

POLICY BRIEF

Restoring DRC's Democratic Ideals Through Internet Freedom



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Introduction

The Democratic Republic of Congo (DRC) is a country in central Africa with a population of almost 79 million inhabitants and an estimated Internet penetration rate of 6.2%¹. Over the past 10 years, various reports published on digital rights and Internet Freedom present the Democratic Republic of Congo as one of the countries where violations of digital rights and internet freedom are recurring and this creates serious consequences for democracy.

The various violations that the country has recorded are contrary to the provisions of the African Commission on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR) and these violations attract an undemocratic profile even as current limits prevent fair access to the Internet for all and present great challenges for democracy.

Since 2001, Law No. 013-2002 of October 16, 2002 has been the main legal instrument used in the violation of freedoms on the Internet as it gives the government the power to take control of telecommunications facilities in the interest of "national security" or "public defense".² This legislation has been instrumental in implementing Internet shutdowns in the country in recent years. The government has also unilaterally initiated plans to update the Law on Telecommunications, the Law on Electronic Transactions as well as proposed a bill to amend the law that establishes the regulator - the Congo Post and Telecommunications Authority (ARPTC). The government has put together a new Telecommunications and ICT bill³, which was drafted with limited public consultation and retains most threats to digital rights such as granting the government the right to interfere in communications, and surveillance powers. Nevertheless, civil society organizations have made recommendations to limit the negative effects of this law.⁴

In the DRC, a number of adopted laws could be used to undermine the right to freedom of expression online in particular, and other digital rights. These laws include section 150 (h) of the 1940 Penal Code, which criminalizes failure to publish the full names and correct address of the author or publisher of any writing. In addition, articles 76 and 77 of Law 96-002 of 1996 on Freedom of the Press criminalize the act of "inciting others (whether by speech, writing, pictures or other written means) to commit punishable offenses. : theft, assassination, looting, any act threatening the stability of the State". Article 77 of this law also criminalizes any publication that offends the President of the Republic, and this makes the work of journalists difficult. The provisions of the Constitution relating to freedom of expression (such as freedom of expression and access to information) are very problematic insofar as these provisions contain internal limitations such as respect for morals and public order. Certain provisions of the 2002 law were built on the basis of the 1996 law. Article 46 of Law 2002 also states that: "the State may, for reasons of public security or defense of the territory is in the interest of the public telecommunications service or for any other reason, prohibit in all or part, and during the time it determines, the use of telecommunications facilities"⁵.

1 "Index Global du Web 2018: La RDC a 6% de Pénétration Internet pour 5 Million d'Usagers", Congolestic.org, January 31st, 2018, <https://bit.ly/3lhlPfm>

2 "RDC - Loi cadre n°13/2002 du 16 octobre 2002 sur les telecommunication", Droit-Afrique.com, January 25th, 2003, <https://bit.ly/377yN7E>

3 "Loi n° 20 017 du 25 novembre 2020 relative aux télécommunications et aux technologies de l'information et de la communication", legalrdc.com, November 25th, 2018, <https://bit.ly/3j1YdZQ>

4 "The Congolese Senate received inputs to the Telecom and ICT draft bill, Rudi International", July 25th, 2018, <https://bit.ly/37aIbr5>

5 "RDC - Loi cadre n°13/2002 du 16 octobre 2002 sur les telecommunication", article 46, Droit-afrique.com, January 23th, 2018, <https://bit.ly/377yN7E>

Internet access

A favorable policy that promotes access to the Internet contributes to the achievements of democracy and issues surrounding problems of network infrastructure, network quality and connectivity prices greatly influence freedoms on the Internet⁶. In most cases, governments can promote or obstruct internet access through firewalls or other technologies, for political or economic purposes. In 2020, as Covid-2019 forced everyone to study, work and carry out most activities online, increased cost of communication and lack of Internet access for many in the DRC had a huge negative impact on poor populations and small companies.

Accessibility and network equality are two important elements for the Internet in DRC. For the Internet Rights and Principles Coalition (IRPC), accessibility means “everyone has an equal right to access and use a secure and open Internet. And the equality of networks stipulates that everyone has universal and open access to Internet content, free from discriminatory prioritization, filtering or traffic control on commercial, political or other grounds”⁷.

In response to improving internet connectivity, Internet Society set up an Internet Exchange Point (IXP) in the country in November 2019. This new Internet Exchange Point in the Democratic Republic of Congo aims to provide a more reliable and faster access to the Internet in the region⁸. An IXP is an access point where multiple local and international networks, ISPs, and content providers interconnect their networks rather than doing so through third-party networks. The local exchange of Internet traffic not only reduces bandwidth costs, it also improves the Internet experience of end users by ensuring the local character of the traffic.

Multistakeholder Internet governance can help improve Internet access as it promotes joint development and implementation by States, private sector, civil society and international organizations, within their respective roles, of shared principles, norms, rules, and decision-

making procedures to shape the evolution and use of the Internet⁹. Given the multiple violations experienced in the country -- internet shutdowns, arrest of journalists and activists, mass surveillance -- Internet governance does not benefit from the role of rights-promoting institutions. In the DRC, several principles are violated and the Internet governance consultation frameworks are poorly developed -- and are lagging far behind. For example, the first Forum on Internet Governance was held in 2017 in the country, several years after Internet Governance Forums launched following the recommendation of the 2005 Tunis Agenda from the World Summit on the Information Society (WSIS).

Despite challenges with Internet access on the continent, the African Union (AU) adopted, in 2017, the African Declaration on Internet Governance which aimed to put in place a global, transparent and inclusive framework on Internet governance based on the principles of openness, including freedom of expression, respect and protection of privacy, universal access and technical interoperability, ethics and respect for cultural and linguistic diversity in cyberspace¹⁰.

Digital Rights and Internet Freedom in DRC: 2015-2020

Over the past decade, the multiple violations of digital rights reported in the Democratic Republic of Congo (DRC) were initiated mostly by the government for political purposes. In the last 6 years, DRC reported various violations with great impact on democracy and Internet freedom:

2015: On January 20, 2015, Internet operators in the Democratic Republic of Congo (DRC) were ordered to cut off Internet access¹¹ in the capital Kinshasa, at the start of very violent demonstrations between the police and demonstrators opposed to the former President Joseph Kabila. The SMS, communication and Internet access were shut down, and the monitoring of journalists and political opponents' communications was put in place¹².

6 “RDC : les prix des forfaits d'appel et Internet grimpent à Kinshasa” financialafrik.com, July 8th, 2020, [https:// bit.ly/3lf2VWQ](https://bit.ly/3lf2VWQ)

7 Charter of Internet of human rights and principles for Internet, IRPC, 2019, <https://bit.ly/3zSxPZc>

8 “Un nouveau point d'échange Internet en République Démocratique du Congo apportera un accès plus fiable et plus rapide à l'Internet dans la région”, Internet Society, November 6th, 2019, <https://bit.ly/3jaCxuW>

9 Gouvernance de l'Internet, UNESCO, <https://bit.ly/3zXTeA3>

10 “Déclaration africaine sur la gouvernance de l'internet”, African Union, February 13th, 2007, <https://bit.ly/3j6F4pD>

11 “RDC : Internet coupé à Kinshasa sur ordre du pouvoir”, Le Monde, January 20th, 2015, <https://bit.ly/3C3i0kb>

12 “Ibid”

2016: In December 2016¹³, the government suspended Internet access and communications following new demands from civil society leaders and opposition actors calling for the resignation of the former President Joseph Kabila after the expiration of his term of office.

2017: Under the Law n° 20/017 of 25 November 2020, relating to Telecommunications and Information and Communication Technologies¹⁴, the authorities of DRC mandated telecommunications companies to slow Internet bandwidth in August 2017 to influence policy demands in the country; which restricted the ability of the public to upload images through social media. On December 31 of the same year, network messaging was suspended based on the demands of government¹⁵.

2018: On January 21 and February 25, 2018, the entire national was deprived of the Internet to stifle free flow of communications following the call for demonstrations by the Catholic Church¹⁶. Towards the end of the year, on December 24, 2018, following the initial date of the general election, the Regulation Authority of Post and Telecommunications of Congo (ARPTC) contacted the four mobile network operators, and asking them to restrict Internet access¹⁷ to “videos and images on social networks like Facebook, WhatsApp, Viber, YouTube and Twitter”. The Congolese Post and Telecommunications Company (SCPT), a public institution that manages the country’s only submarine fiber cable, West Africa Cable System (WACS), that connects the country to the Internet, was also requested to shut down the cable and restrict Internet access to Internet Service Providers (ISPs), to increase pressure on them to respect the injunctions of government¹⁸.

2019: Following the elections of December 30, 2018, the DRC was deprived of the Internet for 20 days. This period of deprivation of Internet

freedoms for political purposes coincided with announcement of elections results by the National Electoral Commission (CENI), giving the victory to

President Felix Tshisekedi¹⁹.

2020: In 2020, even though the DRC did not record Internet shutdowns, some practices were reported as being able to contribute to violations of Internet freedoms. For instance, the prices of Internet package²⁰ offers by operators and ISPs (Vodacom Congo, Orange RDC, Africell RDC and Airtel RDC) increased dramatically during the year 2020, especially during the period of the COVID-19 lockdowns and high prices of communications and Internet connectivity are likely to have further deepened an existing digital divide.

Respect for Internet Freedom and Democracy

Democracy in the DRC has been greatly weakened in recent times. One of the elements of this fragility is found in the recurrent violations of Internet freedom. Internet freedom encompasses fundamental rights of citizens on the Internet, yet have not always been respected for years in the country. Internet freedom is closely linked with freedom of expression, respect for private life, and respecting the confidentiality of communication. These elements contribute to the consolidation of democracy through freedom of expression.

The IRPC charter adds that freedom of expression and freedom of association apply when everyone has the right to seek, receive and transmit information freely on the Internet without censorship or other interference. Everyone also has the right to associate freely through and on the Internet, for social, political, cultural or other purposes²¹.

The protection of freedoms of expression and opinion offers a real opportunity for the diversification of socio-political discourse on the Internet, which strengthens the confidence of people offline. Freedoms of expression are the main foundations of democracy. The level of online freedom of expression in a country makes it possible to assess the real level of democracy offline²². Freedoms of association are those which give citizens the right to meet in public or in

13 “RDC : blackout sur les réseaux sociaux”, bbc.com, December 16th, 2016, <https://bbc.in/3rI5kKM>

14 “Law n° 20/017 of 25 November 2020, relating to telecommunications and information and communication technologies”, 2020, <https://bit.ly/3j1YdZQ>

15 “Internet coupé en RD Congo avant des manifestations contre Kabila”, Lorientlejour.com, December 30th, 2017, <https://bit.ly/3rIRbx3>

16 “RSF dénonce le nouveau black-out internet en République démocratique du Congo”, RSF, February 28th, 2018, <https://bit.ly/37i0nPn>

17 “RDC: comment le gouvernement a privé sa population d’internet”, Rfi.fr, January 19th, 2019, <https://bit.ly/3rI5FNy>

18 “RDC : Internet coupé par le gouvernement”, Lefigaro.fr, December 31st, 2018, <https://bit.ly/3lgKF92>

19 “Présidentielle en RDC: internet coupé par les autorités”, Lexpress.fr, January 2nd, 2019, <https://bit.ly/3xq1RSF>

20 “RDC : instabilité des prix de forfaits appel et internet sur le marché de Kinshasa” <https://bit.ly/3rKFbej>

21 “Charte des Droits et les Principes de l’Internet”, IRPC, 2019, <https://bit.ly/3fi1Wl3>

private -- online and offline -- without the risk of being arrested, spied upon or controlled. Discrete legal provisions should not prevent democracy. According to Reporter Sans Frontières (RSF) 2020 report on press freedoms²³, the DRC was in the 150th place out of 180 countries assessed, and 33rd in Africa. Although the country has progressed by four places on the global rankings, violations of freedoms in the press remained steady. The arrest of journalists and activists for their opinions; the blocking of websites; the blocking of the Internet; curbing press, expression and association freedoms are the real obstacles for democracy and these have marked the history of the DRC for several years.

Internet: Challenges and Principles

In most cases of digital rights violations recorded in Africa, the reasons given by governments to shut down the Internet are often varied. Over the past five years, the DRC has used several arguments, deemed unfounded by human rights actors, such as respect for public order; fight against fake news and hate speech; fight against cybercrime; prevention of disclosure of election results; and restoration of state authority among many others. For example, for the Internet shutdown that happened after the 2018 elections, the diplomatic adviser of former President Joseph Kabila, Barnabe Kikaya Ben Karubi, said "there are people who poisoned the population with false figures concerning the elections. And that prepared the population for a popular uprising".²⁴

In view of the regular Internet shutdowns in the DRC, the 2016 report by the Organization for Economic Co-operation and Development (OECD)²⁵, noted that "the global economy has lost \$ 2.4 billion due to intentional disruption of the connection". Internet shutdowns have serious consequences for the economy. According to Netblocks²⁶, one day of a total Internet shutdown in the DRC would cost an estimated \$3.2 million or 5.3 billion CFA Franc.

In order to better structure its legal framework relating to freedom of expression and opinion and to reduce the digital divide, DRC must amend all the laws on telecommunications and technologies with the objective of improving access to information as outlined in the African Commission on Human Rights and Peoples' Rights' (ACHPR) Declaration on Principles of Freedom of

Expression and Access to Information in Africa and all international documents that promote freedom and protect people's rights online.

Conclusion

Violations of Internet freedoms are real setbacks for democracy. The freedom of the press, freedom of opinion, freedom of expression and freedoms of assembly online are engines for the strengthening of democracy using the Internet. The DRC has recorded major violations over the past six years, which have greatly marred its democratic standing. These violations have had serious consequences on the economic and social development of the country, due to the poor human rights and freedoms ratings, that influence both local and international dynamics of investment. To improve the situation, the DRC must comply with these meaningful recommendations to strengthening digital rights and Internet freedom:

- Comply with international instruments on human rights and Internet freedom, in particular the African Declaration of Internet Rights and Freedoms;
- Develop a transparent legal framework for the freedoms of the press, expression, assembly and association online;
- Strengthen the legal and regulatory framework for digital communications and the Internet ecosystem;
- Integrate a legal framework that sanctions operators and ISPs in the event that they comply with the government and third parties to perpetuate infringements on digital rights;
- Promote good governance of the Internet through the government's commitment in managing the Internet and ICT public policies in a transparent and inclusive manner, including having a defined policy on the development of the Internet ecosystem;
- Integrate all stakeholders in the development and decision making process on the future of the Internet.

22 "L'internet et la démocratie : une liaison difficile", Cairn, 2017, <https://bit.ly/3id8Jy8>

23 "Liberté de la presse : La RDC occupe la 150ème place au monde, (RSF)", Radiokapi.net, March 24th, 2020, <https://bit.ly/3jnKAob>

24 "Internet à nouveau disponible en RDC", Ici.radio-canada.ca, June 18th, 2019, <https://bit.ly/2VqQEUA>

25 "Coups de réseaux sociaux et d'Internet : l'Afrique explose tous les records", Lepoint.fr, October, 10th, 2016, <https://bit.ly/3BZNt6N>

26 "The NetBlocks Cost of Shutdown Tool (COST)", 2021, Netblocks, <https://bit.ly/2VanFo7>



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