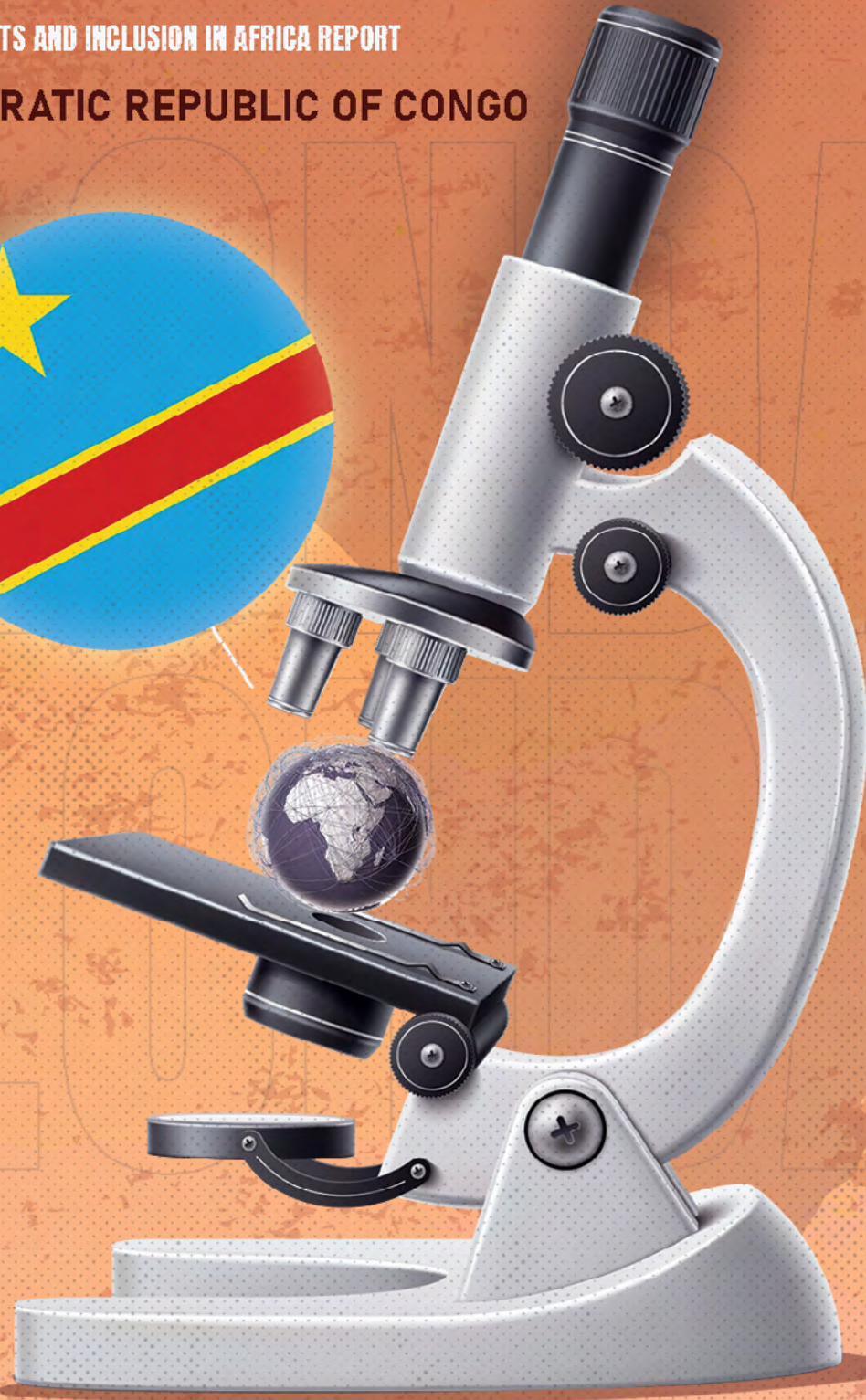


LONDA

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

DEMOCRATIC REPUBLIC OF CONGO



2022

LONDA

Digital Rights and Inclusion in Africa Report 2022

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Democratic Republic of Congo (DRC)



▶ Executive Summary

Over the past five years, the country has undergone various reforms in terms of policies relating to new information and communication technologies in order to fill a legal gap that has been in existence in the digital sector for more than 18 years. At a national level, the Congolese government has put in place plans and strategies that will help the country prepare for the fourth industrial revolution, a conviction that Information and Communication Technologies (ICT) will undoubtedly contribute to the performance of the Congolese economy while strengthening sociability, improving knowledge, the efficiency of institutions and the fight against poverty.

Through a qualitative approach including a documentary, political and legal analysis as well as key personal interviews, this report presents an inventory of digital rights in the context of the development of information and communication technologies in the Democratic Republic of Congo, with a focus on the inclusion of ICTs in national plans and strategies. In addition, it analyses certain provisions relating to data governance and freedom of expression.

Based on the research findings, this report concludes by presenting various recommendations to specific stakeholders, namely the government, Parliament, civil society groups and telecommunication companies with the aim of promoting human rights in policies, existing ones linked to digital technologies and those being implemented in the Democratic Republic of Congo.



Introduction

The Democratic Republic of Congo (DRC) is located in Central Africa with an estimated population of nearly 93.8 million as of the first quarter of 2022, and a mobile internet penetration rate of 23.77 per cent. This is according to date in a report published by the Post and Telecommunications Regulatory Authority of Congo (ARPTC), in the second quarter.

In January 2022, the "*Data Reportal*" website, highlighted that there were nearly 16.5 million internet users out of a population of nearly 93.80 million; raising the overall internet penetration rate in the DRC to nearly 17.6 per cent, with a growth of 3.3 million (+25.4%) between 2021 and 2022.¹

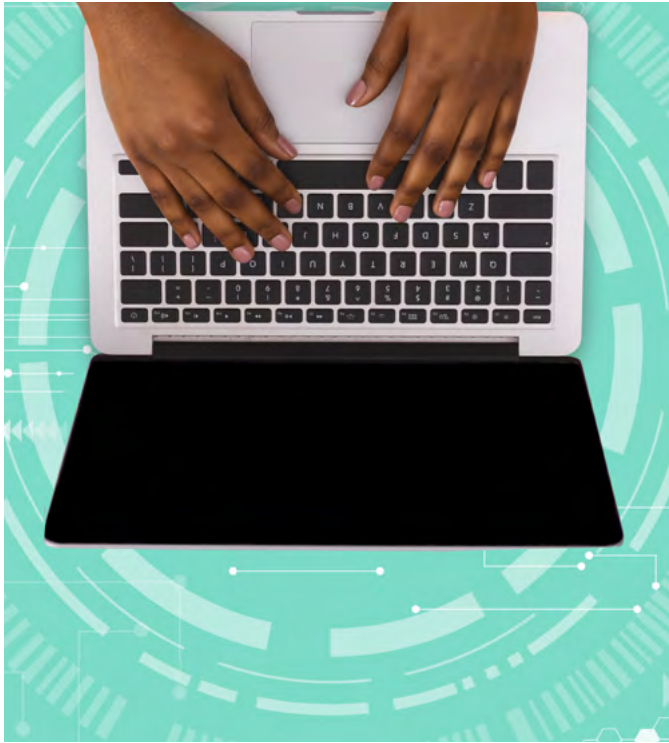
The majority of recent reforms and innovations that the ICT sector has undergone are part of filling the legal gap that was observed in the digital sector², which was once governed by framework law No. 013-2002 of October 16, 2002 relating to post and telecommunications. This legal provision was replaced by Law No. 20/17 of November 25, 2020, due to the deficiencies revealed within the previous one with regards to certain issues that were deemed "mandatory" by the legislator in the new law, as well as its inadequacy to current contexts in the digital technology sector.

The December 2018 elections, saw the constitutional court proclaim Félix Antoine Tshisekedi as the winner and successor to Joseph Kabila who had led the country for nearly 18 years. After being appointed, the new president presented a paper named "*National Digital Plan*"³, leading to several Members of Parliament also presenting various Bills to fill the legal vacuum as well as the digital divide that had been observed when it came to issues such as cybercrime, personal data protection, control of digital activities and services often in the hands of powerful private entities established abroad and beyond the control of most States.

1 Data Reportal, About Page, <https://datareportal.com/about> (Accessed January 19, 2023)

Country Analysis

ICT DEVELOPMENT AND EMERGING TECHNOLOGIES IN THE DEMOCRATIC REPUBLIC OF CONGO



Despite the nation having four mobile telephone operators, namely Africel, Orange, Airtel and Vodacom, the DRC is still facing a major digital divide, with little access to the internet.

The adoption of Law No. 20/017 of November 25, 2020 on telecommunications and information and communication technologies, revoking Framework Law No. 013/2002 of October 16, 2002 on telecommunications in the Republic Democratic Republic of the Congo, took into account and regulated new information and communication technologies; however, this new legal provision failed to fill certain areas,

in particular the following:

- protection of personal data,
- devotion of the legal validity of electronic writing and electronic evidence,
- liability of digital service providers, the legal regimes relating to new digital services,
- dedication of electronic commerce in order to strengthen the security of commercial exchanges as well as the protection of consumers,
- setting up specialised public services on digital issues

It is with this in mind that the Congolese government has invested in a process aimed at implementing the Digital Code with the aim of seeking a point of balance, while also enhancing the principles of freedom in cyberspace, in particular freedom of expression, information, assembly and opinion. Moreover, to undertake the protection of privacy, trade security, economic growth, social progress and the strengthening of governance. The Digital Code also had the mission of promoting innovation and national entrepreneurship in digital technology.

On December 6, 2022, the National Assembly passed the bill on the digital code in the DRC, as tool to be implemented for the success of the Digital Transformation Program of the Democratic Republic of Congo. *"This desired new legislative framework, once adopted by Parliament and promulgated by the Head of State, will give rise to implementing measures through regulations,"* added the Minister of Digital.

Freedom of expression, information and association, as a fundamental right, is

² Zoom-Eco, National Digital Plan, <https://zoom-eco.net/a-la-une/rdc-enfin-le-plan-national-du-numerique-valide/> (Consulted on December 28, 2022)

³ Zoom-eco, DRC: the Head of State launches validation work on the National Digital Plan!, <https://zoom-eco.net/a-la-une/rdc-le-chef-de-letat-launches-the-validation-work-of-the-national-digital-plan/> (Consulted on December 28, 2022)

⁴ Ministry of Digital – DRC, Universality of the Internet, what approach for the DRC, <https://numerique.gouv.cd/actualites/universalite-de-l%27internet-quelle-approche-pour-la-rdc-pdi12c> (Accessed on December 29, 2022)

⁵ Ministry of Digital Affairs, National Assembly considers admissible the bill on the Digital Code, <https://numerique.gouv.cd/actualites/assemblee-nationale-juge-recevable-le-projet-de-loi-portant-code-du-numerique-1svfuk> (Accessed December 29, 2022)

guaranteed by the Constitution of the Democratic Republic of Congo, the supreme law in its articles 23, 24 and 25.⁶

Article 23: *"Everyone has the right to freedom of expression. This right implies the freedom to express one's opinions or convictions, in particular by speech, writing and image, subject to respect for the law, public order and morality."*

Article 24: *"Everyone has the right to information. Freedom of the press, freedom of information and broadcasting by radio and television, the written press or any other means of communication are guaranteed subject to respect for public order, good morals and human rights [...]"*

Article 25: *"The freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public order and good morals."*

FREEDOM OF THE INTERNET

Since November 25, 2020 a new law in the information and communication technology sector has replaced the framework law of 2002 which has been at the centre of several controversies in terms of State security, protection of users' rights but also of market structure. In this digital age, the protection of human rights and freedom of expression remains a fundamental issue across the African continent⁷. As stated in Article 19 of the Universal Declaration of Human Rights, freedom of expression is a fundamental human right, the very basis of all other human rights, the pillar of all civil liberties and par excellence, the foundation of any democracy.

This freedom remains the first of the rights that any aspirant or authoritarian system suppresses in order to establish or maintain its power, through the systematically organised persecution of populations, intimidation, arbitrary arrests, targeted killings, massacres and the establishment of an environment of general insecurity.⁸

In 2021, Reporters Without Borders, an international organisation that campaigns for freedom of information, drew up an "alarming" report on attacks on press freedom in the Democratic Republic of Congo, ranking the country 149 out of 180 countries and territories worldwide⁹. In 2022, this improved with the country's ranking moving up to 125 position, mainly noting the very ambitious reform program adopted at a national media conference in January 2022, and which could pave the way for a new era for journalists in the DRC, hitherto exposed to a hostile and precarious environment under the influence of politicians.¹⁰

As the elections scheduled for 2023 approach, Reporters Without Borders has been able to observe that the Congolese media landscape is marked by the strong presence of politicians who own or launch media platforms to make them instruments of influence and push their personal agendas.

Since May 6, 2021, the provinces of North Kivu and Ituri are still under a special regime called "state of blockage". Article 85 of the Constitution highlights the need to deal with the worsening violence committed against civilians in these regions.¹¹ With the rise

6 Leganet.cd, Constitution of the Democratic Republic of

Congo / Official Journal Special Issue February 5, 2011, <https://www.cour-constitutionnelle.cd/wp-content/uploads/2021/02/Constitution-de-la-RDC.pdf> (Consulted on December 29, 2022)

7 Achpr.org, 362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/ Res.362(LIX)2016, 04 November 2016, https://www.achpr.org/fr_sessions/resolutions?id=374 (Accessed December 29, 2022)

8 Civicus.org, The Need for the Reevaluation of Freedom of Expression in the DRC", 2018, <https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3391-the-necessity-of-the-revaluation-of-freedom-of-expression-in-the-democratic-republic-of-congo> (Consulted on December 29, 2022)

⁹ Without strong measures, being a journalist will remain a risky profession in the DRC, Rsf.org, Ranking 201, <https://rsf.org/fr/republique-democratique-du-congo>

¹⁰ Reporters Without Borders, Democratic Republic of Congo – 2022, <https://rsf.org/en/country/democratic-republic-congo> (Accessed December 29, 2022)

¹¹ France24.com, President declares "state of siege" in two provinces affected by violence, May 1, 2021, <https://www.france24.com/fr/afrique/20210501-rd-congo-le-pr%C3%A9sident-proclame-l-%C3%A9tat-de-si%C3%A8ge-dans-deux-provinces-touch%C3%A9es-par-la-violence> (Consulted on December 30, 2022)

of the civil authorities being replaced with military authorities in these areas, several actors working in the promotion of human rights have expressed their fear that the state of siege is going to open a gap for violations of human rights, restricting freedom of expression, information and association.¹²

On September 27, 2022, Amnesty International pleaded with the authorities to stop using the extension of the state of siege as a pretext to repress demonstrations *"since the establishment of the state of siege in May 2021, it is particularly dangerous to hold the authorities accountable in the two provinces concerned,"*¹³ said Muleya Mwananyanda, Regional Director for Eastern and Southern Africa at Amnesty International.

According to the Minister of Communication and Media, on November 8, 2022, journalist Sonia Rolley, DRC correspondent for the British news agency Reuters, was expelled from Congolese territory for reasons of *"illegal stay"*¹⁴. Organisations such as Journaliste en Danger (JED) and Reporters San Frontières (RSF) denounced this claim, which they indicated as a violation of freedom of the press and also online expression. These organisation alluded that the local authorities no longer their violation of free and independent press.¹⁵

¹⁶

DATA GOVERNANCE

The issue of strict data governance is a recent development in the digital policies in



DRC; however, the government has shown strong will through various initiatives that have been carried out by the digital ministry. The law relating to new information and communication technologies has put measures relating to various mechanisms relating to the manipulation of individual data, especially when it comes to accessing technological services, in accordance with Chapter 2, which highlights the protection of personal data in Law N. 20/017 of November 25, 2020.

During the 62nd meeting of the Council of Ministers on July 15, 2022, the government adopted the draft decree on the management of national Data Centres (Data Centres) which should facilitate interconnection and interoperability between application solutions of the various ministries and public services concerned¹⁷. According to the Minister of Digital, the bearer of this draft decree, the idea

¹² Bbc.com, State of siege in the DRC: what results in Ituri and North Kivu with a 12th extension?, November 20, 2021, <https://www.bbc.com/afrique/59352140> (Consulted on December 30, 2022)

<https://congofond.net/rdc-le-depute-auguy-kalonji-saisit-ilunga-ilunkamba-for-the-removal-of-the-ram-tax/> (Consulted on December 31, 2022)

¹³ Amnesty International, DRC. Authorities must stop using prolonged state of siege as an excuse to suppress protests, September 27, 2022, <https://www.amnesty.org/en/latest/news/2022/09/drc-stop-using-prolonged-state-of-siege-as-excuse-to-crush-protests/> (Accessed December 30, 2022)

¹⁴ 24sur24.cd, Expulsion of Sonia Rolley: "The journalist was in an illegal residence situation" (Patrick Muyaya), November 10, 2022, <https://24sur24.cd/expulsion-de-sonia-roley-la-journalist-etait-in-situation-de-sejour-irregular-patrick-muyaya/> (Consulted on December 30, 2022)

¹⁵ Wikipedia, M23 Rebellion, https://fr.wikipedia.org/wiki/R%C3%A9bellion_du_M23 (Accessed December 30, 2022)

¹⁶ Reporter Sans Frontier (RSF), DRC: RSF and JED denounce the brutal expulsion of a journalist from the foreign press, 09 November 2022, <https://rsf.org/fr/rdc-rsf-et-jed-d%C3%A9announce-the-brutal-expulsion-of-a-press-journalist-%C3%A9trang%C3%A8re> (Consulted on December 30, 2022)

¹⁷ Actualite.cd, DRC: the Government adopts the draft decree on the management of national data centers, July 17, 2022, <https://actualite.cd/2022/07/17/rdc-le-gouvernement-adopte-le-projet-of-decree-on-management-of-data-centers> (Consulted on December 31, 2022)

¹⁸ Ministry of Digital (numerique.gouv.cd), The Congolese Government adopts the draft decree on the management of national Data Centers, July 17, 2022, <https://numerique.gouv.cd/actualites/le-gouvernement-congolais-adopte-the-draft-decree-on-management-of-data-center-nationaux-yzdc3r> (Consulted on December 31, 2022)

was to first give the Congolese government the means of allowing it to ensure its digital sovereignty through the Ministry of Digital, which will then facilitate interconnection and interoperability during the implementation process¹⁸. income of telecom operators²⁰. This measure was made effective on September 30, 2022 following the adoption by the government, of the draft decree on the creation, organisation and operation of a public establishment, placed under the supervision of the Minister of Posts, Telecommunications, New Technologies of Information and Communication (PTNTIC), in charge of the promotion of telecommunications and information and communication technologies in rural and peri-urban areas²¹.

In March 2022, the Congolese government removed tax on mobile devices called "RAM", which was introduced in September 2020 during the Covid-19 pandemic. In a statement by Collectif24 criticising the tax and labelling it "illegal", the organisation went on to say *"this tax has been described as threatening to digital inclusion as it could contribute to the reduction of mobile phone users in the country, thus reinforce the digital divide."*^{22 23}

Bringing forth the violation of the universal principle which was enshrined in article 4 of chapter 2, paragraph 30 of the former framework law of October 16, 2002, relating to telecommunications

THE UNIVERSAL SERVICE FUND

The Democratic Republic of Congo's issue of funds for universal service is framed in Law

No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies in its articles 101 and 102 of chapter 8, section 2¹⁹.

These articles state:

Article 101: *"Basic infrastructure is in the public domain of the State. They are highways or backbone networks that bring information and communication technology services or products to locals."*

Article 102: *"For the purpose of ensuring universal service, the State sets the conditions for tax relief to encourage or obtain the practice of the lowest prices in these areas"*.

In a Council of Ministers chaired by the Head of State on September 9, 2022 the President of the Republic instructed the Prime Minister to effectively operate the universal service fund within a reasonable time, as the fund is financed by the three per cent levies of gross in the Democratic Republic of Congo, the national deputy Auguy Kalonji had seized the Prime Minister asking him to cancel the tax on mobile devices²⁴.

Despite the few advances made by the government to promote digital inclusion in the country, the digital ministry notes a remarkable delay in the field due to the overwhelming 77.29 million people (82.4 per cent of the Congolese population) who are not yet connected. Connection advancements have been concentrated in mainly major sites such as Kinshasa, Lubumbashi, Goma, Kisangani and Matadi²⁵.

¹⁹ Primature.cd, Loi-N°20-017-du-25-novembre-relative-aux-Télécom_08-12-020.pdf, https://www.primature.cd/public/wp-content/uploads/2022/04/Loi-N%C2%B020-017-du-25-novembre-relative-aux-Te%CC%81le%CC%81com_08-12-020.pdf (Consulted on December 30, 2022)

²⁰ Agenceecofin.com, DR Congo: the President of the Republic instructs the operationalization of the universal service fund, <https://www.agenceecofin.com/telecom/1409-101140-rd-congo-le-president-de-la-republique-instruct-l-operationnalisation-du-fonds-de-service-universel> (Consulted on December 30, 2022)

²¹ Politico.cd, DRC: the government creates an establishment for the promotion of Telecoms and ICTs in rural and peri-urban areas, October 01, 2022, <https://www.politico.cd/encontinu/2022/10/01/rdc-the-government-creates-an-establishment-for-the-promotion-of-telecoms-and-ict-in-rural-and-periurban-milieus.html/116888/> (Accessed December 30, 2022)

²² Global Voices, New tax on mobile devices threatens digital inclusion in the Democratic Republic of Congo, 30 December 2020, <https://globalvoices.org/2020/12/30/new-tax-on-mobile-devices-threatens-digital-inclusion-in-the-democratic-republic-of-congo/> (Accessed December 31, 2022)

²³ Actualite.cd, DRC: for Collectif 24, the establishment of the RAM service is a violation of freedom of expression and the right of access to information, Friday, November 6, 2020, <https://actualite.cd/2020/11/06/rdc-pour-le-collectif-24-the-establishment-of-the-ram-service-is-a-violation-of-freedom> (Consulted on December 31, 2022)

²⁴ Congopfond.net, DRC: MP Auguy Kalonji seizes Ilunga Ilunkamba for the abolition of the RAM tax, December 24, 2020,

²⁵ Ministry of Numerique (Numerique.cd), Universality of the Internet, what approach for the DRC, May 31, 2022, <https://numerique.gouv.cd/actualites/universalite-de-l%27internet-quelle-approche-pour-la-rdc-pdi12c> (Consulted on December 31, 2022)

Conclusion and Recommendations

In support of the Congolese government's desire to make digital inclusion a lever for social integration through various initiatives carried out by the government and Members of Parliament, this report makes some recommendations with regard to the different stakeholders in terms of new technologies of information and communication in the DRC, vis-à-vis the following issues:

- The development of ICT and emerging technologies
- Freedom on the internet
- Data governance
- Funds for universal service

GOVERNMENT	PARLIAMENT	CIVIL SOCIETY
<p><i>To the government:</i></p> <ul style="list-style-type: none"> • Set the conditions and procedures for the collection, recording, processing, storage and transmission of personal data, via an order of the Minister of Telecommunications and ICT, proposed by the regulatory authority; as provided for by Law No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies. • Accelerate the various remaining steps in order to move on to the promulgation of the Congolese digital code. • Ensure that the various initiatives fill the legal void in the sector in light of new information 	<p><i>To the Parliament:</i></p> <ul style="list-style-type: none"> • Pursue and complete legislative and structural reforms in the press and communication sector, by not only obtaining the adoption and promulgation of the law on access to information in the DRC, but also by initiating the revision of law n° 96-002 of June 22, 1996, fixing the methods of the exercise of the freedom of the press, thus considering decriminalising offenses of the press. 	<p><i>To civil society organizations:</i></p> <ul style="list-style-type: none"> • Increase activities to raise awareness as well as consolidate joint actions in multi-stakeholder meetings such as forums relating to internet governance to improve or develop different consultation frameworks for the benefit of the digital ecosystem in the Democratic Republic of Congo.

GOVERNMENT	TELECOMS	CIVIL SOCIETY
<p>and communication technologies, engage the various stakeholders in a consultative framework so as to avoid policies and regulations violating human rights,</p>	<p><i>To telecommunications companies:</i></p> <ul style="list-style-type: none"> • Comply with the law and international standards to protect private communications and personal data of their users, and also not to consent illegal requests by government institutions regarding personal data of u 	



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