation is contained in what are loosely referred to as Red Volumes while subsidiary legislation is contained in Blue Volumes. The Uganda Law Reform Commission in 2003 published a Revised Edition of the Laws of Uganda, containing 350 revised Acts and subsidiary legislation enacted during the period between 1964 and 2000. Moreover, a constitutionally regulated hierarchy of courts requires the strict adherence to precedent from both within courts in Uganda and other common law jurisdictions (Constitution of Uganda, c. 8, §129). This presents the need for publication of cases decided in Uganda and access to decisions decided elsewhere in the commonwealth, exposing Uganda Legal Information Institute's (ULII) niche.

[26] The legal sector in Uganda comprises of various institutions concerned with the provision of legal services, the administration of justice and the enforcement of legal instruments or orders. The Judiciary is an independent legal organ comprised of Courts of Judicature as provided for by the Constitution. The Judiciary is entrusted to administer justice through a constitutionally stipulated structure of the Supreme Court, the Court of Appeal (which also doubles as the Constitutional Court), the High Court as well as the lower bench comprising of a three tier magisterial structure and other tribunals established by Parliament. Of all the courts, however, only the High Court enjoys original unlimited jurisdiction and comprises of seven divisions today. Only the decisions of the High Court and the other superior courts have binding and precedential effect.

LEGAL INFORMATION ENVIRONMENT AND SOURCES OF LAW

[27] All Acts of parliament, statutes, legal amendments and practice directions are first published in the weekly Uganda Gazette. On average, a little over 50 copies of the Uganda Gazette are published weekly and these are only in hard copy and printed in insufficient numbers for the members of the legal profession that access them (Mahoro, 2006). Copies are only acquired at a fee which would be unnecessary to charge, or at least reduced, if they were available online. Other information published in the Gazette includes rules, draft bills, proclamations and legal notices.

[28] Due in part to the country's turbulent political past resulting in the breakdown of the institutions and systems of government, law reporting in Uganda has been very weak with very few law reports have been published in Uganda since 1958. The result has been a telling void in the availability of published judgments over a long period of years as lawyers and other stake holders are forced to depend on photocopies of judgments which they request from the courts, notwithstanding the fact that the Law Development Center is mandated to prepare and publish law reports and other legal material but so far have published only High Court Bulletins.¹

[29] Over the years, however, attempts have been made by various parties to remedy this situation. Ugandan judgments are now published in various forums. The Uganda Legal Information Institute (ULII: www.ulii.org) run under the auspices of the judiciary's Judicial Studies Institute is the only Free Access to Law institution in Uganda. Drawing from close relations with the Free Access to Law Movement, ULII is presently

¹ The Law Development Centre was established by Act of Parliament in 1970

hosted by SAFLII and is responsible for primarily publishing Uganda's laws and court decisions online. Despite its constraints and relative nascence, ULII has made remarkable progress in ensuring accessibility of all statutes of parliament and of over 150,000 judgments. But there are other players in this environment.

[30] The former East African Court of Appeal, an arm of the earlier East African Community was initially responsible for the publication of the East African Law Reports (EALR). The Reports published then covered the decisions of the East African Court of Appeal and the superior courts of the constituent territories, namely, Kenya, Uganda, Tanzania, Aden, Seychelles and Somali-land. The East Africa Law Reports were published from 1957 to 1975 when they collapsed following the dissolution of the East African Community (Mahoro, 2006). Following the revival of the East African Court of Appeal, there is now a publication of the Law Reports of the Court of Appeal of Eastern Africa, which covers decisions of the Court of Appeal of Eastern Africa as well as decisions of the higher bench in Uganda as practitioners may contribute them to the Editorial board from time to time.

[31] Since the year 2000, LawAfrica, the Kenyan Commercial publisher responsible for the release of the EALR, now produces an online version and supplies software of the same at a minimum cost of US\$ 100 per month primarily to law firms and institutions, as well as, albeit minimally, any interested individuals and corporations. The Uganda Online Law library, a privately owned provider of legal information also publishes judicial decisions online at an annual subscription cost of US\$ 2,000. This cost is prohibitively high for legal professionals and law students.

[32] The Commercial Division of the High Court of Uganda initiated the publication of the Uganda Commercial Law Reports in 1997 (World Bank, 2006). The intention was to publish all the decisions rendered in that division since its establishment in 1996. In 2005, the Chief Justice, Justice Benjamin Odoki, launched the first edition of these reports comprising decisions handed down between 1997 and 1998. The decisions of the rest of the courts of record are published in the Tax Appeals Tribunal Compendium of Judgments and Rulings, which only covers decisions of the Tax Appeals Tribunal, the High Court Bulletin, which is published by the Law Development Centre and is not only irregular but also does not cover the full spectrum of decisions reached by the High Court. The Uganda Law Reports, which were published much earlier than the High Court Bulletin, have not been published again since 1957, while the Kampala Law Reports are compiled and published by a law firm, which does so for commercial purposes and the Reports have, in some cases been considered a non-authentic publication.

[33] Two observations come to the fore from the above remarks: firstly, there is a lot of legal information that is not available electronically. Remedying this situation would require time and specifically devoted resources. Secondly, other than the legal information availed by ULII, all the other players in Uganda's legal information environment require users to meet overly high costs for access to their undependably supplied information. On the other hand, ULII makes available the same information at no cost. Additionally, ULII's symbiotic relationship with the judiciary allows it access to a lot of information – past and present – in a more timely fashion. The fact that the judiciary has since its inception appointed a Law Reporting Officer and constituted a special committee on law reporting demonstrates that ULII is this environment's best positioned and undoubtedly its most effective stakeholder. None of the players in Uganda's market are better positioned to address the need for the supply of older judgments than ULII. Besides, the absence of an aggressively competitive environment for the supply of legal information does not foster any urgency on the private players to catalogue and convert the older decisions into soft copy format and publish them. ULII on the other hand, as the official online facility of the judiciary, has access to these decisions and has the responsibility to have them published online.

[34] The absence of online Government of Uganda legal information has earned the Ugandan Government the 133rd rank in the UN E-Government readiness index (United Nations, 2008). Within the country, however, legal research is mostly conducted at the most prominent law libraries that include the High Court Library to which every practicing lawyer is mandated to subscribe and pay an annual membership, the Ministry of Justice

and Constitutional Affairs library, the libraries of law schools of which only the Makerere University law library and the Law Development Centre library are not only the best stocked but also the only ones updated more consistently, this notwithstanding that they would not pass for the most current law libraries and are insufficient for conducting online legal research. None of the above libraries, nor the Legal Informatics Centre maintains annual subscription to online databases for legal research such as LexisNexis, JSTOR, or Westlaw, to mention but a few, neither do they have any online presence.

MARKET STRUCTURE OF LEGAL INFORMATION

[35] The commercialization of access to legal resources by private parties, notably Kampala Law Reports (who only publish hard copies of decisions and compendia of statutes) and the Uganda Online Law Library (which avails soft copies of decisions the owners by their own standard consider landmark or ground breaking) may not be a major bottleneck to ULII's progress and sustainability as these are not comprehensive, do not have any advanced features and are costly to acquire. With the number of lawyers growing annually, the potential pool of future users of the Free Access to Law initiative is on a steady rise. There are five Ugandan universities with law departments, none of which offer either on or off campus access to commercial databases whether local or international to both students and alumni. Students are not formally introduced to these sites (whether by the universities or by private commercial marketing) during their tenure at university and only find out about them during graduate studies outside Uganda, or after graduation, when they can afford to subscribe individually or through their employers. These circumstances should naturally compel Ugandan law students and lawyers to choose a free avenue for access to legal information when conducting legal research.

[36] The consistently rising costs of initiating and maintaining online publication of legal resources in a context of a few technological firms faced with high internet costs keeps is but one factor that keeps other players out of the supply of legal information. Presently, there is no indication of potential players interested in joining the field of free online legal publishing. Besides, Ugandan university libraries suffer an acute lack of access or ability to supply the most recent and popular legislations and amendments, as well as case law. The prevalence of this situation has enabled ULII to fast assert its presence as to fill the void.

[37] At the moment ULII provides access to legislation and case law. Developing the publication of secondary legal material, legal publications, practice directions, draft bills, rules, court cause lists, and tribunals' documents may present an opportunity for ULII. Another opportunity for ULII lies in interconnection and integration with other associations through hyper textung so that through links on the site a user is able to navigate from ULII to other pages or other sections within a page, as well as other articles and resources located elsewhere on the web. Potential would also lie in creation of pop-up windows for summaries of the judicial decisions that are already online. This will avail access of otherwise unavailable information to law students, lawyers and judicial officers across all the fields of the legal. With no commercial database in the country doing so, ULII is also uniquely positioned to provide its users with the opportunity to access previously amended versions of the Acts of Parliament for their ease of juxtaposition and the appreciation of jurisprudential coherence.

[38] Scholarly legal information is published in independent journals each run by a different institution. The *East African Journal of Peace and Human Rights* is the country's most widely known, distributed and internationally refereed journal. Others include the Uganda Law Reform Commission's *Uganda Living Law Journal*, the Islamic University in Uganda's *Journal of Comparative Law* and the Law Development Centre's *Scope Magazine*. With the exception of the *East African Journal of Peace and Human Rights*, and the *Uganda Living Law Journal* none of the other publications are available online or distributed widely beyond the region. Even for the *Uganda Living Law Journal*, it is available online at the cost of \$100 for individual subscription and \$500 for corporate subscription. Exploring the potential of harnessing ULII's collaboration with universities and the Law Development Centre presents prospects for the future of legal research. This would through

concluding agreements with the sources of this information and then instead of ULII having the entire journal, it would have abstracts of articles in the journals so that if a user reads the abstract and if interested in the article, they could then purchase the journal.

[39] ULII's original mission was to supply regular law reporting of the cases of superior courts in the country. Its existence has momentarily filled the absence of any interested parties in the field of legal publication and has resulted in much more regular law reporting of cases of superior courts in Uganda. In the wake of financial, human resource and other capacity and logistical constraints however, the absence of any major collaborators other than SALII represents an important risk for FAL in Uganda.

INTERNET AND CELL PHONE PENETRATION

[40] Internet penetration in Uganda is quite low. According to the International Telecommunications Union statistics, there are only 7.8 internet users per 100 inhabitants in Uganda (ITU, 2009). Although this number increases with rise in income, this is at a very slow rate. A total of 214,293 active mobile wireless internet accounts were reported at the end of December 2008, compared to 166,621 in the previous quarter. Fixed-line internet subscriptions were estimated at 22,000. The number of internet users, on the other hand, was estimated to be 2.5 million – about 7% of the population (UCC, 2009).

[41] In the urban and semi-urban areas of Uganda, the internet is easily accessible from a variety of sources, including cafes, libraries, university campuses, government institutions and private businesses albeit at a very high cost. However, in the rural areas where the population is concentrated, the internet is not easily accessible. The proportion of households with computer access is 1.2% while the Proportion of households with internet access is 0.1% (ITU, 2009). This represents a high risk for the FAL which can only be countered by continued action to boost internet access through public facilities

[42] Cell phone penetration is slightly higher, at 27 cell phone subscriptions per 100 inhabitants, but compared to other countries this is still considerably low. This, on one hand, may represent a risk for the FAL, but could also be an opportunity for making statutes and legislations available on CD-ROMs so that they can be accessed without necessarily being connected on the internet. At the same time, there is a need for software development to allow work on this project to take place.

[43] Recently, a possible incentive has arisen that would motivate lawyers to increase internet access within the legal fraternity and thus increase free access to legal information in Uganda. Each year, all law firms are required by law to be inspected for suitability to operate as chambers while new firms are inspected for suitability before approval. During these inspections, the case has been made for the Law Council to find chambers suitable if they have access to the ULII website and a stable internet connection. In the result, most law firms now consider it a necessity to ensure the stability of their internet connection while new firms find it as a means of circumventing the rigorous requirement of having a complete and functional library. It is suggested that ULII should consider lobbying the Committee of the Uganda Law Society on Continuing Legal Education to have access to the internet and acquisition of online research skills made a mandatory requirement for all lawyers to have their practicing licenses renewed. To motivate the legal fraternity even further, the Law Society would work with ULII on structuring a course or training workshops on the role of the Free Access to Law movement in legal research for teachers and practitioners of law. The resultant logistical challenge (one that is not insurmountable) of course would be that ULII would require human and financial resources to offer the said trainings. In the long run however, this approach guarantees a sustainable dependability of the legal fraternity on ULII's resources and infrastructure as the fraternity will only grow larger with every law school graduation and approval of new chambers.

CONCLUSION

[44] The legal profession in Uganda is organized into societies with 5 lawyers' associations, made up of well over 2000 practising lawyers, both private practising advocates and state attorneys, and 3 judiciary associations comprising of 400 judicial officers. Free Access to Law represents an enormous value to lawyers across Uganda, and the capacity to access high quality, comprehensive databases has prompted the Ugandan judiciary to support ULII, enabling ULII become the country's only provider of freely accessible legal information.

[45] To date, SAFLII has been hosting and maintaining the ULII website on ULII's behalf. ULII essentially consists of a content acquisition and processing team. This has hampered the development of ULII and inclusion of new and diverse legal information. It was decided that ULII is to take full control of its technical and content infrastructure, though this has not yet been actualized.

[46] Within three years of operation, ULII has exhibited the potential to develop, perfect and expand its uses and functions due, in part, to the support from SAFLII, regular funding from the Judiciary and will hopefully acquire much needed donor funding soon. The prospects are bright for ULII to continue providing free access to law and legal resources in a favourable context, if in its mandate and operation can be inculcated the consistent production of positive outputs and outcomes by increasing the number of databases, improving the quality and quantity of the legal information published, thereby increasing the number of users and consequently improving the capacity to conduct legal research, users being able to use current material, and less expenditures on legal information material.

HONG KONG

By Tao Zhongyi

ONLINE LEGAL RESEARCH PUBLICATION IN GENERAL

[48] Online legal research publication is flourishing in Hong Kong. Primary sources, including Hong Kong ordinances, regulations, and judgments, have been sorted out into online databases accessible to a variety of users. Publishers have also provided fully or partly electronic version of journals and magazines for online browsing. Public and university libraries also offer indexes and training for online legal research.

OPPORTUNITIES

[49] Hong Kong has a good technical, social and political environment for the field of online legal research publication.

[50] Hong Kong has an excellent ICT infrastructure. The administrative region ranks second for the Asia Pacific Region and twelfth in the world in the ITU's ICT Development Index (IDI) (ITU, 2009). Proportion of households with internet access reaches 77.7% and for government employees, this statistic climbs up to 93% (Government of Hong Kong, 2009). Online legal information users, from law students, to lawyers, to judicial officers, generally have good internet access.

[51] More than 100-years of rule of law tradition also provide a positive social environment for both legal practice and research. There are three law schools and around 8600 legal professionals in Hong Kong, including judges and judicial officers, barristers and solicitors in a region where the total population is 6.98 million. Together, law students, academics and legal professionals provide a considerable market for legal publication.

[52] The Hong Kong government has also provided a good e-information environment. In accordance with the Code on Access to Information (Government of Hong Kong, 1995), nearly all government bureaus and departments are committed to making information available to the public. It is important to highlight, however, that not having been legislated by the Legislative Council, this Code has limited legal status.²

[53] The government uses the internet to disseminate information on its policies, services and activities, and to communicate with the public. All bureaus and departments produce their home pages in both Chinese (traditional and simplified) and English. The Legislative Council and Judiciary offer comprehensive and regularly up-dated databases of Hong Kong laws and judgments. The Copyright Ordinance of Hong Kong entitles the government to copyright Hong Kong legislation and judgments. In accordance to the Copyright Ordinance, unless in very limited situations, any reproduction or making available of copyright works to the public is prohibited without prior authorization. However, the Department of Justice does provide permission to reproduce legislation for non-commercial purpose. Other government websites also give permission for non-commercial use of the legal information in general. All of these sites provide important data sources for FAL initiatives.

² See the Hong Kong Journalists Association on this issue. They are requesting that rather than a Code, an Access to Information Act is required in Hong Kong (Hong Kong Journalists Association, 2010)

RISKS

[54] Online legal information resources can be categorized into (1) free resources and (2) fee-based resources. The free resources are offered mainly by the public sector, i.e., government bureaus, public libraries and universities, and also non-profit organizations. Although more and more law students, researchers and attorneys use both fee-based and free resource for online legal research, there are still obstacles to comprehensive, accessible documentation. Law journals, whether academic or not, are not completely published online –some of the magazines or journals only offer abstracts or are limited to current issues. There are also some titles that are not included in commercial databases. Absence of particular sources can represent both a risk and an opportunity for online legal research. If the FAL initiatives have the means to digitize the documents, this can represent an opportunity: the initiatives may have the opportunity to publish documentation that is not available anywhere else. However, if the initiatives rely on pulling documents from other sites where comprehensiveness is not guaranteed, this can represent a considerable risk for sustainability.

[55] Another obstacle to the dissemination of freely accessible legal information is limited ICT training. Libraries have occasional training for students and firms or profession associations, and also hold programs for attorneys. Compared to the frequent and regular training provided by staff from commercial databases, introduction to and training for free online resources is insufficient. Some online sources remain unknown to the legal community. For example, the website of Department of Intellectual Property has the *Intellectual Property Database for Guangdong, Hong Kong and Macao*, but many law students and lawyers even in the field of intellectual property are unaware of this the database. Legal researchers may still resort to fee-based resources which have been acknowledged by peers. Training for various online resources, especially free online resources is deficient and this impacts the full utilization of online resources.

OPPORTUNITIES AND CHALLENGES OF FREE ACCESS TO LAW IN HONG KONG

[56] HKLII (<http://www.hklii.org.hk/>) is a project of the Law & Technology Centre, a centre jointly established by the Department of Computer Science and the Faculty of Law of the University of Hong Kong. As introduced on its website, the HKLII has obtained the kind assistance of the Australasian Legal Information Institute (AustLII) in its development. With a view to promote and support the rule of law in Hong Kong, HKLII is a free, independent, non-profit internet facility providing the public with legal information relating to Hong Kong. HKLII supports and participates in the Free Access to Law movement.

OPPORTUNITIES

[57] HKLII is generally operating within what seems to be a favourable context. As illustrated above, Hong Kong has a good technical, policy and legal environment for online legal research publication. This statement is also applicable to Free Access to Law project. HKLII has obtained assistance from several data sources, i.e., the Judiciary, the Department of Justice, the Hong Kong International Arbitration Centre (HKIAC), the Law Library of the University of Hong Kong Libraries and the Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong.

[58] HKLII offers comprehensive legal information databases, including databases of judgments, databases of legislations, and secondary material databases. The judgments database can be searched by name and by year while legislation can be searched by title name and chapter number. The interface is often considered to be user-friendly and allows for easy browsing. HKLII has also a column of updates, which enables the users to obtain the latest judgments. These advantages make HKLII welcomed by the legal community, and even the public.

[59] There are nearly 4 000 law students³ enrolled in Hong Kong's three law schools. This represents 1 law student for every 1,763.8 inhabitants compared to a nearby country, The Philippines, where the ratio is 1 law student for every 4,862 inhabitants. Hong Kong law schools also offer graduate level degrees, including LLM, Mphil and PhD. This represents a significant pool of legal researchers.

[60] Although the fact that the Universities offer free access to commercial databases (such as Westlaw and LexisNexis) could be looked at as a risk for the provision of Free Access to Law, it is worthwhile to consider this situation as an opportunity. If FAL initiatives offer high quality services that are used by students throughout their education, FAL initiatives may also be the only sources these students continue to have access to once they complete their studies. Between 1,000 and 1,500 students graduate from Hong Kong law schools every year, and as a result, may cease to have access to commercial databases through their universities. FAL initiatives have the opportunity to provide access to legal information to both students and graduates.

[61] This potential pool of expert users represents yet another opportunity for FAL initiatives. As discussed below in the Challenges section, there are many Free Access to Law websites in Hong Kong and HKLII is experiencing difficulty in differentiating itself from these sources which are mainly government run sites. This is a potential opportunity for HKLII to offer value added features such as annotations and document tracing.

CHALLENGES

[62] Sustainability of a Free Access to Law initiatives depends upon its innovation, and capacity to provide services. To obtain reinvestment, FAL initiatives should present satisfactory outputs and outcomes for target users. HKLII has faced challenges in this regard.

[63] The content and services of HKLII, to some extent, are not distinctive enough among other free online resources. It offers comprehensive legal information databases which enables the users to locate and search multiple databases through one website. The speed is also advanced. But with the development of online legal resources, these advantages have become less and less outstanding. There are many online sources maintained by various authorities of government which are offering free and comprehensive legal information to the public. Bilingual Laws Information System (BLIS) on the website of Department of Justice contains *The Laws of Hong Kong* in English and Chinese and selected constitutional documents (Hong Kong Department of Justice, 2010). The website of Judiciary offers a database of case judgments which are of significance as legal precedents on points of law, practice and procedure of the courts and of public interests from most of courts (The Judiciary of Hong Kong, 2010). Data is regularly updated. In the normal course of events, a judgment will be published on this website within 3 working days of its reception. Different bureaus have their own websites to illustrate the application of particular ordinances and regulations with relation to their authority.

[64] Commercial online sources are strong competitors. They often offer more comprehensive databases and services. LexisNexis contains the full-text of Hong Kong Cases (1947-) and Hong Kong Public Law Reports (1994-1997) (LexisNexis, 2010). Westlaw International provides full-text legislation, case law and law reviews covering a number of jurisdictions, including Hong Kong. Its Hong Kong content highlights include Hong Kong Case Law, Hong Kong Law Reports & Digest (1905-), Hong Kong Latest Judgment Alert Service (1999-), Hong Kong legislation, Hong Kong journals, Hong Kong Law Journal and Journal of Chinese & Comparative Law and Hong Kong Civil Procedure (White Book) (Thomson Reuters, 2010).

[65] Commercial online resources not only offer key word searches, but also additional services, including subject indexes, summary, highlights, etc. Users are able to locate all cases subject to certain statute or certain judgment. The key issues are highlighted at the beginning of the text. All of these services are essential for

³ There are three universities with law school in Hong Kong. The number comes out by adding the student numbers of the three law schools together. The University of Hong Kong, around 1, 500 law school students (The University fo Hong Kong, 2007); Chinese University of Hong Kong , 1317 law school students as of 2009 (The Chinese University of Hong Kong, 2009); City University of Hong Kong, around 1000 law school students as of 2008, (School of Law - City University of Hong Kong, 2009)

academics, as well as attorneys. The collection of news, magazines, and journals enable the users to locate all the information from one source.

[66] Compared to fee-based online legal research sources, HKLII appears to suffer from certain deficiencies. Although searching for certain cases or statutes is convenient through HKLII, to locate related cases or rapidly identify issues would be difficult. Most of the journals are not available through the service, which means that researches must still refer to fee-based online resources for complete research. Due to those factors, although commercial online resources are rather expensive, most of firms and universities still purchase them as essential legal research resources.

CONCLUSION

[67] Overall, Hong Kong offers a favourable context for online legal research publication as well as FAL initiatives in terms of its excellent ICT infrastructure, good e-information environment and rule of law tradition. Online legal research publication has become an increasingly important source of legal information although improvements stand to be made with regards to comprehensiveness of available documentation and technical training for users.

[68] With the assistance of data sources – those being mainly the databases of government – HKLII provides free access to legal information to the public conveniently and efficiently. It is recognized by the legal community. However, it still faces challenges from both other free and commercial databases. For its success and sustainability, it must identify target users and innovate on the content and services.

INDIA

By Prashant Iyengar

[69] This synopsis is intended to highlight trends, risks and opportunities for the field of online legal research publication.⁴

[70] Free access to legal information, including research, is important from two standpoints. Firstly, access to information on public affairs plays a crucial role determining the *quality* of democratic practice in a country. This is widely acknowledged both nationally⁵ and internationally⁶. It is also the prime motivation behind the guarantee of freedom of press in India⁷. Secondly, free access to information *generally* is an integral component of the basic human right to freedom of expression whose importance has recently been reaffirmed and expanded in the context of digital technologies by the recently concluded World Summit on the Information Society.⁸ In this second conception, access to information is seen as being vital to ensure that people are able to live a life of dignity, free from ignorance.

[71] Current statistics reveal that as little (or as many) as 42 million Indians are active users of the Internet. Viewed as a percentage of the population, this is a meager 6 to 7 per cent. However, this is close to the total number of graduates in India (48.7 million (Jain, 2005)) and is adding users at a much higher rate than the number of new graduates every year (2.5 million (Cheney, Ruzzi, & Muralidharan, 2005)). This alludes to a degree of techno-literacy that is higher than figures of actual literacy would ordinarily suggest. A recent survey indicates that the internet boom in India has been led not by the metros but smaller and non-metro towns where the number of internet users has risen 69 times and 33 times respectively since 2000. According to the report "More than 60% of information seekers look for general information on the net and **45% look for educational information.**" (Nagaranjan, 2007)

[72] Whilst older forms of access barriers persist, the internet has become an important site of informal self-educational activity where even the merely curious are able to acquire specialized knowledge, previously only available within formal academic environments. An example of this at work is the ease with which computer programming is increasingly being learnt by hobbyists and technology enthusiasts over the internet simply by accessing any of the numerous free tutorial websites on the computer language they wish to learn – themselves in turn usually written by hobbyists. Whilst the huge popularity of the “free internet” as a tool to learn programming languages may be due in large part to the fact that computer programming is native to the internet (in the sense that the internet is a medium built by coders) – the lessons it provides for self-learning models still retains its relevance as, increasingly, the internet becomes populated by people who only have a basic proficiency in using computers.

[73] The fact that 43% of the users of MIT Open CourseWare in 2009 were self-learners and 54% of all users were non-US is indicative of the fact that significant numbers of internet-users are using online material for non-certificatory learning (MIT, 2009). In 2005, 43% of all South Asian visitors to the site were self-learners

⁴ In putting together this section, I have drawn upon my prior writings with modifications. These include, “A few old lessons (and some new ones) for Open Education in India” (Iyengar, 2007); “Open Information Policy for Student Research in Law Universities” (Iyengar, 2008); “Confessions of a Legal Info-holic” (Iyengar, 2010)

⁵ In this context, see the experience of the struggles of the grassroots organization Mazdoor Kisan Shakti Sangathan in Northern India which underscores the importance of the right to information in ensuring transparency and accountability and in enabling participatory governance. (Roy & Dey, 2006)

⁶ For instance, in 1993 the United Nations General Assembly proclaimed that World Press Freedom Day would be celebrated on May 3rd in recognition of the fundamental importance of media independence and pluralism to the process of democracy

⁷ As the Supreme Court of India has observed, “A successful democracy posits an ‘aware’ citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or Organisation.” (The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, 1995)

⁸ See Principle 4 of the WSIS Geneva Declaration of Principles 2003 which reaffirms Article 19 of the UDHR and further declares that “Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.” (World Summit on the Information Society, 2003)

and another 34% were students again indicating that internet users from these parts of the world are keen on learning on the internet by themselves (Carson, 2006).

[74] Open Access material directly feeds the diversity of materials available on the internet which has the effect of increasing the “range and diversity” of things that individuals can do by themselves thereby representing “a qualitative improvement in the condition of individual freedom.” (Benkler, 2006, p. 137)

[75] Against this context, a proposal to provide free access to legal research materials would provide an invaluable resource of materials for self-learners amongst the legal fraternity, thereby greatly enhancing their available horizon of options.

[76] India is privileged to have a fairly robust ICT infrastructure installed. Internet access is relatively inexpensive, and the ubiquity of “cyber cafes” has resulted in extensive Internet penetration, even in the absence of individual subscriptions.

[77] Government bodies at all levels are statutorily obliged under the Right to Information Act to publish, on the Internet, vital information regarding their structure and functioning. This creates special affordances for free access to law as enormous volumes of government data have already been published on the internet by the government. The National Informatics Centre (NIC), a public sector corporation, is responsible for hosting, maintaining and updating the websites of government bodies across the country. These include, inter alia, the websites of the Union (federal) Government, the various state governments, union and state ministries, constitutional bodies such as the Election Commission and the Planning Commission, and regulatory bodies such as the Securities Exchange Board of India (SEBI). These websites typically host a wealth of useful information including, illustratively, the full texts of applicable legislations, subordinate legislations, administrative rulings, reports, census data, application forms etc.

[78] The NIC has also been commissioned by the judiciary to develop websites for courts at various levels and publish decisions online. As a result, beginning in around the year 2000, the Supreme Court and various high courts have been publishing their decisions on their respective websites. The full texts of all Supreme Court decisions rendered since 1950 have been made available, which is an invaluable free resource for the public. Most High Court websites however, have not yet made archival material available online, so at present, access remains limited to decisions from the year 2000 onwards. More recently the NIC has begun setting up websites for subordinate courts, although this process is still at a very embryonic stage.

[79] Feeding off the data provided by the NIC, a number of private free access to law providers have sprung up including, notably, Indiainkanoon.com, CommonLII and Openjudis. These websites will be the subject of some focussed study in this report.

[80] Apart from these free sources, a handful of commercial enterprises have been providing online access to legal materials. Among them, two deserve special mention. SCCOnline - a product of one of the leading law report publishers in India - provides access to the full texts of decisions of the Indian Supreme Court. The CD version of SCCOnline sells for about INR 70,000 (about US\$1,500), which is around the same price the company charges for a full set of print volumes of its reporter. For an additional charge, the company offers updates to the database. The other major commercial venture in the field is Manupatra, which offers access to the full text of decisions of various courts and tribunals as well as the texts of legislation. Access is provided for a basic charge of about US\$100, plus a charge of about US\$1 per document downloaded. While seemingly modest by international standards, these charges are unaffordable by large sections of the legal profession and the lay public.

[81] The availability of large volumes of Indian legal information on the internet for free leads to special affordances for FAL projects in India since it has led to the establishment of a large constituency of users who expect, as a matter of *course*, access to be free. In the long run, this will be one of the most potent driving forces for the success of the FAL enterprise.

By Aria Suyudi

ONLINE LEGAL PUBLICATION IN GENERAL

[82] Access to legal information online in Indonesia is currently in a period of transition. The once opaque and informal legal information environment is slowly becoming more constant and transparent today, and legal documents are slowly making their way online. Previously, public access to legal information had been unnecessarily hindered by bureaucracy and other unofficial protocols. To complicate matters, a working relationship forged between government officials and commercial publishers contributed to the commercialization of legal materials. As a result, primary legal information has generally been made available, albeit through costly secondary sources without the guarantees of accuracy or continuity.

[83] Even though public access has been regulated since the colonial period⁹, it was not until 2004 that the government established a sufficient protocol for the drafting, deliberation and publication of legislation (Khopiatuziadah, 2010). Under Law Number 10 on the Establishment of Legislation, the Ministry of Law & Human Rights has been appointed as the new agency responsible for publishing the State Gazette and other official news, replacing the State Secretariat as publishing body. This reform has helped reconcile matters of access to legal information, as the publication process has become an integral step in the application of new legislation. Access to legal information from both Supreme¹⁰ and Constitutional¹¹ Courts online remains quite consistent to date. However, such comprehensive access exists only for national level legislation¹², while both sectoral and local regulations still need to make their way online. For the judicial branch, public access remains in a premature stage, and despite many efforts, accessing legal information from courts remains a difficult practice.

[84] Free access to legal information online began to emerge in the late 90s, with the number of providers reaching its peak in the year 2000—and fading out only a few years later. Initiated by the private sector during the “dot com” boom, national level legislation had begun to find its way online and much of it was free to access. Since then, government agencies have also stepped in slowly to fill in the gaps. A recent survey examining the completeness, accuracy, and utility of government websites revealed that at least 55 government agencies are offering access to legal information.¹³ However, most do not offer prompt, comprehensive and relevant services—including access to required information. With respect to the frequency of information updates, government websites on average scored just above sixty-percent, while scores for data completeness fared just below seventy percent. With exception of the Constitutional Court, no government website has achieved a perfect score in any of the evaluation categories.

[85] Presently, there remain two FAL providers of notable mention. Firstly, there is Hukumonline—an online publisher that provides a mix of both free and fee-based access to legal information. In its earlier stage, Hukumonline had provided free access to national level legislation. However, in 2002, the company began to impose registration restrictions, and later, subscription fees for sectoral regulation and court decisions. Hukumonline has generally sustained its operations through subscription fees to sectoral legislation and court

⁹ Since the 19th century, the colonial administration had regulated the mechanism of enactment and promulgation of legislation by designating specific publication means to different types of legislation, however in implementation, there is no effective public access to these publications.

¹⁰ Public access to court decision has been much debated: in previous periods, access to court decisions was only available to the litigants and other non-litigants who were regarded as having interest on the basis of permission from the Chief Justice of that court. Hence, comprehensive publication was not possible.

¹¹ Constitutional Court as a new jurisdiction was established recently in 2004, and has the most advance standard and performance in terms of transparency and public access both in terms of completeness as well as timeliness to make the information available to public.

¹² Law No. 10/2004 includes Constitution, Law/Government Regulation in Lieu of Law, Government Regulation, Presidential Regulation, and Regional Regulation.

¹³ This survey was conducted by Hukumonline.com in 2008 but was not published. It was consulted in person.

decisions. However, this business model may soon become outdated if publicly provided access to legal information continues to improve at current pace.

[86] Secondly, there is Legalitas, a free access provider managed by a group of legislative drafters committed to maintaining public access to legal information. Because the initiative is maintained by staff members from both the Directorate General Legislation and the Ministry of Law & Legislation, Legalitas offers up to date access to national level legislation. Access to this information flow has enabled Legalitas to upload new information to their collections in an expeditious manner. Due this unofficial affiliation with government agencies, Legalitas's operations can be considered, in some ways, to be receiving partial government support.

[87] As a FAL provider, Legalitas has been available online since 2000 and has maintained a reputation as the most comprehensive and up to date provider of freely accessible legal information, including national level legislation, academic papers, a discussion forum, and a search engine optimized for browsing legal materials. In addition to providing access to regulations made available by the Directorate General legislation, Legalitas also offers access to sectoral regulation – which was previously only available through Hukumonline on a subscription basis. Due to an unofficial affiliation with government agencies, Legalitas also provides premier access to bills in the deliberation process. Such a feature has only been matched by a public interest parliament monitoring site (Indonesian Center for Law and Policy Studies, 2007), however, on a much smaller scale. Legalitas also embodies a unique collaborative and participatory character, as numerous individuals, beyond project staff, have helped contribute to the content of the website, and participate in discussions on the Legalitas forum. Since its inception, the repository has accumulated more than 25,000 documents, and presently, has 3,000 users registered with the Legalitas forum. The majority of legal practitioners in Indonesia are aware of Legalitas, and are familiar with its trade name.

OPPORTUNITIES FOR THE FAL INITIATIVE

[88] Due to recent legal developments, the move towards free access to legal information has gained momentum. Since the mid 2000's in particular, the legal framework for transparency and public access to legal information has become more comprehensive. Following the enactment of Law Number 10 on the Establishment of Legislation in 2004, the government has also passed the Presidential Regulation Number 1 in 2007, on the Approval, Publication and Dissemination of Laws and Regulations. This regulation binds government agencies to publish their regulations as they are promulgated—a component which was not covered previously covered by Law Number 10/2004. This law provides a framework which facilitates the electronic publication by government agencies, which should subsequently promote greater public access online.

[89] The later 2007 Ministerial Regulation Number M-01.HU.03.02 on the Methods of Publication and Dissemination of Laws and Regulations had also provided a new detailed procedure on how the publication process was to be restructured. As a result, a new legal publication protocol has been established in Indonesia, with operations centralized at the Ministry of Law & Human Rights. In compliance with such regulation, the Directorate General of Legislation has made available online on one website, both national and sectoral level legislation, state gazettes, and official news since 2009. Legal information of various government agencies can now also generally be found on one comprehensive site, insofar as the respective agencies comply with the obligation to submit copy of the regulations to the Directorate General of Legislation.

[90] Demands for greater access have also come from information transparency and public service legislation (Law 14/2008) which set out provisions (criminal or administrative) for government officials who fail to provide public access to information, including legislation. In addition, the Chief Justice of the Supreme

Court Decree Number 144/2007 on the Judicial Transparency has provided a regulatory framework which guarantees public access to court decisions.¹⁴

[91] As access to national and sectoral legislation is becoming increasingly available through a publicly ran website (Directorate General of Laws, 2010), opportunities for FAL initiatives to fill in the gaps of legal information are emerging. Until the government-run site can provide both reliable and comprehensive access to legal information, there will still be opportunities for any FAL initiatives to grow by providing reliable access to accurately prepared documents. To add value to such documents, the FAL initiative could also begin to cross reference legal documents, such as court decisions, and or academic papers.

[92] In addition to a legal framework which should continue to facilitate greater access to legal information online, there exist several government efforts to increase ICT access and literacy in Indonesia. Over the past 20 years, the internet penetration rate had increase over than 1000% (Miniwatts Marketing Group, 2009). In its first 100 day program, the Ministry of Post and Telecommunications has prioritized increasing access to the Internet in remote areas through programs such as 100 Ringing Villages (Camelia Pasandaran, 2010). The National Education Network, a project ran by the Ministry of Education, also aims to provide ICT infrastructure for education institutions in local communities throughout the country. Such programs, if successfully implemented, may enhance the number of beneficiaries of publicly accessible legal information.

[93] In an archipelago country where distance and the lack of transportation presents a major impediment to conducting legal research in its traditional form, providing online access to legal information has become the most effective way to promptly ensure the widespread availability of up to date legal information. However, just below sixty-percent of law schools maintain the sufficient technical infrastructure to facilitate online legal research, and such schools are located in larger cities. For law schools in more remote areas, there is a continued reliance on in-house materials.

[94] Today, the legal field also presents opportunities for the FAL initiative to gain relevance as a premier legal research resource. Indonesia has roughly 7,390 judges and 11,094 registrars throughout almost 800 working unit across the 33 provinces and 530 cities/regencies. In addition, the education sector includes a total of 191,077 students attending 344 law schools nationwide (Kementerian Pendidikan Nasional, 2010). Inferring from the growing size of the legal communities, there is a considerably pool of potential users of FAL sources in Indonesia. Furthermore, few challenges for legal publishing are met in terms of language. Although Indonesia consists of various ethics group and minority languages, many speak the official Indonesian language, *Bahasa Indonesia*. It is only in such language that all official legal documents are published.

RISKS FOR THE FAL INITIATIVE

[95] As previously mentioned, public access to legal information in Indonesia is in a period of transition, although the pace of reform can be considered to be moving quite slowly. The challenge to provide comprehensive access to legal information in one place is hindered by corruption in the publishing process, resistance among various government agencies to work cooperatively with the Ministry of Law and Human Rights, as well as lack of clarity and understanding of new publishing obligations imposed upon government agencies. Indeed, Transparency International estimates that Indonesia is among the countries where bribery is most common, listing the country 111th out of 180, where number 180 is most corrupt. Until the information handling practices of government agencies become more transparent, providing free access to law in Indonesia will remain a threatened enterprise.

[96] In addition to a much required paradigm shift among government agencies concerning the transparency of information, the demand for online legal information continues to be stifled by a generally

¹⁴ For example, Law Number 49/2009 on General Court, Law Number 50/2009 on Religious Court, Law Number 51/2009 on State Administrative Court as well as Law Number 3/2009 on Supreme Court which specifically mentions people's right to access court decision on timely basis.

weak ICT infrastructure. Despite increased rates of internet penetration, access still only falls around roughly 12%, and only remains affordable in larger cities (ITU, 2009). In more remote regions, particularly in Eastern Indonesia, access remains limited. The absence of public or private funding to sustain FAL publishing also threatens the sustainability of such initiatives in the long term. As a result, the lack of financial and human resources continues to leave fragile initiatives vulnerable to shifts in external or internal environments. As recently exemplified, the promotion of the operations manager of Legalitas to another post has left the individual unable to continue his involvement with Legalitas –significantly threatening the future of the FAL initiative.

CONCLUSION

[97] While the future of legal research in Indonesia is, in fact, online, it is unclear whether it will be the government or private providers who will lead the way through such a transition. It appears that initiatives with informal protocols and ad hoc structures, such as those modeled by Legalitas, may be unable to secure operational sustainability in the long-term. In addition, with recent improvements made to publicly provide legal information online, existing FAL initiatives are required to innovate by providing other value-added features beyond primary information, which is already made available by the government.

[98] Only through such practices will the initiatives be able to remain relevant within the legal community. However, despite such demands for in-house innovation, a lack of funding considerably stifles such prospects. Due to the large number of local government in Indonesia (total of 540 regencies/cities), a weak ICT infrastructure and lack of funding, access to local legal materials remains piecemeal. Although the government provides a legal framework which facilitates the publication of these materials, the limited capacity of local governments has hindered publication at this level. To date, it is the potential publication of regional and local legal materials which provides FAL initiatives with most opportunity to expand operations.

PHILIPPINES

By Michael Vernon Guerrero Mendiola

THE LEGAL INFORMATION ENVIRONMENT

[99] In the Philippines, the majority of legal materials has always been available in printed form. Primary sources can be acquired from a particular branch, department or agency of promulgation, and commercial legal publishers provide compilations of laws according to subject categories of the Philippine bar exams (Philippines Rules of Court, §10, Rule 138). Compilations of jurisprudence, including digests, can also be sourced from both Supreme Court and commercial publishers.¹⁵ On the other hand, form books, law dictionaries, and indexes are mostly made available through commercial legal publishers. Previously, legal encyclopedias and citators were also available from commercial legal publishers (see Sibal, 1986; Castigador, 1991). However, these have long been discontinued in print form. In the Philippines, albeit not always appropriate or ideal, legal researchers may draw upon American legal materials, most notably secondary sources and finding tools.¹⁶

[100] With the rise of personal computing in the 1980s, legal publishers began to diversify their publishing methods to suit emerging technological trends. One of the earlier publishers to compile jurisprudence in optical media form was PhilJuris, and since the mid-90's, CDAAsia's Lex Libris has become the most popular choice¹⁷. The Lex Libris collection provides two compact discs – the first is a compilation of Filipino laws, and the other a compilation of Filipino jurisprudence. Subsequently, subject-specific compilations were also published by as part of the collection.¹⁸ Other, yet less popular, publishers include haiNa, Access to Law, among others.

[101] In the mid 1990's, the growing availability of the internet had begun to move legal publishing online. Amidst the scattered online collections of various government branches, the Chan Robles Virtual Law Library and the LawPhil Project arose as two prominent repositories of Philippines's laws and jurisprudence. The former is published and maintained by the Chan Robles law firm, and the latter by the Arellano Law Foundation. Recently, CDAAsia has also provided users with a paid online version of Lex Libris (CDAAsiaOnline, s/d). In addition; selected copies of Philippines-published annotations are becoming increasingly available through Google Books.

[102] Notwithstanding the strong presence of legal information both online and in optical media, print materials continue to dominate the legal information environment. This can be attributed to the fact that many continue to prefer consulting legal materials in print, rather than on screen. Considering the mainstream preference for print materials, commercially published compilations remain an economical alternative to the resource intensive process of converting online and optical sources to print. In addition, there remains a substantial unavailability of online versions or equivalents of secondary sources and finding tools to date. Finally, the absence of universal and reliable access to the internet and other digital technologies –notably in

¹⁵ Philippine Reports can be acquired from the Office of the Reporter of the Supreme Court while the Supreme Court Reports Annotated (SCRA) and the Supreme Court Advance Decisions (SCAD) from commercial publishers

¹⁶ As these materials are merely persuasive, the import of *Francisco vs. House of Representatives* (2003) must be taken to account as reliance thereon may be misplaced. "Said American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only limited persuasive merit insofar as Philippine constitutional law is concerned. As held in the case of *Garcia vs. COMELEC* (227 SCRA 100, 112 [1993]), '[i]n resolving constitutional disputes, [this Court] should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs.' Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, '[w]e have cut the umbilical cord.'" (Republic of the Philippines Supreme Court, 2003)

¹⁷ The site claims approximately 4,000 paying subscribers. (CDAAsiaOnline, s/d)

¹⁸ (a) Environment and Natural Resources, (b) Department of Justice, Opinion of the Secretary, (c) Taxation, (d) Local Autonomy and Local Government, (e) Labor and Social Legislation, (f) Securities and Exchange Commission, (g) Philippine Elections, (h) Trade Commerce and Industry, and (i) Family Law

more remote areas—inhibits the growth of online legal research. Due to such reasons, online and computer-aided legal research remains only complementary to more traditional methods.

MOVING ONLINE: OPPORTUNITIES AND RISKS FOR LEGAL RESEARCHERS

THE OPPORTUNITIES

[103] Conducting legal research online offers both opportunity and risk to Filipino legal researchers. Most positively, developments in information and communication technologies (ICT) have reduced the temporal and monetary costs associated with conducting legal research. With the availability of free online resources, great efforts are no longer required to source relevant materials from geographically dispersed government branches and agencies, increasing the ease with which legal information may be accessed. Furthermore, researchers are no longer dependent on printed collections of Supreme Court jurisprudence¹⁹, for example, or other toll-access CD-based compilations, which require the procurement of expensive primary products, and regular paid updates.

[104] In addition to lower costs and convenience, online alternatives have generally expanded the scope and comprehensiveness of legal materials available in print. Relevant government bodies, and subsequently online repositories, are able to update collections more regularly than new print and optical sources can be published. The availability of free online resources also reduces the requirement of maintaining stored, physical inventories of legal materials and increases the mobility with which legal research can be conducted. The word-based search capabilities of online repositories also prove more convenient than the static table contents and indexes of print materials.

THE RISKS

[105] While online resources lend to both speedy and efficient legal research, there are also risks involved with using online resources. Because power failures in the Philippines are frequent (Sy, 2010), online resources may not always be available due to the lack of connectivity from either the client or the hosts' end. Also, while search technologies can assist legal researchers in locating information more rapidly, search engines may not always bring back the most relevant results. A pointed search may likely return cluttered search results, even when employing optimal query parameters. Further, incomplete and scattered online resources often lack the comprehensiveness associated with print sources. For example, a print guide may nicely compile all available promulgations from various government branches, while a research may have to consult several different spread sources or collections online to locate the material.

[106] Risks also derive from the absence of online publishing standards. Because there is no generally enforced standard for publishing legal materials online, the standards of different publishers may diverge greatly. It is not an unlikely to find documents which contain typographical errors, misplaced emphasis, or that are generally incomplete—the Supreme Court itself even provides a disclaimer waiving the accuracy of online documents.²⁰ To add to such complexity, laws may be published in their original form, or with amended provisions without a specified cut-off date. In either case, the law is not displayed in its present state. In the absence of updated information, a researcher may be led to believe that what has been found online is the current and prevailing law, regulation, or judicial doctrine on the issue in question.

[107] Misunderstandings of the copyright regime in the Philippines may also put the legal researcher at risk, notably when online resources are maintained by private entities. Although original promulgated laws,

¹⁹ The latest released SCRA volume, which started in the 1960s and not the 1900s, is already at volume 598, and which an average of ten volumes are released per month

²⁰ "In case of conflict, the original printed text will prevail over the electronically reproduced decisions found herein." (Supreme Court of the Philippines, 2010)

issuances, and court decisions are government works²¹ and thus are not within the scope of copyright protection, the collection and publishing of such materials remains an enterprise within the scope of copyright.²² Other openly licensed sources, such as those of the LawPhil project, may also be copied for non-commercial purposes.

ONLINE PUBLISHING: OPPORTUNITIES AND RISKS FOR THE FREE ACCESS TO LAW INITIATIVES

THE OPPORTUNITIES

[108] Foremost, the active presence of the Philippines government online increases the ease with which legal documents can be added to free access repositories. However, despite this positive trend, FAL initiatives must be careful to compare an online document with the official printed version before posting it online. The piecemeal and disorganized nature of online legal resources presents the FAL initiative an opportunity to compile and offer these materials within a single repository. Furthermore, because copies of laws promulgated prior to World War II remain difficult to source locally in print form, a FAL initiative may be able to heighten their relevance to users by incorporating such materials.²³

[109] Current inconsistencies in publishing standards also present FAL initiatives with the opportunity to rectify confusions which may arise from there being multiple versions of an existing law online.²⁴ FAL initiatives in the Philippines may also be able to gain relevance at the municipal level by providing local legislation online,²⁵ and providing other secondary materials, finding tools, and other external aids. From an ICT perspective, market competition has significantly reduced the costs of ICT equipment and internet connection, and the increasing availability of ICT skills in the Philippines proves for a promising technical environment for the FAL initiative.²⁶

[110] Lastly, the increasing number of legal practitioners provides an opportunity for the FAL project to remain relevant through the provision of basic and advanced forms of legal materials, notably as such individuals pursue competence in the legal field. Furthermore, the increasing number of persons interested in the law provides an opportunity for the FAL project to contribute in efforts to develop a responsible and empowered citizenry.

THE RISKS

[111] Notwithstanding such opportunities, it must be noted that such are also laden with risks. It may be impractical for a FAL initiative to undertake the above if financial and human resources are not sufficient.

²¹ "No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character" (Intellectual Property Act of the Philippines, §176, 1997)

²² "The following derivative works shall also be protected by copyright:[...] (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents." (Intellectual Property Act of the Philippines, §173, 1997)

²³ Acquisition of copies deposited in repositories or libraries in the United States is necessary, to fully connect these primary sources.

²⁴ This option should be made with due care inasmuch as accuracy may be dashed by consequences of implied repeals.

²⁵ Although the Vice Mayor League of the Philippines (VMLP) and the League of Vice Governors in the Philippines (LVGP), in cooperation with Ayala Foundation Inc. (AFI), created the eLegis Reference System website which should contain local legislation, the content thereof remains insubstantial (eLegis, 2008)

²⁶ Increase is due to tertiary regulation. There is an increased focus on IT-related studies since 2000. However, the focus to generate more nurses in the Philippines remains a higher priority. This is due to priorities of tertiary education directed towards overseas employment opportunities

Attempts to provide more advanced legal content may substantially derail efforts to ensure up to date collections of primary sources. The FAL initiative will meet the need for innovation presents with some degree of challenge, as the large volume of promulgations made by government, and the lack of financial resources may effectively hinder efforts for expansion.

[112] Although the publication of legal information is mandated by law (Government of the Philippines, 1987) and that the right of the people to information is mandated by the Constitution (§28, a. II) and other statutes (Philippine Civil Service Commission, 1989), there still remains significant delay in the release of promulgated laws under current leadership – notably when laws are controversial or of particular public interest. Whether or not such delays will persist will be determined by the regime of the next President, which is to be elected in May 2010. If current practice continues, the sourcing of official documents will continue to experience delay, affecting the speed with which the FAL initiatives can update their collections.

[113] Securing the privacy of individuals is a practice mandated by law and one which has become increasingly recognized during the mid-2000's. There are confidentiality provisions in Republic Act 7610 (1992), Republic Act 9262 (2004), and the Supreme Court Rule on Violence Against Women and their Children (2004). The real names of victims must not be disclosed in case law, and there must be a non-disclosure of personal circumstances and other information which may compromise the identities of involved individuals, including immediate family or household members (People v. Cabalquinto, 2006).

[114] While such legal provisions have been welcomed by FAL initiatives, publicly made decisions promulgated prior to 19 September 2006 present a unique challenge. LawPhil must maintain the fine balance between making court decisions available to the public on the one hand, while complying with the requirement to protect the privacy and anonymity of vulnerable individuals on the other. The same privacy considerations are expected in the case of young offenders, as outlined by confidentiality provisions in the Republic Act 9344 (2006). Currently, a Writ of Habeas Data²⁷ may be used against a FAL initiative for alleged violation of rights by publishing pre-2006 cases.

[115] The high costs of maintaining and developing online legal repositories may puts at risk the very sustainability of the FAL initiative. Notwithstanding lowering costs of technology and the increasing availability of skilled professionals, several technical challenges still remain. Firstly, the cost of software, hardware, and a dedicated connection for servers remains considerable even though the prices of personal computers and peripheral devices and have declined substantially. Due to such costs, the quality of equipment and connection used by LawPhil will have a substantial impact on the overall speed with which their legal content can be accessed.

[116] Secondly, the outwards migration of skilled professionals from the Philippines throughout the years has diminished the potential pool of local technical personnel. Nearly 10% of the population is currently living outside of the country, leaving remaining skilled IT professionals in the position to bargain for higher wages (Philippine Overseas Employment Administration, 2007). As a result, highly competent personnel may be compelled to search for more lucrative opportunities than presented by FAL initiatives, while lawyers dedicated to the FAL initiative may remain without appropriate financial compensation.

[117] Finally, a lack of project funding may diminish the ability for the FAL initiative to expand the scope of its current operations. As a result, the pursuit of alternative funding, such as online advertisements, may be contemplated by the FAL initiative. However, commercial advertising present on an online legal resource may be considered as the economic exploitation of government works and could entail payment of royalties to respective government branches or agencies. Furthermore, the context of “free” in Free Access to Law can, at times, become a source of contention between the FAL initiative and donors. As a result, it may be difficult to

²⁷ A “writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.” (The Rule on the Writ of Habeas Data, 2008)

attract funders to the project, notably for those who hold more conservative views. Resistance may also be expected if “free” distribution of the resource would allow for the commercial exploitation by other parties. Local funders may insist that if the resource is made accessible to everyone free of charge, it should remain to be so whoever intends to distribute it.

CONCLUSION

[118] Despite the advances made in online and computer-aided legal research, such methods still only remain complementary to more traditional methods in the Philippines. The FAL initiative can increase its relevance by providing equivalent legal materials to those in printed form, online and doing so within a consolidated, free for access repository. The main challenges, as to the content, arise from the lack of operational transparency on behalf of the government, and the privacy concerns which arise when publishing case law. In the long term, challenges are made to the sustainability of the FAL initiative, as a lack of financial and human resources may threaten the fulfillment of projects vision and goals.

NORTH AMERICA

CANADA

By Isabelle Moncion

FREE ACCESS TO LAW IN CANADA: RISKS AND OPPORTUNITIES

The accessibility of law in Canada is influenced by a number of contextual factors, including Copyright law, accessibility of legal information from the data sources and work conducted by the Canadian Citation Committee.

Canada's ten provinces and three territories are organized under a Constitutional Monarchy. All provinces follow the Common Law legal tradition except for Québec, where a combination of Civil and Common Law systems are in place. The Constitution Act of 1867 (pt.2 § III and IV) distributes the legislative powers and specifies which responsibilities are provincial, and which are federal. Of the many legislative powers distributed, the Federal government is responsible for Copyright law.

Under the Canadian Copyright Act (1985), any work that "is, or has been, prepared or published by or under the direction or control of Her Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to her Majesty [...]". This ensures that all government publications, including judicial decisions, legislation and regulations, are protected and are under the exclusive ownership of the Canadian Government.

Prior to the arrival of digital publication, legal publishers would request permission from the Government to use the law. Commercial publishers would pay fees to the Government as part of the agreement and then publish collections with value-added features, such as abstracts and footnotes to improve the usability of the information. Users of legal information pay high fees charged by these large publishing houses to have access to said documents. A study lead by Ian Gallacher (2005) on legal information in the "Google" age, shows that costs of legal information were (are) rising at an alarming rate: "as an example, the supplementation costs for Am. Jur. 2d in 1993 was \$1,300. In 2001, only eight years later, the supplementation cost had risen to \$3,058.75 and in 2005 the figure is \$4,560.75". These rising costs were quickly becoming prohibitive, particularly with the arrival of new information technologies and developments. Rather than lowering prices, new products and innovations were looked at as supplementary features justifying higher prices.

Information technologies and particularly the internet also offered a parallel avenue for the large scale distribution of legal information, at low costs which could be passed on as low prices or no charge at all to the users of this information. In 1993, the LexUM legal information laboratory of the University of Montreal, in partnership with the Supreme Court of Canada, began publishing the Supreme Court's decisions online, for free.

Increased pressure for more open accessible government led to the Reproduction of the Federal Law Order (1997). This Order states that "Anyone may, without charge or request for permission, reproduce enactments and consolidations or enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals." Thus, federal law can now be openly and freely published.

In 2004, the *CCH Canadian Ltd. v. Law Society of Upper Canada* case came to an end with the Supreme Court's judgment, 10 years after the case has first been brought to court. CCH Canadian Limited, Carswell Thomson Professional Publishing and Canada Law Books Inc. sued the Law Society of Canada for copyright infringement. The Law Society had been providing photocopy services to researchers. Beyond the unanimous ruling in favour of the Law Society, the nature of the case required the Court to rule on a number of copyright issues. Namely, the Court ruled that if the publishing houses could claim copyright over headnotes, case summary, topical index and compilation of reported judicial decisions, this could not be the case for the judicial reasons themselves. Over the 10 years it took for this case to make it to the Supreme Court, lawyers and law societies across Canada rallied around the issue of accessibility of legal information.

The Federation of Law Societies of Canada set up a National Technology Committee which showed great interest in developing a virtual law library, where all Canadian law could be accessed through a specialized search engine. The Federation worked with LexUM to develop such a library and in 2000, the not-for-profit organization, the Canadian Legal Information Institute (CanLII) was created. CanLII's mission is to "support the legal profession in the performance of its duties while providing the public with permanent open access to the legal heritage of all Canadian jurisdictions." (CanLII, n.d.) CanLII is supported by all lawyers across Canada. Such a model has proven to be of critical importance to Free Access to Law in Canada. Indeed, the regulatory framework together with Canadian lawyers' proven interest in maintaining law within the public domain have been decisive in the free distribution of legal information in Canada.

ACCESSIBILITY OF LAW BY DATA SOURCES

Just as important is the scope of legal information made accessible by the data sources. The vast majority of provincial and territorial courts across Canada provide access to decisions directly from their website. The same is true Federal courts as well as for legislation made available by the responsible government branches. For example, the Department of Justice Canada has set up the Justice Laws Web Site (<http://laws.justice.gc.ca>) where legal material may be reproduced without seeking permission.

In Québec, the *Société Québécoise d'Information Juridique* (SOQUIJ) is legally mandated to publish legal information and to make such information accessible through information technologies (Loi sur la Société québécoise d'information juridique, 2005). As part of that mandate, SOQUIJ has developed the www.jugements.qc.ca website which provides access to decisions from Quebec courts and tribunals as of 1987.

The openness of the majority of courts and governments is greatly facilitating the distribution of legal information in Canada. Data sources are generally making the law available in its raw form, but with limited or no added-value or search capabilities. This represents a key opportunity for the free and open distribution of legal information: FAL initiatives can access the law freely and offer research tools and other value-added features essential to the usability of the law. By having access to legal information online, Canadian FAL initiatives hold a great advantage.

CANADIAN CITATION COMMITTEE

With the increased availability of law online, concern was indeed growing for the quality and the usability of the information being made available. The Canadian Citation Committee (CCC) was formed to support the standardization efforts of the Judges Technology Advisory Committee of the Canadian Judicial Council (JTAC). The CCC works for the development of standards in case naming, preparation of judgments and citations. These efforts culminated in publication of *The Preparation, Citation and Distribution of Canadian Decisions* (CCC, 2006). These standards work to facilitate access of online cases.

The first issue to be addressed was with regards to the preparation of legal decisions. The goal of standardizing the way judgments are prepared was, in part, to facilitate their online publication. The use of ICTs was growing within courts and judicial institutions but to harness the full potential of these new tools, standardization was essential. As the *Canadian Guide to the Uniform Preparation of Judgments* explains,

In an electronic information system based on standardized documents, information recognition and identification can be automated. Once properly identified, data can be marked up with languages such as XML (Extended Markup Language) and its well-known subset, HTML (Hypertext Markup Language). These languages express the logical structure and contents of documents by placing meaningful tags around pieces of data. A software application can then read this kind of document and interpret the marks with predefined sets of instructions, thereby displaying them in various ways. It can also facilitate contextual searching. (CCC, 2002)

After this standardization was adopted, the CCC worked on citation standards. Prior to the CCC's standards, judgments were assigned a reference number only once they were published on paper. With the rise of ICTs, judgments were being published online within hours of being rendered, but were left without any official reference. The *Neutral Citation Standard for Case Law* (CCC, 2000) calls for a reference number assigned by the court itself in a format that is used across Canadian courts. A unique, permanent citation for judgments has been of great use to the development of electronic research tools.

These standards and others developed by the Canadian Citation Committee have proven to be invaluable assets to the online, open and freely accessible publication of the law. They have promoted technological innovations and have facilitated the large scale distribution of the law.

RISKS

Within such a favourable environment, there are nevertheless risks for the free open distribution of legal information in Canada.

Risk exists primarily within legal information market which is dominated by few private publishing powerhouses. The two largest providers – Westlaw and QuickLaw (by LexisNexis) – are present in Universities, law firms, courts and government agencies. They offer free accounts to all Canadian law students and come into Universities to offer free training workshops. Students can easily become accustomed to these highly sophisticated big-budget sites and continue using these sites long after they have graduated.

As the number of technological firms multiplies and costs of online legal publication decrease, competition continues to grow. The arrival of Google Law in the US is indicative of the potential players interested in joining the field of online legal publishing. Although political and social contexts are quite different in Canada, Google Law should still serve as a reminder that “free” will no longer suffice as a FAL initiative's only competitive edge. As alternative services continue to emerge, innovation will play a key role in the sustainability of high quality, freely accessible law in Canada. Levering opportunities described above will no doubt be part of this process.

APPENDIX 1

| A. POLITICAL | | | |
|------------------------------|--|---|---|
| General Area | Types of Information | Source of Verification | Further Information |
| A1. Legal system | A1.1 Government type | National documentation | Constitutional monarchy, federal parliamentary democracy, constitutional republic, etc. |
| | A1.2 Legal system tradition | | Is the legal system inherited from another country? How has it been modified or adapted to local context if this is the case? Describe the relevance and use of foreign legal material and/or the use of current and past law from the country from whom law was inherited. |
| | A1.3 Court structure | | |
| | A1.4 Legislative process/structure | | |
| | A1.5 E-Information score | UN E-Government Survey 2008 | |
| | A1.6 Presence of judicial/legislative branches online | Websites of judicial/legislative branches | In terms of online services, website up date and general quality of site. Number of available legal documents is asked under “legal research environment” |
| A2. Legal policy environment | A2.1 Presence and scope of copyright laws restrictions | http://a2knetwork.org/watchlist http://www.giswatch.org/gisw2009/GISW2009.html or national documentation | The purpose of these questions is to identify the copyright and other policies/laws which may impact FAL sustainability and to provide researchers with information to adapt questionnaire content to local context |
| | A2.2 Presence and scope of privacy and secrecy restrictions | National documentation | |
| | A2.3 Presence and content of any particular government/institutional policies or laws on dissemination of legal information | | |

| B. SOCIAL | | | |
|----------------|--------------------------------|------------------------|------------------------------|
| General Area | Types of Information | Source of Verification | Rational/Further Information |
| B1. Population | B1.1 Population | National documentation | |
| | B1.2 Official and other | National documentation | |

| B. SOCIAL | | | |
|--|--|---|---|
| General Area | Types of Information | Source of Verification | Rational/Further Information |
| | prominent languages | | |
| | B1.3 Language of documents published by the courts/publishers | | |
| | B1.4 ITU Skills sub-index of the ITU ICT Opportunity index | ITU statistics | The Skills sub-index considers both school enrolment and literacy rate. See Chapter 7, Annex 1 of the 2007 ICT-Opportunity Index |
| B2. Legal education and profession | B2.1 Number of law schools (University) | National documentation University website | |
| | B2.2 Number of judicial or legal training colleges. | Faculty of Law website/ documentation | |
| | B2.3 Geographical distribution of law schools | | |
| | B2.4 Size of each law school | | |
| | B2.5 Number of law professors | | |
| | B2.6 Particular specialization of the school (if applicable) | | To see if the available FAL initiative content corresponds to the needs of academia |
| | B2.7 (average) Total number of law graduates per year | | |
| | B2.8 University subscription to online private/commercial legal databases and point-of-access | Law librarian University website | Does the university provide free access to private/commercial databases to its staff and students? Can staff and students access these documents from home? |
| | B2.9 Structure of the legal profession | | Is the profession organised in associations? Is access to the profession restricted? Where do law graduates end up working? |
| | B2.10 Number of academic legal libraries in country | | If possible, data on comprehensiveness of collections and pertinence (up-to-date) information would be valuable as well. This question aims to look at the possible alternatives to FAL and/or potential space for collaboration. |
| | B2.11 Number, scope and size of legal associations | National documentation National Bar Association Academic research | |
| B2.12 Average legal practice size | Law Societies Other professional associations | | |
| B2.13 Number of jurists/legal professionals | Academic research | | |
| B2.15 % of women lawyers | UN or other internationally | | |
| B2.16 % of women judges | renowned statistic | | |

| B. SOCIAL | | | |
|--------------------------------|---|--|---|
| General Area | Types of Information | Source of Verification | Rational/Further Information |
| | B2.17 Number of practicing lawyers (advocates and attorneys) | | |
| B3. Legal research environment | B3.1 National providers/sources of online legal information (both free and with fee) | Online research May be supplemented with interviews | For each of these alternatives, look up: -Cost to access the documents (specify if costs vary according to user – ex. Law firm vs individual, etc.) -Number of available documents - Comprehensiveness of collections -The source’s targeted audiences What resources are lawyers using? (may be supplemented by interviews but is useful to look into at this stage in terms of subscription to paper journals, online journals, etc.) Include a distinction of open/non-open/free access law journals |
| | B3.2 Regional providers/sources of online legal information (both free and with fee) | | |
| | B3.3 National providers of hardcopy legal information (both free and with fee) | | |
| | B3.4 Other legal information sources available to national users | | |
| | B3.5 Number of national law journals (specify if academic or not) | University websites National law journal websites | |
| | B3.6 Legal blogs indigenous to the country | Online research May be supplemented by interviews | |
| | B3.7 Availability of legislation online | National websites | |
| | B3.8 Availability of case law online | National website | |

| C. ECONOMICAL | | | |
|-----------------------|------------------------------------|---|--|
| General Area | Types of Information | Source of Verification | Rational/ Further Information |
| C.1. National Economy | C2. GDP (PPP) in US billion | http://hdrstats.undp.org/en/indicators/151.html Click on the Excel file link that provides both GDP and HDI | It may be interesting to obtain economic information more directly tied to the legal profession/legal education/law journalism/etc. in order to gauge the possibility for financial support from these audiences. The researcher is invited to search for such data when and where possible. |
| | C3. GNI per capita | http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf | |

D. TECHNICAL

| General Area | Types of Information | Source of Verification | Further Information |
|------------------|---|--|---|
| D1. Internet | D1.1 Internet users per 1000 inhabitants | Africa: http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-RPM.AF-2009-PDF-E.pdf Asia and the Pacific: http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-RPM.AP-2009-R1-PDF-E.pdf Americas: http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-RPM.AM-2009-E09-PDF-E.pdf Also consult: http://www.giswatch.org/gisw2009/GITMW2009.html | All indicators in the “Technical” category should be considered in terms of how they apply to the legal profession and academia. Are lawyers generally connected to the net? At what speed? Do they have access to PCs? What % of their expenditure (lawyers, universities, students) is spent on accessing the net? The capacity of the researcher to obtain such answers will be highly dependent on the available national documentation and statistics. The researcher is nevertheless invited to search reports and sources that may touch on any or all these issues and identify trends, risks and opportunities for the FAL initiative. |
| | D1.2 Number of fixed broadband Internet subscribers per 1000 inhabitants | | |
| | D1.3 Proportion of households with computer access | | |
| | D1.4 Proportion of households with Internet access | | |
| | D1.5 Price of Internet access as % of GNI | | |
| | D1.6 Availability of public access sources (free and paid for) | ITU stats National statistics Other internationally renowned statistics | How accessible is the Internet outside of the household and work? |
| | D1.7 National/regional efforts to improve ICT infrastructure | National documentation | Does the government have a stated objective to improve infrastructure? Are there agreements in place? |
| | D1.8 Available connection speeds within the country | ITU stats Speedtest.net (test your connection speed) | |
| | D1.9 Most commonly used /available connection speed | | |
| | D1.10 Geographical spread of connection speed | | Are remote areas connected? What is the speed of this connection? Does it vary from urban connection speed? |
| D2. Mobile | D2.1 Mobile users per 1000 habitants | ITU stats | |
| | D2.2 Number of mobile cellular subscribers per 1000 habitants | | |
| | D2.3 Mobile Internet subscribers per 1000 inhabitants | | How are users accessing the Internet? By phone or with a computer? |
| | D2.4 Area of the country with mobile coverage | | |
| D3. State of ICT | D3.1 Availability of IT skills | Local Stats | To identify, if existent, shortage in IT skills needed to run the initiative, develop products, define need for |

D. TECHNICAL

| General Area | Types of Information | Source of Verification | Further Information |
|---|--|------------------------|---|
| | | | engaging in networks etc. |
| | D3.2 Cost of Technology | | To identify, if existent, barriers to use of latest technology – Data on this indicator will no doubt vary from one country to the next. In one country, clear statistics might exist on the cost of technology. If not, the researcher is invited to look into other possible indicators, such as the cost of a particular piece of technology in comparison to that same technology in neighbouring countries |
| | D3.3 Scope of presence and use of ICT in government | National Documentation | Are law and policy producing bodies actively using ICTs to do their work? |
| D3.4 Scope of presence and use of ICT in the judiciary | Information on the implementation of ICT projects in the judicial branch; state of digitization, etc. i.e. Are courts actively using ICT? In what respect do they use ICT? | | |

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