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The Right of Access to Public Information: Human Rights Issues, Transparency and Good Governance

Didier Yangonzela Liambomba[1]

[1]*Catholic University of Congo, Democratic Republic of Congo*
E-mail: liambomba66@hotmail.fr

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Abstract

The right of access to information is based on both Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which guarantee everyone the right and freedom "to seek, receive and impart information and ideas" by any means of their choice. Article 24 of the Constitution of the Democratic Republic of Congo (DRC) guarantees the right to information in the following terms: "everyone has the right to information". The effective manifestation of this right to information remains closely linked to the exercise of freedom of expression and opinion on any subject of public interest and its inevitable corollary, freedom of information. The effectiveness of the right to information also depends on citizens' participation in the nation's public life. A population well-informed by its government can fight against fake news and the spread of false rumors while promoting the fight against corruption and good governance. Accessing public information is one of the most important conditions for assessing the democratic management and openness of society to citizen participation. As an inalienable right, access to information is the foundation of a free, democratic and transparent society. The research was based on the legal approach and the comparative method. The former allowed the subject to be approached by grasping the quintessence of the various existing legal standards. The latter helped to compare the various internal and extra-internal legal instruments based on comparative law, particularly French law. This analysis also used the documentary technique and the free interview in the form of a chat with ordinary

citizens or any other personality (civil society groups, journalists, entrepreneurs, national and local elected representatives, other professional, political and trade union groups, and civil servants).

A. Introduction

Access to information has become the buzzword of the 21*ème* century.[1] Governments and private companies are collecting data in monumental proportions and the information holder has become much more powerful in influencing and determining national interests. Access to information is often associated with good governance and the media is seen as the key to exposing the secrets of governments.[2]

Today, a state and a democratic one cannot establish legitimacy by maintaining ignorance, corrupting laws and disregarding rights. Among these rights, there is in particular the one enshrined in the Universal Declaration of Human Rights (UDHR), Article 19 of which guarantees to all "the right to seek, receive and impart information and ideas through any media". This formula has the merit of embracing such a broad field, that of publicly accessible information, knowledge and ideas. Beyond techniques, the progress of consciousness and law did not fail to bring to the forefront the strategic question of strengthening access to public information.[3]

Article 24 of the Constitution of the Democratic Republic of Congo (DRC) guarantees the right to information in the following terms: "everyone has the right to information".[4] An analysis of this provision reveals two aspects of this right: passive and active. In the passive sense, enshrined in paragraph 2 and relayed by other special texts,[5] this right is analyzed as the guarantee that every citizen has the right to be informed by a free and independent press without any restriction except for the safeguarding of the rights of others and public morality.[6] Passivity means the information is collected, processed and made available by the media outlet following its editorial line. On the other hand, in its active sense, the right to information is understood as the right recognized by every citizen in a democracy to request, on his or her initiative, from the public services or any private individual referred to by law, any data applicable to his or her participation in the management of the State on the one hand and, on the other, to the defense of his or her fundamental rights guaranteed by the Constitution. Only the passive dimension is recognized in the current positive Congolese law. However, countries that have adopted access to information law have often had the desire to combat corruption as their main motivation. Professor Evariste Boshab points out that in the

[1] Terms of reference of the consultation: "Access to information: Human rights issues and instrument of transparency in the management of public affairs". Our thanks to Paul Nkuadio, Head of the Media Regulation Unit at Internews and Henri-Christian Longendja, Executive Secretary of the "Collectif 24", who provided us with the necessary documentation during a conference for the promotion of the right of access to public information, organised by the Human Rights Club of the Master 2 students of the Faculty of Law of the Catholic University of Congo (UCC), on Wednesday 25/08/2021, of which we were a speaker.

[2] African Freedom of Information Centre (AFIC), Centre for Law and Democracy (CLD) and Friedrich-Ebert-Stiftung (FES), *Training Manual on the Right of Access to Information for African Journalists*, (2017): 18.

[3] P. Queau, "Preface", P. Canavaggio, Towards a right of access to public information in Morocco: A comparative study with standards and best practices in the world, UNESCO, (2011), [online], https://bibliopiaf.ebsi.umontreal.ca/bibliographie/D32QXQ3G/download/FC7MS4MT/Canavaggio%20et%20Balafrej%20-%202011%20-%20Vers%20un%20droit%20d_access%20to%20public%20information%20.pdf accessed on 28/01/2022 at 15:45.

[4] *La Constitution de la République démocratique du Congo du 18 février 2006, telle que modifiée par la loi n° 11/002 du 20 janvier 2011, JORDC, n° Spécial, 52ème année, 2011.*

[5] Notably Law No. 96-002 of 22 June 2002 on the exercise of press freedom in the Democratic Republic of Congo, *JORDC*, 42nd year, special issue, 2001.

[6] This is what Steven Golberg ["Citizen Access to Government Records", *Freedom Files*, United States Information Agency, (09/1994): 1], calls "*restrictions on the Government's ability to censor those who wish to make its activities known*".

DRC, "nothing has been done to put in place a legal framework allowing all citizens to access public information and thus to crack the edifice of administrative secrecy behind which the public authorities still hide all sorts of indelicacy".[7]

Thus, at the end of this reflection, the right of access to public information is understood as the right of any natural or legal person to seek, access and receive information from public and private bodies performing a public function and concerns the duty of the State and public institutions to provide this information to citizens.[8] Following Jacques Ndjoli, it constitutes a set of rules, mechanisms and procedures that allow citizens to access information held by public services and certain companies operating in the public domain.[9]

A universal, fundamental and constitutional right, access to public information is seen as the oxygen of democracy. It is inherent to fulfilling economic, social and political rights and helps people make informed decisions about their lives. It is therefore seen as a means of preventing citizens from corruption and mismanagement by providing access to documents and information held by the state (government) and in some cases by non-state entities (private bodies).

Accessing public information is an essential element of good governance and one of the aspects that allow assessing the democratic management and the openness of society to citizen participation. Access to information allows citizens to evaluate the actions of their institutions and governments: it is the basis for an informed debate.[10] In most countries faced with authoritarianism in power and corruption of its political class, citizens demand dignity and social justice from their rulers through principles of transparency, respect for rights and accountability.[11]

We appreciate with Perrine Canavaggio that the technological advances of the last twenty years and the decreased cost of computer equipment have led to an open world where exchanges have become instantaneous. The expansion of the internet and its generalization have increased the demand for information from the public, businesses and non-governmental organizations. Information flows no longer have borders and citizens used to accessing foreign information sources on the web want to get it from their governments. Governments can technically meet this demand thanks to the enormous increase in the capacity to store and disseminate information in digital format. Monopoly and control of information cannot withstand this dynamic. These technological advances have led to changes in individual behavior. The traditional vertical functioning of administrations, based on the monopoly of information by the highest hierarchical levels, has been called into question, as it no longer corresponds to society's expectations.[12] The development of social networks even constitutes, for some observers a fifth power.[13] The phenomenon is likely to become more pronounced

[7] E. Boshab Mabudj-ma-Bilenge, *La contractualisation du droit de la fonction publique: Une étude de droit comparé Belgique-Congo*, Academia-Bruylant, Brussels, (2001): 142.
[8] P. Nkuadio, "Access to Public Information", *MSDA Strategy Note*, (04/2020): 4.
[9] P. Bomboka, *"Jacques Ndjoli : quand il n'y a pas accès à l'information publique, le peuple est dans un régime opaque"*, Zoomeco, 13/10/2020, [online]: https://zoom-eco.net/developpement/jacques-ndjolilorsquil-ny-a-pas-acces-a-linformation-publique-le-peuple-est-dans -un-regime-opaque/, accessed on 25/01/2022 at 20:45.
[10] M. Millward, "Preface", P. Canavaggio (2014), *Towards a right of access to public information: Recent advances in standards and practices*, UNESCO, (2014), [online]. https://unesdoc.unesco.org/ark:/48223/pf0000214658, accessed on 28/01/2022 at 15:45.
[11] The "Arab Spring" protests are prime examples.
[12] P. Canavaggio (2014), *Op. cit.*
[13] After the executive, legislative, judicial and media powers. Th. Crouzet, *Le cinquième pouvoir. Comment internet bouleverse la politique*, Paris: Bourin, (2007): 54.

with the arrival of generations of "digital natives" who have been brought up in a virtual environment and are inclined to mobilize and engage via the Internet.[14]

The outcomes of the Geneva (2003) and Tunis (2005) World Summits on the Information Society reaffirmed universal access to information as one of the essential foundations of inclusive knowledge societies, provided that they are accessible to everyone, to facilitate the full realization of the right to information for all.[15]

On 18 June 2013, the G8 heads of state signed a charter for open public data which establishes a principle of open data by default; by affirming the principle of free reuse and favoring open formats, it encourages access to information for all and promotes innovation.[16]

Yet access to information remains one of the inalienable rights that all people need to know about the governance of their country. Good governance is considered a necessary condition for development policies and the Millennium Declaration, adopted by the UN in 2000, makes it a central element of development and poverty eradication. International conventions recognize its importance as an effective means of combating corruption, a major obstacle to development and has been a priority for international organizations since the mid-1990s.[17]

The African Union, for its part, adopted in 2003 a Convention on Preventing and Combating Corruption which, in its Article 9 on access to information, requires each State Party to adopt "legislative measures to give effect to the right of access to any information that is required to assist in the fight against corruption".

Access to public government information is not a luxury or a privilege reserved for a minority. It is a fundamental right of citizens recognized by international and Congolese domestic law. It allows citizens to know why, by whom, how and when public decisions are taken and implemented at all state levels. It is also through the exercise of this right that citizens can control the actions of the government, elected officials and private companies

[14] Digital Natives and Modern Citizenship, Price waterhouse Coopers, (2009), [online] http://www.pwc.se/sv/publikationer/assets/e-generation_en.pdf Accessed on 03/02/2022 at 7:20 am.

[15] Geneva Declaration of Principles and Plan of Action, Tunis Commitment and Agenda for the Information Society http://www.itu.int/wsis/index-fr.html

[16] G8 Charter for Open Government, 18 June 2013, Unofficial translation prepared by Etalab in collaboration with the Government of Canada online at http://fr.scribd.com/doc/148580461/Charte-du-G8-pour-l-Ouverture-des-Donnees-Publiques-Francais, accessed on 05/02/2022 at 4:50 am.

[17] Article 10 on public information of the UN Convention against Corruption (which entered into force in 2005) obliges countries that have ratified it "to take measures to improve public access to information". Article 13 of the same convention adds: "(a) to enhance transparency of decision-making processes and promote public participation in those processes; (b) to ensure effective public access to information". Read the Convention online at https://www.unodc.org/pdf/corruption/publications_convention-e.pdf accessed on 05/02/2022 at 4:55 am. The Convention not only calls on states to enshrine the right of access to information in response to individual requests, but to do so voluntarily by "adopting procedures or regulations to enable users to obtain, where appropriate, information about the organisation, functioning and decision-making processes of the public administration". This means that the administration will be obliged by the Access to Information Act to communicate on its missions, organisation, strategy and action plans, as well as on its performance and activity indicators. These measures should organise the prevention, detection and punishment of corruption, as well as cooperation between countries in this area. The United Nations Development Programme (UNDP) considers that the right to information is a key weapon in combating poverty and accelerating human and economic development. Its governance and anti-corruption programmes include a component on access to information. The UNDP supports the adoption of legislation in this area and investment in information and communication technologies (ICT). The International Monetary Fund, for its part, encourages its member countries to improve accountability by making government policy more transparent in accordance with internationally recognised standards and codes covering public administration, the financial sector and business (http://www.imf.org/external/np/exr/facts/fre/govf.htm). Transparency International works to uphold and monitor international anti-bribery conventions, including the UN Convention, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (see http://www.oecd.org/document/20/0,3746,fr_2649_34859_2649236_1_1_1_1,00.html) and the Inter-American Convention against Corruption, as well as to promote access to information laws. The organisation uses these laws to obtain documents that enable it to uncover and prevent corruption.

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working in the public domain. The recognition by the state of this right also means that it accepts to be accountable for its actions to the citizens who have the right to hold it to account and judge its policies. This obligation must be enshrined in law. In the DRC, however, the law on access to public information is still in the drawers of parliament. The adoption of this law does not interest Congolese legislators.

If one appreciates these various considerations, one is forced to note the problem of the consultation, namely the search for a balance between the public's right to know in a democracy that is still in its infancy and under construction in the DRC and the legitimate imperatives of transparency and good governance. The search for this balance is all the more necessary now that, throughout the world, it has been observed that, under the pretext of safeguarding security, governments, even those that have passed access to information laws, are unjustly extending the domain of secrecy by enacting restrictive measures against this right in specific laws.

We can thus ask ourselves to what extent the right of access to information, a human right (I), enables citizens to better enjoy their civil and political rights on the one hand and economic, social and cultural rights on the other, insofar as more accessible access to public information enables them to make better choices (since they are better informed)?[18] After an outline of the right of access to public information through the reinforcement of trust between the administration and the citizens, we will question the perfectibility and the insufficiency of this right of access to information as an instrument of transparency and good governance in the face of the challenge of secrecy (II).

The interest or novelty of this research is both scientific and societal. It is scientific because it constitutes a theoretical framework for research in that it presents a series of analyses, suggestions and proposals likely to arouse the curiosity of other researchers in the field of the right of access to public information, which has not yet been explored in the Democratic Republic of Congo. By making this reference document available to the scientific community, the fruit of this work can certainly fill the void that still characterizes this sector and provide researchers in the field of human rights in general and those interested in issues relating to the normative framework of the right of access to information in particular, with the knowledge that can boost the success of the advocacy in favor of the law on access to public information that is still in the drawer of the Office of the National Assembly of the DRC.

The societal interest of this work is justified by the concern that the Democratic Republic of Congo has a stable legal framework for the right of access to information, the necessary reforms of which can only be carried out objectively to meet the imperatives of transparency. The necessary reforms can only take place objectively to meet the requirements of transparency, the fight against corruption and good governance of public affairs based on the principles guaranteeing the rights and freedoms of citizens to access reliable information following Article 19 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and Article 24 of the Congolese Constitution of 18 February 2006 as amended to date. The result of this research can be used by Congolese civil society and certain Congolese parliamentarians who are campaigning through public campaigns, colloquiums (of which we are one of the actors), round tables, etc., for the presentation to the plenary of the National Assembly of the examination of the proposed law on access to public information and its adoption to provide the country with this legal instrument. This law, once adopted and promulgated, is a guarantee of transparency in national economic accounting; it will thus give credibility to, among other things, the

[18] P. Nkuadio, *op. cit.*

democratic practice of awarding public contracts (currently undermined by corruption) by the public or private administration and other territorial entities holding informational data by fighting against the culture of secrecy which does not serve the general interest of the Congolese population.

B. Discussion

1. Right of Access to Public Information: A Fundamental Human Right

Access to information is a universal fundamental human right for all people, enshrined and recognized in the international and regional legal instruments duly ratified by the Democratic Republic of Congo. In a state governed by the rule of law,[19] the state must inform society, as it has the right to be informed about the actions carried out by those responsible for conducting efficient public policy.[20] As already mentioned, this right, at least in one of its aspects, is also guaranteed by the Congolese Constitution and other specific texts.

An informed public has the means to express itself. This expression, which takes many forms, can only reach its destination (the state and society) through the media. It is the role of the media to transmit information to the state about the opinions and reactions of the public to its actions. A democratic state does not censor this role. The state apparatus should not censor information, especially that which exposes mismanagement, proven corruption and abuse of power within the state for the public to denounce. The state's withholding of such information can only reinforce the undemocratic nature of the state and therefore contribute to the weakness of its legitimacy and dysfunctions, thus enhancing dissent. It does not censor the media because it accepts to listen to (radio), watch (television) and read (written and electronic press) all the expressions of the public, including the most radical ones. A state that informs its citizens is a transparent state that is self-correcting and self-regulating. "The State, in all its emanations, and public authorities of all kinds, have a role to play in regulating, protecting and preparing for the future, a role that is essential for a modern and complex society, a role expected by all economic and social agents".[21] A well-informed state acts with full knowledge of the facts and can thus readjust its policies.

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[19] The concept of the "rule of law", which emerged among German jurists, reflects the fact that power in the state is limited because it is subject to legal norms. Thus, both the rulers and the ruled are obliged to respect the rules of law. The rulers are not above the law and cannot subject citizens to their whims or fancies; otherwise, we would be in the opposite situation of a police state. This implies, by way of consequence, that the respect of the law to which all natural and legal persons in the State Are Bound Is Effectively Ensured By Appropriate Mechanisms - Most Often Of A Jurisdictional Nature - Which, If Necessary, will make it possible to sanction offenders. But this first definition is only partial or incomplete. For if we were content with this formulation alone, the concept of the rule of law would be a purely formal or mechanical principle. As Dominique COLAS states [*L'Etat de droit*, Paris: PUF, (1987): VIII], if the rule of law were only a technical device subjecting the law to the Constitution and manifesting the triumph of the principle of the hierarchy of norms, it would have no other virtue than to ensure the intellectual satisfaction of the disciples of Hans Kelsen and would always run the risk of establishing the government of judges. In this scheme, if the limitation of power is partly assured, the protection of citizens is not. Everything depends on the content of the rights they are granted. It is therefore appropriate, following Michel FROMONT ["République fédérale d'Allemagne, l'État de droit", *Revue du droit public*, (1984): 1205 et seq.], to supplement this first approach with a material one: For it is no longer only the forms and procedures relating to State action that are governed by the principle of the rule of law, it is the very content of State action that is limited by the need to protect human dignity, freedom and security.

[20] E. Said, R. Amina, B. Nawal, *Secret d'Etat, Administration et journaliste au Maroc : Le défi du droit à l'information*, Rapport d'enquête, CMF MENA, Casablanca, (05/2007) : 5, [online] . Abhatoo : Secrets d'Etat : Administration et journaliste au Maroc : Le défi du droit à l'information : Rapport d'une enquête, accessed on 04/02/2022.

[21] A. Leyval-Granger, "La communication administrative : entre secret et publicité", *Communication et langages*, 110(1996) : pp.61-73, [online], http://www.persee.fr/doc/colan_0336-1500_1996_num_110_1_2721, accessed on 23/08/2021 at 15h30.

Access to public information is useful for citizens, communities and civil society organizations in their engagement with governments to improve public services and build a culture of transparency and social accountability within states, governments and public institutions.[22] Easier access to public information enables the state to improve public policies for citizens. "If citizens don't have the information, they don't get access to anything. This is how we say that when there is no right of access to information, we are in an opaque, authoritarian regime".[23]

Although Article 24 of the Congolese Constitution enshrines the right to information, it must be noted that the government and the average citizen confuse the right to know with the freedom of the press if it is not ignored altogether. Freedom of access to information and administrative documents is thus general in scope and protean in basis (1), the limits of which, whether relative or absolute, are strictly defined by the law, subject to certain specific communication regimes (2).

a. Freedom of Access to Administrative Information and Documents: A Right of General Application with Multiple Foundations

The draft law on the right to information of the Honourable Moise Nyarugabo is part of a renewed approach to the relationship between the administration and the citizens. Indeed, its purpose is not to allow the search for the responsibility of a public person or a public agent within the meaning of Article 15 of the Declaration of the Rights of Man and the Citizen (DDHC)[24] but to create an opposable right to information, which citizens can invoke before the administration and the administrative judge[25] (a). This right is a "major turning point" in terms of its international, regional and national foundations (b).

1) A Right of General Application

Congolese administrative culture, as elsewhere in Africa, is characterized by the silence of public officials in the name of their obligation of confidentiality, and the principle of secrecy of "papers", endorsed by the constant jurisprudence of the administrative judge, according to which the communication of a document held by the administration was only a right if a text expressly provided for it. This right to information thus breaks with the tradition of administrative secrecy.

They are also sometimes old but limited consultation rights. These derogatory consultation rights are generally limited in terms of their beneficiaries, who must sometimes also prove an interest in acting, and the documents on which they may be exercised.

As the French Council of State states, following several modern democratic systems, communication is now a right and only the legislator can limit its scope; freedom of access to administrative information and documents is indeed one of the "fundamental guarantees granted to citizens for the exercise of public freedoms".[26] It should be noted in this respect that the definition of the scope of the right of access to administrative information and documents is a purely national competence.[27] Moreover, in favor of an extensive conception of the right of access and administrative documents, it should be noted that, whether it is a

[22] *Same as*
[23] P. Bomboka, op. cit.
[24] According to which "Society has the right to hold any public official accountable for his administration".
[25] F. Moderne, "Conception et élaboration de la loi du 17 juillet 1978", in Transparence et secret, Colloque pour le XXVe anniversaire de la loi du 17 juillet 1978 sur l'accès aux documents administratifs, *La documentation française*, (2004).
[26] French Council of State (C.E.fr), 29/04/2002, *M. Gabriel X, Lebon 157*.
[27] The European directives of 2003 and 2008 on the re-use of public information thus expressly refer to national legislation in this area.

question of defining the interest in acting, the documents concerned, or the administrations subject to the obligation to communicate,[28] the scope of the right of access to administrative documents is broad. The applicant must provide information on the document to which he or she is requesting access. The information accessible may be re-used under the conditions laid down in Chapter II of the proposed law on access to information of 2020,[29] with the exception of the information contained in documents produced or received in the exercise of a public service mission of an industrial and commercial nature.

Concerning a broad definition of administrative documents, a document is deemed administrative if it is held by an administration, whether it was produced or received by the administration: it may therefore have been sent to it by a private individual or an enterprise.[30]

Under the terms of Article 2 of the proposed law of 2020, in addition to the State services,[31] local authorities, other persons governed by public law, in particular public establishments, as well as anybody governed by private law carrying out a public service mission are automatically subject to the obligation to provide access, but only in respect of documents relating to the exercise of this mission.

While there are no formal requirements for access requests,[32] their admissibility is subject to the provision of information on the document sought.[33] Since the law does not allow for a response to a request for information or for a document to be drawn up that does not pre-exist the request, the judge will require, when the country has access to information law, that the applicant provide, at the very least, a simple description of the document and indicate the service that might hold it. This then amounts to an obligation to provide details of the document. What is the basis for the right of access to information at the international, regional and national levels?

2) A Multi-Founded Duty

The right to information's effectiveness presupposes the existence of an adequate legal framework and its implementation in daily administrative practice. Hence the imperative of the foundations of this right has been laid down in both conventional (universal and regional) and national texts.

a) The Conventional Foundations of The Right of Access to Information

The UN laid the foundations of the right to information early on. In 1946, during its first session, the United Nations General Assembly adopted Resolution 59, which affirmed that: "Freedom of information is a fundamental right and the cornerstone of all the freedoms to

[28] Art. 3, point 3 of the Proposed Access to Information Act: "*For the purposes of this Act, disclosable information means any information not covered by a seal of confidentiality"*.

[29] Art. 30(1)[er] of the Access to Information Bill: "*Public information can only be re-used if it is contained in a document that is accessible or has been publicly disseminated"*.

[30] Art. 3, point 7 of the proposed Access to Information Act defines it as "*any document, irrespective of its date, place of storage, form and medium, drawn up or held by public authorities and public bodies, other legal persons governed by public law or private individuals referred to in this Act"*.

[31] Due to the separation of powers "acts and documents produced or received by the parliamentary assemblies" are governed by the rules of each assembly.

[32] Article 4, paragraph 1 of the above-mentioned Access to Information Act states: "Without stating reasons, any person has the right to access information free of charge from the holder of the information".

[33] Article 18 of the proposed Access to Information Act already cited provides: "Where a request for information meets the conditions laid down in this Act, the holder of the information concerned shall assist the applicant by providing all the information required for this purpose.

which the United Nations is dedicated. But states have adopted and ratified other legal texts of a universal nature".[34]

As for the African Union, it has also recognized the validity and importance of the right to information in advancing human rights, democracy and good governance on the African continent. However, this progress remains very modest so far.

The African Commission on Human and Peoples' Rights adopted the Declaration of Principles on Freedom of Expression in Africa in October 2002, which clarified the scope and content of Article 9 of the African Charter. However, over the past two decades, significant and relevant issues have emerged but still need to be sufficiently addressed. This has been the case in relation to access to information and the interface between the rights guaranteed by Article 9 and the Internet.

Today Africa has 21 countries that have adopted public information access laws and others that provide constitutional, legislative and/or policy guarantees for public access to information.[35] Several regional legal instruments in Africa relate to the right of access to information.[36] But are constitutional guarantees and other legal instruments for exercising this right in the Democratic Republic of Congo?

b) The National Basis of The Right of Access to Information

Referring to the international texts to which the DRC has ratified and is a party, the Congolese constituent has enshrined the right of access to information as one of the most fundamental freedoms in Title II of the 2006 Constitution. With this in mind, Article 24, paragraph 1 of the Constitution of 18 February 2006, amended and supplemented by Law No. 11/002 of 20 January 2011, provides that 'Everyone has the right to information.

[34]A/Res/59(I), A/229, A/261 of 14 December 1946 on the Convening of an International Conference on Freedom of Information, [online] 1st session (1946-1947) - General Assembly - Shortcuts - Research Guides at United Nations Dag Hammarskjöld Library accessed on 05/09/2021 at 1:34 am) The following other international legal texts are relevant to the right of access to information: Universal Declaration of Human Rights of 1948. This Declaration is now a binding obligation in relation to the right of access to information. Article 19 of the UDHR. This was proclaimed by the United Nations General Assembly in its resolution 217A/III of 10 December 1948 and entered into Congolese legislation with its publication on page 1206 of the Official Bulletin of the DRC. The Preamble to the DRC Constitution of 18 February 2006 reaffirms the adherence and attachment to the UDHR; International Covenant on Civil and Political Rights (ICCPR) of 1966. Adopted and opened for signature, ratification and accession by the UN General Assembly in its resolution 2000 (XXI) of 16 December 1966 and ratified by the DRC on 1 November 1976. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966. Entered into force on 3 January 1976 and ratified by the DRC on 1 November 1976. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others pursuant to Resolution 317 (IV) of 2 December 1949, which entered into force on 25 July 1951. The DRC acceded to it on 31 May 1972. Convention on the Rights of the Child adopted and opened for signature, ratification and accession by the United Nations General Assembly in its resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990 and was ratified by the DRC by Ordinance-Law No 90-048 of 21 August 1990, one month before its entry into force. United Nations Convention against Corruption adopted and opened for signature, ratification and accession by the United Nations General Assembly in its resolution 58/4 of 31 October 2003. The DRC ratified this convention on 3 September 2010 and has thus committed itself to implementing its mandatory provisions, including those contained in its article 10, which relate to the public's right to information. The United Nations Declaration on Human Rights Defenders, the drafting of which began in 1984, was adopted by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the UDHR.

[35] Countries with access to information laws include Angola, Burkina Faso, Ethiopia, Guinea, Côte d'Ivoire, Kenya, Liberia, Malawi, Mozambique, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda and Zimbabwe.

[36] The African Charter on Human and Peoples' Rights ratified by the DRC on 20 July 1987 by Ordinance-Law No. 87-027 of 20 July 1987; the 2002 Declaration of Principles on Freedom of Expression in Africa; the African Charter on Democracy, Elections and Governance. It was adopted by the General Assembly of the African Union on 30 January 2007; African Charter on the Values and Principles of Public Service and Administration; African Convention on Preventing and Combating Corruption was adopted at the second ordinary session of the Assembly of the African Union held in Maputo on 1 July 2003.

Based on Article 18 of the same constitution, the right of access to information in the context of criminal or civil proceedings includes, among other things, the right to be immediately informed of one's rights, to be immediately informed of the reasons for one's arrest and any charges brought against one (...). In the context of this right, Article 20 of the current 2006 Congolese constitution states that 'Hearings of courts and tribunals shall be public unless such publicity is deemed dangerous to public order or morality. In this case, the court shall order the hearing to be held on camera. The principle of publicity is the one that applies to guarantee the right to information.[37]

This study is a succinct and non-exhaustive list of reference texts and international, regional and national mechanisms relating to the right of access to information. These include texts of a universal nature referring to the United Nations, texts of a regional nature exclusively limited to the African Union, and texts of a national nature including the constitution, laws, texts having the force of law and regulatory texts.[38] The aim was not to provide any substantive analysis of the situation of their effective implementation in the DRC. This is beyond the scope of this study.

"The current legal framework on the right of access to public information is marked by a lack of definition of the right and conditions of access to public information: absence of regulatory principles, absence of a definition of the conditions of access to public documents and data, absence of a definition of the processes to access this information. The situation of public archives is also a major obstacle to easier access to public information. Advocacy efforts for a law on access to public information in the Democratic Republic of Congo come mainly from civil society".[39]

There is a need for access to information law to enable citizens to enjoy their citizenship fully and to live in a democracy truly. These organizations are convinced that open government guarantees accountability and good governance for achieving Sustainable Development Goals (SDGs).

The requirement of transparency linked to the right of access to public information improves the quality of administrative procedures and guarantees citizens' rights. Still, it is inseparable from the need to reaffirm the obligation of discretion imposed on public officials and to protect certain information to ensure public action's effectiveness.

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[37] The following Congolese legal texts relating to the judicial sphere provide for the right of access to information relating to the preparatory, pre-judicial and judicial investigation and even to the archives of decisions rendered by the justice system: Ordonnance-loi n°79-028 du 28 septembre 1979 portant organisation du barreau, du corps des défenseurs judiciaires et du corps des mandataires de l'Etat; Le Décret du 30 juillet 1988 relatif aux contrats ou des obligations conventionnelles; Ordonnance-loi n°86-033 du 5 avril 1986 portant protection des droits d'auteurs et des droits voisins; Arrêté d'organisation judiciaire n°299/79 du 20 août 1979 portant règlement intérieur des cours, tribunaux et parquets.

[38] In addition to the Constitution, the supreme norm in Congolese law, other national instruments contain several provisions relating to the right of access to information. These include The Family Code, instituted by law n°87-010 of 1 August 1987 and amended by law n°16/008 of 15 July 2016 in its articles 91 and 99; The Congolese Civil Code Book II instituted by law n°73-021 of 20 July 1973 on the general regime of, land and property regime and the regime of securities; Congolese business law (OHADA); Law 87-005 establishing the composition, organisation and operation of the Court of Auditors; Ordinance-Law No. 78-013 of 11 July 1978 on the general regime for archives; Ordinance-Law n°89-010 of 18 January 1989 establishing the national library; Law n°11/009 July 2011 on fundamental principles relating to environmental protection; Decree-Law n°003-2003 of 11 January 2003 establishing and organising the National Intelligence Agency (ANR); Organic Law n°16-001 establishing the organisation and functioning of the public services of the central government, the provinces and decentralised territorial entities, *JORDC*, n°11, col. 11, 01/06/2016; Decree-Law n°017/2002 of 03 October 2002 on the code of conduct for public officials; Law n°18/001 amending and supplementing Law n° 007/2002 of 11 July 2002 on the Mining Code, col. 1, *JORDC*, n° special, 59ème year, 28/03/2018; Law n° 11/011 of 13 July 2011 on public finance, *JORDC*, n° special, 25/07/2011; Law n°10/010 of 27 April 2010 on public procurement.

[39] P. Nkuadio, supra note 14, at 11.

b. From The Obligations of The Administration Seized to The Exceptions Limited by The Law

The general right of access to public information and administrative documents is subject to obligations on the part of the administration concerned (a) and exceptions resulting either from the law itself, directly or by reference, or from autonomous communication regimes. Depending on the case, these limits are of a material, personal or temporal nature (b).

1) The Obligations of The Administration Seized

The administration to which a request for access to public information or administrative documents is submitted must, in principle, take a certain number of steps, even when it does not hold the document whose communication is requested. The DRC needs to be made aware of this diligence because of the perverse practices that undermine the Congolese administration.

a) On The Communication by The Detaining Administration

As soon as it holds the information or document to which the request for disclosure relates and when it is completed, the administration seized is required to disclose it to the applicant, even if it is not the producer. Such a request in the DRC is, in most cases, utopian. Documents that are "publicly available", i.e., published or easily accessible on a public website, are not covered by the right of access. However, the public website is often very poor in information.

b) For The Transmission of Misdirected Requests

When it does not hold the information or document requested, the administration to which the request is addressed must forward the request to the administration holding it and notify the person concerned. That is the ideal. However, it is not obliged to research to identify competent administration. This is what characterizes the Congolese administration more.

c) A Deadline for Communication

The communication must be made within eight days from the date of the request.[40] If the administration remains silent after the deadline, this constitutes a refusal and gives the right to lodge an informal appeal or to bring the matter before the courts.[41] Reasons must be given for any express refusal. However, the proposed law on access to information is still waiting to be examined and adopted by the Congolese parliament before being promulgated by the head of state. Until then, no one understands why this process, which has been at a standstill since 2017, is blocked.

d) Access Arrangements Chosen by The Applicant

Access shall be provided, at the applicant's choice, either by free consultation on the spot or by the issue of a paper copy or on an electronic medium, including in the form of a file or extraction from a database.[42] Likewise, transmission is ensured by post or electronic means, depending on the applicant's wishes. Costs corresponding to the cost of reproduction and, where applicable, dispatch may be charged to the applicant according to the tariff previously decided by the administration. We support these arrangements, but they come up against

[40] Article 20 of the proposed Access to Information Act already cited.
[41] Article 26 of the proposed Access to Information Act already cited.
[42] Art 14 of the proposed Access to Information Act already mentioned.

Congolese realities. The territory is vast and not entirely covered by the Internet. The post office does not serve the whole territory either. What can be done for the citizen living in this territory?

2) Exceptions Limited by Law

In addition to several documents listed exhaustively which may not be disclosed, the fact that the disclosure of certain information is likely to affect secrets or interests protected by law means that it must be concealed. In contrast, the personal nature of other information restricts access to those concerned. Of course, these exceptions can only be invoked to the extent necessary to ensure the protection of the interests they protect. Disclosure of the documents is, therefore, merely delayed and becomes possible after the deadlines set for access to archives.

a) The Exception of Secrets and Interests Protected by Law

Article 5 of the proposed law on access to information excludes from the right of access administrative documents whose communication or consultation would infringe the secrets or interests it lists, as well as "other secrets protected by law", of which there is no exhaustive list. This expressly mentions secrets protecting the activity of the State:

1) the secrecy of the deliberations of the Government and the responsible authorities of the executive branch;
2) the secrecy of national defense;[43]
3) the conduct of the DRC's foreign policy;
4) state security, public safety and personal security;
5) the conduct of court proceedings or operations preliminary to such proceedings.

b) Access to Personal Data is Restricted to The Persons Concerned

Article 5 (4) of the draft law on access to information reserves to the person concerned the right to communicate "information containing his or her personal data, the disclosure of which would constitute an unjustified intrusion into the private life of a third party concerned". These data are those :

[43] Articles 149 to 151 of Law No. 023/2002 of 18 November 2002, as amended and supplemented to date, on the code judiciaire militaire [JORDC, no. special, 20/03/2003], constitute the basis of the matter. It should be noted that here the legislator has, prior to determining the repressive regime, defined in Article 149 what is meant by a defence secret. Indeed, it provides that, within the meaning of the law, "information, processes, objects, documents, computerised data or files of interest to national defence which have been the subject of protective measures intended to restrict their dissemination" are classified as national defence secrets. Such measures may be applied to "information, processes, objects, documents, computerised data or files classified by the Minister of Defence or the Supreme Commander and whose disclosure is likely to harm national defence or lead to the discovery of a defence secret". On the basis of this definition, the code pénal militaire provides that 'those who are guilty of disclosing, disseminating, publishing or reproducing the information referred to in Article 149, or those who provide the means to do so, shall be punished by twenty years' penal servitude, without prejudice to the heavier penalties that they may incur under other legal provisions'. In times of war or in a region where a state of siege or emergency has been declared or during a police operation to maintain or restore public order, the guilty parties are punished by death. In Article 151, the aforementioned code punishes with five to twenty years of penal servitude, anyone who is given any document or writing which, by its nature, is secret. An examination of these provisions shows that they are drafted in very general terms and, as mentioned above, cannot, in view of the Congolese socio-political context, encourage any openness on the part of any applicant requesting information or data relating to the organisation, functioning and management of the public services of national security and defence. It should also be noted that in the absence, to our knowledge, of a regulatory act listing the data classified in accordance with Article 149 of the Military Penal Code, the very general definition of the concept of 'national defence secret' without any indication of the objective criteria of distinction cannot be of any help. See also J.B Otshudi Disashi Kalonda, 'Le droit d'accès à l'information publique et restrictions liées aux impératifs de sécurité et de défense nationales: état de la question en République Démocratique du Congo', (2012) [online]. <https://www.right2info.org/resources/publications/pretoriafinalization-meeting-april-2013-documents/national-security-and-rti-in-the-drc, accessed 09/09/2021 at 23:45.

1) of his private life;
2) covered by medical confidentiality;
3) making a judgment or assessment about him/her;
4) revealing his behavior where disclosure of that behavior could be prejudicial to him.

Information concerning legal persons may also be communicated only to those concerned because of commercial and industrial secrecy. This secrecy covers processes, economic and financial information and commercial strategies.

c) Deferred Communication of Archives and Preparatory Acts

Exceptions to the right of access are not definitive and only have the effect of delaying the availability of documents for a period of time which varies according to the sensitivity of the protected information.

Preparatory documents may be disclosed once the decision has been taken. In principle, preparatory acts can only be disclosed once the decision they prepare has been taken. However, specific texts provide for the disclosure of documents prior to the administration's decision when the latter is taken after consultation or prior inquiry procedure. This is particularly the case for urban planning documents or inquiries into classified installations for environmental protection.

d) Deferred Communication of Archives and Preparatory Acts

Public archives: time limits taking into account the sensitivity of the information. Article 25 of law no. 78-013 of 11 July 1978 on the general regime for archives provides for deadlines of 50 years, after which archives must be made available. Authorization for early consultation may be granted before the expiry of the legal time limits, either on an individual basis, "insofar as the interest in consulting these documents does not lead to excessive harm to the interests that the law is intended to protect" and after agreement from the authority from which the documents originate, or when the archive administration decides to open the documents early.[44]

Access to public information is useful for citizens, communities and civil society organizations in their engagement with governments to improve public services and build a culture of transparency and social accountability within states. In short a tool for good governance.

2. The Right of Access to Public Information: A Tool for Transparency and Good Governance

This second section examines the principles and practices of open government that relate to the scope of public administration and the framework of the right of access to information. These principles and practices are essential for assigning responsibility for the design and implementation of public policy. The designation of all entities that provide a public good or service allows members of the public to understand the true scope of government action (1). A legal and administrative framework that clearly defines the roles and responsibilities of the public administration in the collection and use of public resources is conducive to accountability and good governance (2).

[44] Art. 27 of law n° 78-013 of 11 July 1978 on the general regime of archives states: "The national archives may, on the favourable opinion of the minister having culture and the arts in his or her attributions, authorise the communication for scientific purposes of certain archives even before the expiry of the communication period referred to in articles 25 and 26".

a. Right of Access to Public Information: Transparency Instrument for Major Progress

The public administration sector should be separate from the rest of the public sector and the rest of the economy. The division of responsibilities within the public sector for decision-making and management should be clear and made public.

The public sector comprises the general government sector plus public corporations.[45] The separation of government functions from commercial and monetary activities makes it possible to clearly identify responsibilities in the conduct of these strong but different operations and facilitates the assessment of the macroeconomic effects of public finance activities. From this perspective, transparency contributes to the reform of the State. Its fundamental characteristic is to oppose secrecy in favor of a state closer to its citizens (a). The right of access to information, as opposed to secrecy and opacity, is characterized by a right of access to administrative documents, a right of access to information concerning the person to whom the information relates and a right of appeal in the event of a refusal. The rights recognized can be summarised as simply as that. However, the task becomes more perilous if one has to list the restrictions that allow the authority to withhold parts of documents in some instances, that sometimes oblige it to do so (b), and to which it may even refuse access altogether.

1) From Secrecy to Transparency: For A Congolese State Closer to Its Citizens Through The Right of Access to Information [46]

Secrecy is a multifaceted concept that refers to opacity. A distinction is made between that which cannot be spoken of in any way, the mystery that can be spoken of under certain conditions, the secret, and that whose content can only be revealed after the fact, the machination. The secret is not an object as such, it is what covers the object, what makes it inaccessible to knowledge: the secret is not the object, it is the mystery of the object.[47]

Secrecy is necessary knowledge for action and the condition for the success of that action. Secrecy is deeply linked to the reason of the State. It is a technique, an art of governing. Secrecy enables politics to be associated with the exercise and maintenance of dominance.[48]

Machiavelli is often regarded as the theorist of secrecy. However, in his famous work The Prince, the term “secret” is only applied once, as an adjective, to the prince's person: “an emperor is a secret man, he does not communicate his designs”. For Machiavelli, secrecy is therefore, a way of acting to control Fortuna. The prince must play with circumstances and the dichotomy between being and appearing. He must concentrate on “simulating and concealing”, an art of “coloring his nature well”.[49]

Long before Machiavelli, Plato also spoke of secrecy, which in his case, takes the form of a lie. In his work The Republic, he states that “lies are useful to men, (...) to the profane. It is therefore for the rulers of the state to deceive enemies and citizens in the interests of the state, and no one else should touch it”.[50]

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[45] The terms and concepts defined here are based on the definitions provided in Chapter II of the IMF's GovernmentFinance Statistics Manual 2001 (GFSM 2001), online at http:// www.imf.org/external/pubs/ft/gfs/manual/index.htm

[46] Inspired by Stéphane Fillion [Du secret à la transparence : Pour un Etat plus proche des citoyens, Master's thesis, Institut d'études Politiques de Lyon, (2007)].

[47] M.A Frison-Roche , *Secret et profession*, Paris : Autrement-Essais, (1999) :5, quoted by S. Fillion, *Op. cit*. p.4.

[48] *Idem*.

[49] Machiavel, *The Prince*, Chap XXIII.

[50] Plato, *The Republic*, Book II, 382a, 382b

The historical evolution of relations between the state and the citizen is marked by the passage from the secrecy rule to the secrecy exception. The DRC, following France, is also a country of secrecy. State Councillor Louis Fougère explained that the administration opposed "a double legal barrier to any request for information: the silence of its agents and the secrets of its papers".

Indeed, since the time of Belgian colonization up to the present day, through the period of the strong regime of Marechal Mobutu, the Congolese public administration has been steeped in a culture of secrecy. The career staff of the public services,[51] wrongly basing themselves on the observance of the duty of reserve and the prescription prohibiting them from disclosing professional secrecy, are reluctant to make available to the citizen who requests any information relating to the organization and functioning of the public service.

However, when a request of this kind is made, any civil servant who wishes to protect himself against the sanctions referred to above,[52] requires the applicant to produce the "authorization to obtain a copy of the documents",[53] issued by the public prosecutor at the local court of appeal. Although this is a provision that allows the official to disclose certain information, it is nevertheless indicative of the very restrictive state of Congolese law on access to information.

This is certainly an abusive interpretation of article 157 of the Decree of judicial organization n°299/79 of 20/8/1979 on the internal regulations of the courts, tribunals and public prosecutor's offices, which states that: "The Public Prosecutor at the Court of Appeal has sole custody and disposal of the penal and disciplinary files in progress or closed. He alone shall determine the appropriateness of communicating the documents in a criminal or disciplinary file in return for payment of the costs determined for this purpose".

It is agreed, says Jean-Baptiste Otshudi Disashi, that with such a discretionary power of appreciation, the Public Prosecutor is free to grant or not his authorization to remove the documents requested by the citizen.[54]

Furthermore, the administration requires students and researchers to produce a certificate duly issued by the teaching or research institution before providing data or other information required for their scientific or research work.

Beyond these cases and many others provided for in the specific texts recognizing the right to disclose public information,[55] we agree with Professor Evariste BOSHAB that the Congolese administration has a strong culture of secrecy and consequently does not easily disclose information on its organization and management.[56]

In the DRC, secrecy has thus been a fundamental principle for many years, guiding the organization and functioning of the administration. The DRC, like France, is "the country of secrecy" par excellence. Such a conception governs relations between the state and its citizens and explains, in particular, the incommunicability of documents. There is talk of official secrecy, feeding suspicions of arbitrariness and corruption. Decisions are imposed and not

[51] Term used in Congolese law to designate a state civil servant. This is law n°81-003 of 17 July 1981 on the status of career staff in the public services of the State, *JOZ*, n°15, 01/08/1981, p. 11.
[52] See footnote 10 of this study.
[53] Th. Tshidibi Biduaya, *Opinions and considerations on the right of access to information in the Democratic Republic of Congo*, Cape Town: Open Democracy Advice Centre, (2014): 21 et seq.
[54] However, the obligation to give reasons for decisions enshrined in the constitutions and rigorously applied by the administrative courts has rightly led Professor Evariste Boshab [*Op.cit.*, p.143] to wonder whether this discretionary power has been reduced to a mere pittance?
[55] See the discussion of this study on the national basis for the right of access to information above.
[56] E. Boshab Mabunj ma Bileng, *op. cit.* p.143.

explained. This rule of secrecy is linked to the strong obligation of secrecy imposed on civil servants.

Secrecy thus applies to the entire administration. This is common law. In the absence of a text to the contrary, the administration does not, in principle, have an obligation to publicize and is not obliged to give reasons for its decisions, even unfavorable administrative acts. The excessive centralization of the State also favors the persistence of administrative secrecy. This has been the "hallmark" of public service. It is a tradition deeply rooted in the Congolese mentality, with the state giving the image of being resolutely closed to others. As no text imposes transparency, it does not feel it has to communicate or give reasons. The position in relation to the constituent reinforces this observation. The relationship is unequal and marked by the unilateralism of the administration which, through the prerogatives of public power, has means that are unreasonable to common law, allowing it to make the general interest prevail over particular interests.[57]

Following Stéphane Fillion, it is logical to state that the process of building a State governed by the rule of law is manifested in particular by the progressive affirmation of the rule of transparency, which refers to democracy itself because of the fight against arbitrariness that such transparency implies.[58] Jean Jacques Rousseau did not fail to declare that transparency constitutes "a virtue of the soul".

The increasing complexity of our societies only reinforces the need to bring the State closer to the citizen. This brings good governance and its principles-transparency, accountability, fairness, equity, efficiency and respect for the rule of law-closer.

A few years ago, the French Council of State described transparency and secrecy as two sides of the same "fundamental ethical dilemma". Today, it is transparency that seems to prevail over secrecy as our society evolves and as legislative and administrative reforms have made it a fundamental principle of public action.

The fundamental right of citizens is freedom of access to administrative documents. The public has a right to know. The administration has a duty to inform them. In particular, transparency encourages discussion, criticism and therefore control by citizens, in accordance with the requirements of Article 15 of the DDHC, according to which "Society has the right to demand an account from any public official of its administration". The procedures for public association or participation and collecting external opinions will likely enrich the administration's reflection and the quality of its decisions.

Indeed, citizens, better educated, wishing to participate more in public decision-making and the functioning of public authorities, but also increasingly suspicious, even suspicious, of representatives of all kinds and persons exercising public functions, no longer tolerate opacity and secrecy, which they perceive as the survival either of administrative authoritarianism or, more simply, of a regime that is certainly democratic and representative, but too distant from society. Transparency is perceived as the condition for the participation of citizens in the development and control of public action. It is shrouded in an aura of modernity, respectability, and even morality and tends to be imposed as an unavoidable obligation of the administration.

The requirement for transparency has certainly contributed to improving the quality of administrative procedures and the guarantee of citizens' rights. Still, it is inseparable from the need to reaffirm the obligation of discretion imposed on public officials and to protect certain information to ensure public action's effectiveness. We must, therefore, rethink the

[57] S. Fillion, *Op.cit*, p. 8.
[58] *Idem*.

reconciliation between the requirements of transparency and secrecy that weigh on the administration.

2) The State's Compliance with its Transparency Obligations: Taking into Account The Respect of Other Legitimate Interests

The first of these interests is to preserve the efficiency and fluidity of public action. Excessive transparency would likely inhibit public decision-makers from being constantly disturbed by untimely interventions contrary to the general interest. The obligations of secrecy and professional discretion which are imposed on public officials are therefore justified in that they allow the administration to act autonomously, at a distance from the multiple and contradictory external pressures which can have a disruptive influence on public action.

Premature or uncontrolled transparency can also, in certain cases, lead to half measures or excessive caution, where determined and energetic choices would be necessary. It exposes the risk of the appearance of "double-bottomed suitcases (or reports and notes)" or even of the emergence of double circuits with, on the one hand, official documents that are smooth because they have been purged of their sensitive content and their most innovative or decisive proposals, and, on the other, truthful documents that remain confidential. This fear is certainly overestimated in the case of procedures provided by law, such as public inquiries, which provide a consultation and participation process strictly regulated in terms of its timeframe and content. It is much less so in the case of requests for opinions that do not follow any particular formalism, or reports commissioned, for example, from the inspection services of ministries.

More broadly, there is a risk that too much transparency will create blockages that confidentiality could have prevented and undermine the decision-making process's openness, clarity, efficiency, and speed. This fully justifies the confidentiality that attaches to government deliberations[59] or to preparatory or unfinished work,[60] which is removed from the *a priori* knowledge or curiosity of the public or of groups wishing to use it to put pressure on decision-makers.[61] By revealing the outlines, "pre-drafts", hesitations, iterations or reversals that led to a decision, transparency can also undermine the credibility or legitimacy of that decision and create a form of mistrust or reluctance to implement it.[62]

Secrecy is also necessary for the protection of other legitimate and even fundamental interests: those of the nation, defense, security, the economy, as well as those of privacy. In a world hit by the "Wikileaks syndrome",[63] where everyone would like to know everything

[59] Article 6 of Law No. 78-753 of 17 July 1978 on various measures to improve relations between the administration and the public and various administrative, social and fiscal provisions.

[60] C.E[fr], 11/02/1983, *Ministre de l'Urbanisme v. Atelier libre d'urbanisme de la région lyonnaise*, Rec. 56, confirmed by C.E[fr], 23/12/1988, *Banque de France v. Huberschwiller*, Rec. 464.

[61] Etudes et documents du Conseil d'Etat français, *Rapport public 1995*, La Documentation française, n° 47, p. 68.

[62] A. Vidal-Naquet, "La transparence", J-B. Aubry (dir.), *L'influence du droit européen sur les catégories de droit public*, Paris: Dalloz, (2010): 643.

[63] Christophe Premat ["The Wikileaks effect", online : http://sens-public.org/articles/848/ accessed on 14/09/2021 at 12:09 pm] considers that a few months after the waves caused by the *Wikileaks* revelations, it is appropriate to question the consequences of the information delivered by this organisation. Beyond the twists and turns of the Julian Assange soap opera and the speculations worthy of the most elaborate spy novels, the *Wikileaks* effect should be analysed in principle. *Wikileaks was* set up as a genuine network of anonymous information with moles present in the various administrations of a number of states. This network collected this data (mainly administrative reports intended to remain secret) and made it available to public opinion. The aim was certainly to propose a certain global *glasnost* and to reveal hidden and unacknowledged aspects of international relations. The *Wikileaks* affair reactivates this myth of transparency with the idea of a truth reconstructed by collected information while the methodology related to the elaboration of these secret reports is never questioned. Finally, the *Wikileaks* information seems to us to have benefited journalists in need of information rather than any in-depth work on the alleged allegations.

about the workings of public action, we must certainly guard against an angelic vision of public power, but even more so against certain private interests that advocate transparency for purposes that are in no way disinterested, nor in line with essential public interests. The public interest requires that certain information be kept confidential to preserve the nation's fundamental interests and protect the community's future. We do not live in an irenic world, so transparency cannot be total.[64]

Indeed, information relating to the army and the security services has always been considered as not being able to be disclosed to the public to avoid undermining the fundamental interests of national defense. And the particular context of the present period, when the Democratic Republic of Congo is facing war in its eastern part, is not conducive to the disclosure of information related to the organization and functioning of the public services in charge of security and national defense.[65]

This is the meaning of the exceptions on the communication of administrative documents, which exclude, in particular, the communication of documents relating to national defense, the conduct of the DRC's foreign policy, state security, public safety or personal safety. This also justifies the need to establish a status for "whistleblowers". They must certainly be protected, in that they reveal sensitive information of general interest. But this disclosure, for example, in the press, must be part of a graduated response,[66] fully in line with the case law of the European Court of Human Rights.[67] It should be added that the principle of the separation of powers seems to be opposed to excessive transparency of the internal workings of administrations *vis-à-vis legislative* and/or deliberative political assemblies and their committees.[68]

The rise of the digital society also raises new concerns about using the Internet and disseminating data. The multiplication of sources creates an abundance of searchable documents, which undermines the quality of the information itself. This trend is accentuated by *Open Data*, which aims not only at the general dissemination of certain information by the administration but also at its free re-use by all interested in it.[69] In such a context, the "counter-powers" - citizens, associations, or the press - find it difficult to target the relevant documents, which can scatter them or lead them astray and complicate their understanding and even their control.

Similarly, under the *Google Spain* case law of the Court of Justice of the European Union,[70] a person targeted by information disseminated on the Internet may, in certain circumstances, request its removal. However, this limit to digital transparency must be

[64] Etudes et documents du Conseil d'Etat, *Rapport public 1995*, La Documentation française, (47): 67.

[65] Our research is severely hampered by this situation of armed conflict in the east of the country. The people contacted in the public services of the Defence and Security sector are not very willing to share useful information with us.

[66] This graduated response corresponds to what the French Council of State recommended in its study entitled "*Le droit d'alerte: signaler, traiter, protéger*".

[67] The European Court of Human Rights imposes on whistleblowers an obligation of responsibility and restraint. It thus holds that while whistleblowers must be able to benefit from the protection of their freedom of expression in order to bring to the attention of the public facts which they consider to be of interest to the public and to denounce certain reprehensible conduct, they are required to act "with the necessary vigilance and moderation" by avoiding, for example, publishing the names of third parties, using expressions which are likely to cause confusion (ECHR, No. 20240/08, 02/02/2012, *Růžový Panter o.s. v/. Czech Republic*, §§. 32-35) or to publish in the press information protected by secrecy when other effective means were available to remedy the objectionable situation (ECHR, G.C., no. 14277/04, 12/02/2008, *Guja v. Moldova*, §. 73).

[68] See CC, No. 2012-654 DC, 09/08/2012, *Loi de finances rectificative pour 2012 (II)*, § 82, regarding the modification, by law, of the remuneration of the President of the Republic and the Prime Minister, and the opinion of the Council of State on the draft law for confidence in public action (No. 393324, 12/06/2017), regarding the rules imposed on members of the Government in the composition of their cabinets.

[69] Art. 11 of Law No. 2016-1321 of 7 October 2016 for a Digital Republic.

[70] CJEU, GC, No. C-131/12, 13/05/2014, *Google Spain SL, Google Inc. v. Agencia Española de protección de datos (AEPD), Mr Costeja Gonzalez.*

combined with the freedom of expression. The French Conseil d'Etat has therefore referred eight questions to the Court of Justice for a preliminary ruling to clarify this case law: should the right to protection of privacy result in a ban on all processing of sensitive data, or should this processing be linked to freedom of expression, to which search engines contribute, by strictly regulating dereferencing obligations?

While the progress made in the area of transparency should not be called into question, the administration's compliance with its legal obligations in this area must be reconciled with the satisfaction of other interests that also contribute to the general interest and require a certain amount of secrecy.

Like any excess, abuse of transparency will likely harm the interests it intends to promote. Rather than being an absolute objective, transparency should remain an instrument for the public good. The main negative consequence of transparency taken to extremes would be to increase further citizens' distrust of the administration and its agents and managers. Transparency without trust degenerates into suspicion, which the communication of information will never be able to decrease and will feed on the gaps of secrecy left in the shadows by the regulations in force.

b. Right of Access to Information and The Requirement of Good Governance

In realizing the right to information, it is assumed that human rights are important in promoting transparency and accountability. Establishing an impartial state will involve a significant and long-term change in the order of things.

However, the DRC seems to have taken measures for the situation for a long time. The right to information should serve as a brake on government excesses and promote better service delivery. The right to information affects all sectors of public governance and this right is guided by certain principles (a) that are enshrined in several international, African and national instruments.

Good governance and its requirements-good policies, a regulatory framework that provides an enabling environment for growth, and the provision of efficient public services - contribute to poverty reduction but seem to be a white elephant in Congo (b). This approach to development, which places the quality of institutions at the center of policies, is now dominant.[71]

1) International Principles on Which Right-to-Information Laws should be Based

Human rights principles set out a set of values to guide the actions of governments and other political and social actors. They also provide a set of standards against which the accountability of these actors can be challenged. Good governance and the right of access to information as human rights are complementary.

These principles also inform the nature of good governance efforts: they can inform the development of legislative frameworks, policies, programs, budget allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. Implementing the right of access to information as a human right requires an enabling and supportive framework, including appropriate legal frameworks and institutions, as well as the political and administrative processes necessary to meet the rights and needs of the people.

[71] P. Jacquemot, "La résistance à la 'bonne gouvernance' dans un Etat africain: Réflexion autour du cas congolais (RDC)" *Revue Tiers Monde*, 204 (2010/4): 129-146.

This analysis defines good governance as the exercise of authority through political and institutional processes that are transparent and accountable and encourage public participation. When referring to human rights refers to the standards set out in the UDHR and developed in several international conventions that define the minimum standards necessary to ensure human dignity.

The ability of everyone to access and contribute to the information, ideas and knowledge is essential in an inclusive information society. The basic principles of access to such information can be an important valve for good governance.

These principles include:

a) Maximum Disclosure and The Obligation to Publish

Right-to-information laws should be guided by the principle of maximum disclosure and restrictions should only be applied in very limited circumstances; public bodies should be broadly defined. This principle, on the one hand, prescribes minimum standards for maintaining and preserving records by public bodies and on the other hand, recommends the criminalization of the wilful destruction of records. Public bodies should have an obligation to publish key information.

b) Promoting Transparent Government and Limited Scope for Exceptions

Public bodies must actively promote open governance, promote public education, and fight the secrecy culture. Exceptions must be clear, precisely worded and subject to strict harm and public interest tests. Exceptions must meet the following three-part test: the information must relate to a legitimate purpose set out in the law, the disclosure of the information must threaten to cause substantial harm to that purpose, and finally, the harm to the purpose must outweigh the public interest in disclosure. Refusals of requests for information must meet a substantial harm test, and the public interest override should be justified, even if it can be shown that disclosure of the information would cause substantial harm to a legitimate objective if the benefits of disclosure outweigh the harm.

c) The Process for Facilitating Access to Information, Fees and Open Meetings

Requests for information should be dealt with promptly and fairly. Refusals of access should be subject to independent review at three levels: within the public body, appeals to an independent administrative body and appeals to a court. Individuals should not be discouraged from requesting information because of high costs. Meetings of public bodies should be open to the public.

d) The Primacy of Disclosure and Whistleblower Protection

Laws incompatible with the principle of full disclosure must be amended or repealed. Those who make information about wrongdoing public - whistleblowers - should be protected. Analysis of these principles leads to identifying some advantages of the right of access to information.

Thus, as human rights, the right to information must be respected and promoted in its own right. Furthermore, experience allows us to identify seven key benefits that flow from a robust Right to Information:

a) Fighting Corruption

The right to information is essential in combating corruption and wrongdoing in government. This should be of particular importance to honest civil servants who do not wish to be reputed for the bad behavior of their colleagues.

b) Democracy and Participation

Information is essential to democracy on several levels. Fundamentally, democracy is the ability of people to participate effectively in the decision-making process that affects them. Democratic societies have various participatory mechanisms, ranging from regular elections to citizen oversight bodies, such as public education and health services, to mechanisms for commenting on draft policies or laws.

Effective participation at all these levels depends, quite obviously, on access to information. Voting is not just a technical function. For elections to fulfill their role - according to international law, to ensure that the will of the people shall be the basis of the authority of government - the electorate must have access to information. The same applies to participation at all levels. It is only possible, for example, to contribute effectively to a policy-making process with access to the policy itself and to the basic information on which decision-makers have based their policy-making.

c) Accountability

Democracy is also about accountability and good governance. The public has the right to scrutinize the actions of its leaders and to participate in open debates about those actions. They must be able to assess government performance, which depends on access to information about the state of the economy, social systems and other matters of public interest. One of the most effective ways to address governance issues, especially over time, is through open and informed debate.

d) Dignity and Personal Goals

Commentators often focus on the more political aspects of the right to information, but it also serves other important social purposes. For example, the right to access one's personal information is an aspect of basic human dignity, but it can also be essential for effective personal decision-making. Access to medical records, often denied in the absence of a legal right, can help individuals make decisions about treatment, financial planning, etc.

e) Economic Development

One aspect of the right to information that is often overlooked is the use of this right to facilitate effective business practices. Commercial users are one of the most important user groups in many countries.

Public authorities hold a large amount of information of all kinds, much of which relates to economic issues that can be very useful to businesses. This is an important benefit of the Right to Information Act, which helps to address the concerns of some governments about the cost of implementing the Act.

Transparency also ensures that tenders and other public spending procedures are fair. Companies that are unsuccessful in bidding can request information on why they were unsuccessful. This ensures that tenders are fair and helps companies be better prepared for future tenders.

The World Bank, for example, now requires all successful bidders to publish key bid information on their websites, such as the points awarded to the winning bid in each category and the total value of the contract awarded.

Open data, which many governments publish in large quantities, is used by various social actors to develop tools that benefit society in many ways. The economic value of this activity has been estimated at several billion dollars.

f) Respect for Human Rights

Human rights abuses, such as corruption, occur in a climate of secrecy. Some of the worst human rights violations, such as torture, are almost by definition acts that take place behind closed doors.

An open approach by the government - which would include, for example, the publication of investigations into alleged human rights violations - is more likely to lead to respect for human rights. In some countries, no exceptions to the right to information apply when the information concerned relates to human rights violations or war crimes.

g) Effective Development

Openness encourages greater participation and therefore ownership of development initiatives. It helps to ensure informed development decision-making and successful implementation of projects. It also helps to ensure that efforts reach their intended targets. As human rights, the Congolese governance experience allows us to identify its respectability or a white elephant arising from a robust right to information.

2) Good Governance in The DRC: A White Elephant[72]

Good governance is at the heart of the development policies advocated by international institutions. However, in fragile states such as the DRC, its implementation meets with strong resistance. Basic forms of corruption and the most elaborate criminal practices are embedded in the production and distribution of public rents.[73]

The year 1989 is symbolized by the fall of the Berlin Wall, with communism and popular democracies in its wake. At the end of this geopolitical upheaval, the United States of America hyperbolically rose to the world's top. It became the world's hyperpower by spreading its ideals and principles.

Indeed, during this period, new terminology invaded the lexical field: democracy, liberalism, political pluralism, alternation, the rule of law and good governance. These concepts were in vogue. Their principles were disseminated on a global scale and imposed on many states.

Today, the most commonly used term for these countries is good governance. It is worth recalling that after the independence of African countries, which was achieved for the most part in the early 1960s, some people had high hopes for this development. They saw in this new political transformation the possibility for many of them to take their development in hand and to get off the path of underdevelopment with its almost endemic misery in which they were distinguished.

[72] S. Marysse, "La gouvernance au quotidien: Entre réformes et éléphants blancs", A. Ansoms, A. Nyenyezi Bisoka & S. Vandengiste (eds.), *Op.cit.* pp. 231-255.
[73] P. Jacquemot, *Op.cit*, p. 129.

Faced with this fundamental question, some analysts were both critical and skeptical. The most virulent was *René Dumont*, who predicted independence in acerbic terms and concluded that "black Africa" was "badly off". In reaction to this analysis, discordant voices were raised to react against this perception, which they considered too pessimistic.

However, more than half a century later after the first hours of independence, if we take a synoptic look at the socio-political and economic situation in Africa south of the Sahara and in particular in the DRC, the situation seems to be very alarming: States with a dizzying degree of debt and poorly managed, increasing socio-political disparities that are constantly galloping, in short, poverty that is almost endemic despite numerous riches. The facts and especially the numerous crises that have plagued Africa and the DRC, crises whose primary causes lie in the absence of rigorous, healthy and transparent management of public affairs, seem to augur the darkest of futures.

Often used by a good number of authors for all issues related to the development and state management as a whole, good governance has become a tool often used to respond to the many challenges posed by the socio-political reality in Africa and the Congo. Without thinking it is a magic solution, good governance poses other challenges that would contribute to managing territories and other public spaces in the best possible way. These numerous constraints posed by good governance and the question of development require a reasonably in-depth analysis of the issue.

Good governance and the right of access to information as human rights are complementary. Human rights principles set out a set of values to guide the actions of governments and other political and social actors. They also provide a set of standards against which the accountability of these actors can be challenged. These principles also inform the nature of good governance efforts: they can form the basis for legislative frameworks, policies, programs, budget allocations and other measures. However, in the absence of good governance, such as can be observed in the DRC and most of the francophone states of sub-Saharan Africa, human rights cannot be respected and protected in a sustainable manner. Implementing the right of access to information as a human right requires an enabling and supportive framework, including appropriate legal frameworks and institutions, as well as the political and administrative processes necessary to meet the rights and needs of the population.

This analysis defines good governance as the exercise of authority through political and institutional processes that are transparent, accountable and encourage public participation. Human rights refer to the standards set out in the UDHR and developed in several international conventions that define the minimum standards necessary to ensure human dignity. It examines the links between good governance and human rights in four areas: democratic institutions, state services, the rule of law and anti-corruption measures.

When inspired by human rights values, reforms that relate to the good governance of democratic institutions provide the means for public participation in policy-making, whether through formal institutions or informal consultations. They also create mechanisms to include multiple social groups in decision-making processes, particularly at the local level. Finally, they can encourage civil society and local communities to formulate and make known their positions on issues they consider important. This is not the case in the DRC.

In the area of state services to the public, good governance reforms represent a step forward for human rights when they increase the state's capacity to fulfill its responsibility to provide collective goods essential for the protection of a number of human rights, such as the right to education, health and food. Despite the authorities' good intentions, these rights are still a white elephant in the DRC. Reform initiatives may include accountability and

transparency mechanisms, culturally sensitive policy tools to ensure services are accessible and acceptable to all, and ways to engage the public in decision-making.

With regard to the rule of law, which is still under construction, good governance initiatives that respect human rights reform legislation and help institutions, from prison systems to courts and parliaments, to implement it better. Good governance initiatives can include advocating for legal reform, raising public awareness of the national and international legal framework, and capacity building or institutional reform.

Finally, anti-corruption measures are also part of the good governance framework. Although the links between corruption, anti-corruption measures and human rights have hardly been explored so far, the anti-corruption movement looks to human rights to support its efforts. In the fight against corruption,[74] actions to bring about good governance are based on principles such as accountability, transparency and participation in developing anti-corruption measures. In the fight against corruption, human rights violations must be prevented through respect for the rule of law.

In the context of investigating corruption cases, it is self-evident that the right to life, the right not to be subjected to torture and other inhuman treatment or punishment, the prohibition of discrimination, the prohibition of arbitrary detention or imprisonment, the right to a fair trial and the protection of privacy and the family must be protected by good governance practices for the protection of human rights.[75]A former US Supreme Court Justice, Louis Brandeis, famously remarked: Sunlight is the best disinfectant.

C. Conclusion

The issue of the right access to information is one of the major challenges of the 21st centuryème due to the profound transformation of our societies through the digital revolution. This right of access to information continues to progress in the world, even if the pace of adopting new laws has slowed.[76] The normative frame of reference is well established and facilitates the development of law in countries that do not yet have one[77] and the bringing of existing law into conformity with these standards in those that do. “The question is: Is the right to information a right?” and “In this framework, what kind of information are we talking about?”

The right of public access to information and the development of open and democratic societies with participatory and accountable governments is one of the inalienable human rights, one of the fundamental civil rights of the citizen in the DRC and throughout the world; one of the inalienable rights that every people needs to know about the governance of their country.

This contribution recalls the major legislative advances at the international and regional levels in access to information, particularly the emergence of various international legal instruments. It then identifies the best Congolese national standards and practices for making this right effective through its recent history, its weaknesses, and the prospects for the future, particularly the adoption of the law on access to public information and its implementation. Finally, its fundamental purpose is not simply “access to information”, per se. The real purpose is to give citizens, all citizens, the power to make up their own minds about how they

[74] A. Malukisa Nkuku, op. cit.
[75] Good Governance Practices for the Protection of Human Rights, New York/Geneva: United Nations Publication, (2007).
[76] P. Canavaggio (2014), *Op.cit*.
[77] In the DRC, the draft law on the right of access to information still remains in the drawer of the Congolese National Assembly.

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are governed and the power to use public information, once made available to them, to change a life, their lives in the DRC.

In politics, it is said, pioneers lead the way. But often, newcomers can make several leaps forward, benefiting from their experience and a better understanding of the issues and prospects. Emerging democracies, notably the DRC, in the hope of sustainably reforming their political and societal environment, have a de facto unique opportunity to move much faster and further in the direction of history by enshrining their constitutions and strengthened and re-evaluated citizens' rights.[78] The current Congolese Constitution bears witness to this.

Among all these rights is the right to freedom of expression, which is closely linked to the right to access information. For the ordinary citizen or any other public figure (civil society groups, journalists, entrepreneurs, national and local elected officials, other professional, political and trade union groups, and civil servants), access to information means, first and foremost, access to public information, both information that is by its very nature in the 'public domain', and information held by the government and all public interest agencies.[79]

But the best laws are nothing without the hand of men. In the area of access to public information, it is necessary to ensure that these laws are applicable and enforced.[80] This is often where the problem lies. This is where the world's best intentions are lost under inertia, special interests, and passive or organized complicity. Firstly, it is necessary to ensure that all the relevant legislative advances are effectively confirmed in reality through the publication of the necessary implementing decrees and regulatory texts, finalizing the precise conditions for free and open public access to information.[81]

Moreover, access to public information is only a necessary condition, not in itself sufficient. Above all, this information must be reliable, coherent, relevant, constantly updated and easily accessible in all the languages used by the population. Moreover, the information must be freely reusable by all and for all the uses allowed by free circulation. Public administrations must be legally obliged to make all the information at their disposal freely accessible. Therefore they must organize their working methods to fulfill this obligation effectively.

Moreover, provisions must be made for remedies and sanctions in the event of failure to apply the law. Finally, a genuine strategy for access to public information must be developed at the national level, and it must be in synergy with the concept of a truly open government and not confined to a culture of secrecy, a culture of the shadows, which is conducive to petty arrangements and impunity. It is on these conditions that the endemic distrust that citizens sometimes feel towards the administration, the frustration of civil society in the face of bureaucratic obstacles, the anger of entrepreneurs in the face of non-transparent invitations to tender and obscure procedures for awarding public contracts, or the demands of journalists to defend their role as mediators and commentators on the news, can gradually disappear.[82]

The law to be adopted by the Congolese legislator should contain only minimal exceptions, which are legitimate under international law. Exceptions that aim to protect non-legitimate secrets should not prevail in the future text of the law. The withholding of information must be in the interest of public safety and not that of hidden powers and

[78] Ph. Queau, "Preface", P. Canavaggio and A. Balafrej, *Towards a right of access to public information in Morocco: Comparative studies with standards and best practices in the world*, UNESCO, (2011): 8.
[79] *Idem.*
[80] In the DRC, this law on access to public information has not even been adopted yet and is lying in the drawer of the Congolese National Assembly's office
[81] *Ibid*
[82] *Ibid.*

interests. It is also important that the provision of information is not a formal request but a proactive action by the state toward the public. The state should also produce information on sectors that suffer from a great lack of information, such as the environment. Finally, and most importantly, the culture of secrecy that dominates public information management must change radically. The Congolese want a transparent state. Consequently, civil servants must be made aware of the importance of public archives and their responsibility as custodians of information, which must be considered a public good belonging to the citizens.

References

A/Res/59(I), A/229, A/261 of 14 December 1946 on the convening of an international conference on freedom of information, [online] 1st session (1946-1947) - General Assembly - Shortcuts - Research Guides at United Nations Dag Hammarskjöld Library accessed 05/09/2021 at 1:34 am.

African Freedom of Information Centre (AFIC), Centre for Law and Democracy (CLD) and Friedrich-Ebert -Stiftung (FES), *Training Manual on the Right to Access Information for African Journalists*, (2017).

Bomboka P., "Jacques Ndjoli : quand il n'y a pas accès à l'information publique, le peuple est dans un régime opaque", Zoomeco, 13/10/2020, [online]: https://zoom-eco.net/developpement/jacques-ndjolilorsquil-ny-a-pas-acces-a-linformation-publique-le-peuple-est-dans -un-regime-opaque/, accessed on 25/01/2022 at 20:45.

Boshab E., *La contractualisation du droit de la fonction publique: Une étude de droit comparé Belgique-Congo*, Academia-Bruylant, Brussels, (2001).

Canavaggio P., Towards a right of access to public information in Morocco: A comparative study with standards and best practices in the world, UNESCO, (2011).

Canavaggio P., *Towards a right of access to public information: Recent advances in standards and practices*, UNESCO, (2014), [online] https://unesdoc.unesco.org/ark:/48223/pf0000214658, accessed 28/01/2022 at 15:45.

French Constitutional Council, No. 2012-654 DC, 09/08/2012, *Loi de finances rectificative pour 2012 (II)*.

Court of Justice of the European Union, GC, No. C-131/12, 13/05/2014, *Google Spain SL, Google Inc. v. Agencia Española de protección de datos (AEPD), Mr. Costeja Gonzalez*.

European Court of Human Rights: no. 20240/08, 02/02/2012, *Růžový Panter o.s. v/. Czech Republic*; no. 14277/04, [GC], 12/02/2008, *Guja v/ Moldova*.

Colas D., *L'Etat de droit*, Paris: PUF, (1987).

French Conseil d'Etat, 11/02/1983, *Ministre de l'Urbanisme v. Atelier libre d'urbanisme de la région lyonnaise*, Rec. 56, confirmed by the judgment of 23/12/1988, *Banque de France v. Huberschwiller*, Rec. 464; 29/04/2002, *M. Gabriel X, Lebon 157*.

Constitution of the Democratic Republic of Congo of 18 February 2006, as amended by Law No. 11/002 of 20 January 2011, *JORDC*, No. Special, 52ème year, 2011.

Crouzet Th., *Le cinquième pouvoir. Comment internet bouleverse la politique*, Paris: Bourin, (2007).

Geneva Declaration of Principles and Plan of Action, Tunis Commitment and Agenda for the Information Society http://www.itu.int/wsis/index-fr.html.

Digital Natives and Modern Citizenship, Price waterhouse Coopers, (2009), [online] http://www.pwc.se/sv/publikationer/assets/e-generation_en.pdf Accessed on 03/02/2022 at 7:20 am.

The European Directives of 2003 and 2008 on the re-use of public information thus expressly refer to national legislation in this area.

Etudes et documents du Conseil d'Etat français, *Rapport public 1995*, La Documentation française, n° 47.

Fillion S., Du secret à la transparence : Pour un Etat plus proche des citoyens, Master's thesis, Institut d'études Politiques de Lyon, (2007).

Fromont M., "République fédérale d'Allemagne, l'État de droit", *Revue du droit public*, (1984): 1205-svt.

Golberg S., "Citizen Access to Government Records", *Freedom Files*, United States Information Agency, (09/1994).

Jacquemot P., "La résistance à la 'bonne gouvernance' dans un Etat africain : Réflexion autour du cas congolais (RDC)", *Revue Tiers Monde*, 204 (2010/4): 129-146.

Leyval-Granger A., "La communication administrative : entre secret et publicité", *Communication et langages*, 110(1996) : pp.61-73, [online], http://www.persee.fr/doc/colan_0336-1500_1996_num_110_1_2721, accessed on 23/08/2021 at 15h30.

Machiavel, *The Prince*, Chap XXIII.

Government Finance Statistics Manual 2001, IMF, GFS, (2001), online at http:// www.imf.org/external/pubs/ft/gfs/manual/index.htm.

Malukisa Nkuku A., 'Lutte contre la grande corruption en RDC avec Félix Tshisekedi au sommet de l'Etat: une justice à deux vitesses', A. Ansoms, A. Nyenyezi Bisoka & S. Vandengiste (eds), *Conjoncture de l'Afrique centrale 2018*, Paris/Tervuren/Anvers: L'Harmattan/MRAC/CRE-AC, 92(2018): 107-129.

Marysse S., "La gouvernance au quotidien : Entre réformes et éléphants blancs", A. Ansoms, A. Nyenyezi Bisoka & S. Vandengiste (eds), *Conjoncture de l'Afrique centrale 2018*, Paris/Tervuren/Anvers: L'Harmattan/MRAC/CRE-AC, 92(2018): 231-255.

Moderne F., "Conception et élaboration de la loi du 17 juillet 1978", in Transparence et secret, Colloque pour le XXVe anniversaire de la loi du 17 juillet 1978 sur l'accès aux documents administratifs, *La documentation française*, (2004).

Nkuadio P, "Access to Public Information", *MSDA Strategy Note*, (04/2020).

Otshudi Disashi Kalonda J.B, 'Le droit d'accès à l'information publique et restrictions liées aux impératifs de sécurité et de défense nationales: état de la question en République Démocratique du Congo', (2012) [online] <https://www.right2info.org/resources/publications/pretoriafinalization-meeting-april-2013-documents/national-security-and-rti-in-the-drc, accessed 09/09/2021 at 23:45.

Plato, *The Republic*, Book II, 382a, 382b.

Good Governance Practices for the Protection of Human Rights, New York/Geneva: United Nations Publication, (2007).

Premat C., "The Wikileaks effect", online: http://sens-public.org/articles/848/accessed on 14/09/2021 at 12:09 pm.

Proposition de Loi relative à l'accès à l'information, (2020), *La Documentation française*.

Said E., Amina R., Nawal B., *Secret d'Etat, Administration et journaliste au Maroc : Le défi du droit à l'information*, Rapport d'enquête, CMF MENA, Casablanca, (05/2007), [online] . Abhatoo : Secrets d'Etat : Administration et journaliste au Maroc : Le défi du droit à l'information : Rapport d'une enquête, accessed on 04/02/2022.

Tshidibi Biduaya Th, *Opinions and considerations on the right of access to information in the Democratic Republic of Congo*, Cape Town: Open Democracy Advice Centre, (2014).

Vidal-Naquet A., "La transparence", J-B. Aubry (dir.), *L'influence du droit européen sur les catégories de droit public*, Paris: Dalloz, (2010).