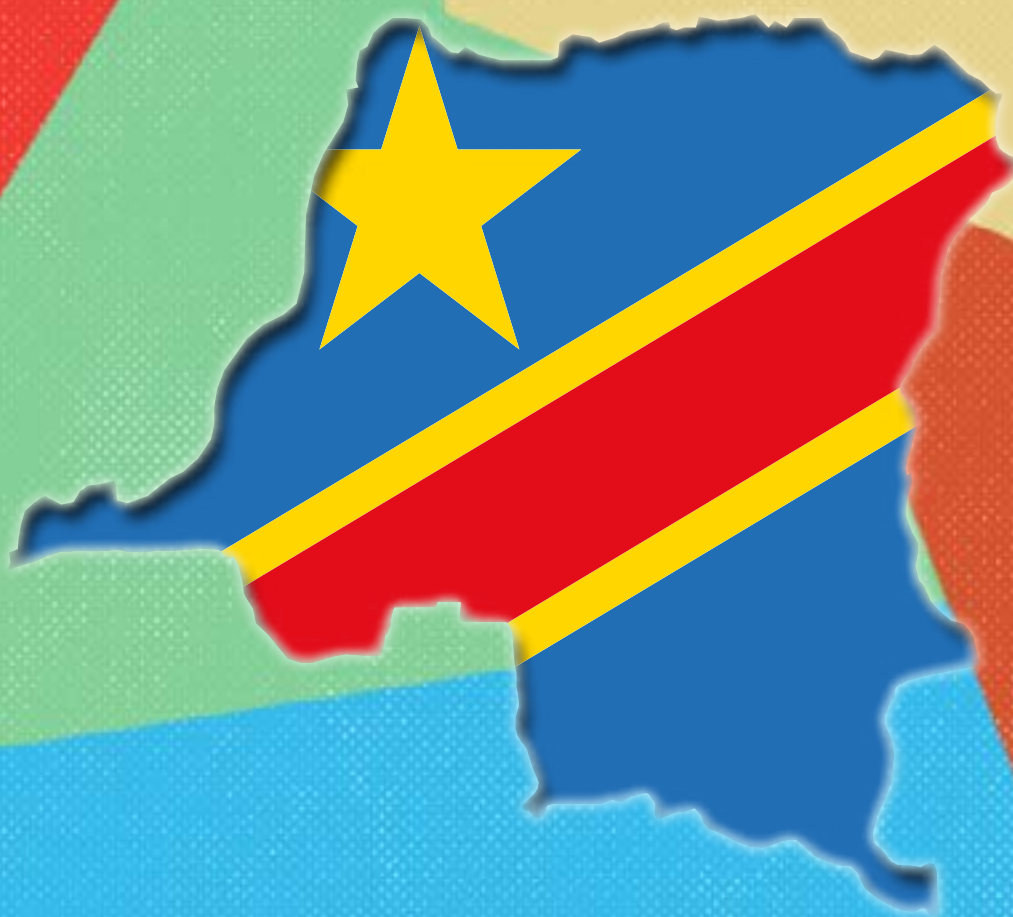


# LONDA 2023

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



DEMOCRATIC REPUBLIC OF  
CONGO

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# Democratic Republic of Congo

## EXECUTIVE SUMMARY

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This Londa report on the Democratic Republic of the Congo (DRC) addresses digital rights issues and provides an overview of the ICT landscape for this country at the heart of the African continent. This report speaks of the two main legal texts covering the country's digital landscape: the 2020 Telecoms and ICT law and the Digital Code enacted in 2023. The two texts are the main ones used here to assess the country's digital rights situation and can be considered as major milestones in the country's search to update its legal framework for the last few years. It is noted in this report that, unlike the 2018 general elections that saw the country go under a long internet shutdown period, the just concluded 2023 general elections recorded no internet shutdown nor any telecoms disruption, which is a positive sign. Unlike the previous administration under President Kabila, which recorded many network disruptions, President Tshisekedi's presidency recorded no disruption for his 5-year tenure.

This report addresses the Universal Service Fund in the RDC (FDSU). The FDSU, the institution in charge of managing the USF, was established by the 2020 Telecoms and ICT Law, providing for telecom operators to contribute 3% of their annual turnover

to it. The FDSU management is still working on securing the funds which were used to contribute to the national budget and need to be redirected. The report also touches on the situation of women human rights defenders and the gender-oriented online violence they are facing as they work to participate in the creation of a rights-respecting digital space. The state of cybersecurity and data protection in the DRC is also mentioned, highlighting that no specific law covers any of the two aspects. Still, a few articles on both issues exist in the two main legal frameworks. The report ends with a conclusion and recommendations addressed to various stakeholders, including the regulatory authority, the government, the parliament, civil society organisations and telecom companies. Data presented in this report was collected through desk research that comprised the exploration and analysis of the various legal frameworks, other similar studies as well as news reports about the specific issues covered by this report.

# Introduction



The Democratic Republic of Congo (DRC) is the second largest country in Africa, with an area of 2,345,000 km<sup>2</sup> located at the heart of the continent. According to World Bank data, its population is estimated at 99 million (2022), and its GDP per capita at 586,464 US dollars (2022).<sup>131</sup> The DRC had its general elections on December 20, 2023 and saw the incumbent president, Felix Antoine Tshisekedi Tshilombo, be provisionally announced as the winner for a second term by the Electoral Commission on December 31, 2023, pending confirmation by the Highest Court. Unlike the previous 2018 general elections, no internet disruptions were noticed, a positive sign that showed the current administration's commitment to the tech ecosystem.

131 World Bank, Congo Democratic Republic available at <https://data.worldbank.org/country/congo-dem-rep?view=chart>

## ► Country Analysis

### ICT-related Legal Frameworks

The digital ecosystem in the DRC has a few legal instruments that cover the sector to ensure a smooth collaboration between the different state and private bodies which are considered partners in the fight for meaningful connectivity in the DRC. The two most important ones are presented below.

1. The 2020 Telecommunications and Information and Communication Technologies Law of the DRC Referred to in this study as the 2020 Telecoms and ICT Law, this document is considered the most important framework law that oversees the telecommunication and ICT sector in the country. According to the Prime Minister's office<sup>132</sup>: "This law also aims to make telecommunication and information and communication technologies a truly economic growth sector and job creator in the Democratic Republic of Congo."

A long-awaited project by different actors in the sector, this law, enacted in November 2020, came in replacement of Framework-Law No 013/2002 of October 16, 2002 on Telecommunications in the DRC that was mostly focused on telecoms. It was important for the country to have it updated with the aim of, filling the gaps that hinder the smooth running of the market and the economic profitability of the ICT sector for the Congolese State, and adapting the legislation to the imperatives of security and the evolution of the telecommunications industry in the digital age.

2. Le Code du Numérique (The Digital Code) It is Ordinance-Law No 023/10 of March 13, 2023 on the Digital Code, a project led by the Ministry of Digital Affairs and one of the projects mentioned in the National Digital Plan, under its 3<sup>rd</sup> pillar, Governance and Regulation. This is part of Project 62, whose objective is the « implementation of a legal and regulatory framework for digital activities with a participative, corrective, adaptive, complementary and forward-looking approach, in line with commitments at sub-regional, regional and international levels."<sup>133</sup> This ordinance law is considered the legal lever for the digital transformation of DRC, as it is positioned as an instrument for developing and diversifying the national economy. It aims to foster the emergence of the digital economy by facilitating the development of digital services and the widespread distribution of digital technology based on established rules.

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### Internet access and disruptions

With four main telecom companies operating in the DRC: Vodacom, Orange, Airtel, and Africell; the mobile telephony penetration rate is at 58.6% and the mobile internet penetration rate at 30.8% in the second quarter of 2023, according to a report by the Regulatory Authority<sup>134</sup>. The DRC

132 The 2020 Telecoms and ICT Law: [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](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)

133 PNN: [https://www.numerique.cd/pnn/pnn/Plan\\_National\\_du\\_Nume%CC%81rique\\_HORIZON\\_2025.pdf](https://www.numerique.cd/pnn/pnn/Plan_National_du_Nume%CC%81rique_HORIZON_2025.pdf) (National Digital Plan, Page 66) (Accessed on Jan 5, 2023).

134 Regulatory Authority Report: [https://drive.google.com/file/d/18uPpM6np908blnm6igZL\\_jlscf-dC\\_oA/view?usp=sharing](https://drive.google.com/file/d/18uPpM6np908blnm6igZL_jlscf-dC_oA/view?usp=sharing)

citizens were invited for the general elections on December 20, 2023 which saw the mandate of President Felix Antoine Tshisekedi Tshilombo renewed for a second term after the announcement by the Electoral Commission on December 31. Unlike the previous general elections of 2018, no internet shutdown or disruption was noted during these elections.

## The Universal Service Fund

Article 14 of the 2020 Telecoms and ICT Law provides the following: “The Government creates, by decree approved by the Council of Ministers, a public body responsible for promoting telecoms and ICTs in rural and semi-urban areas that are not of interest to the sector’s economic operators. To this end, the law creates a Universal Service Fund for the telecommunications and ICT sectors. It is placed under the authority of the Minister.” Decree No 22/51 of December 30, 2022 provides for the creation, organisation and operation of a public body called the Fonds de Développement du Service Universel des Télécommunications et des Technologies de l’Information et de la Communication (FDSU)<sup>135</sup> or the Universal development fund for ICT, in English. This institution was presented<sup>136</sup> to telecoms operators during a meeting with the Minister of ICT on July 24, 2023, an initiative that was welcomed and supported by operators as well as by the telecoms regulator, who said: “This fund, which has been set up by telecoms operators over the years to cover 3% of their turnover, will be used to develop telecommunications in less profitable areas.” To operationalise this law, a ministerial order<sup>137</sup> came in to appoint a mission manager and their deputy. Their mission is to prepare the implementation of the FDSU (Art. 2) and this mission lasts until the appointment of the official managers by a presidential decree, which hasn’t happened as of yet.

The FDSU will be in charge of the following missions, as per Article 5 of Decree No 22/51 referenced above:

1. Financing interventions and projects aimed at implementing the Government’s universal service development strategies;
2. Promote access to telecoms and ICT services for rural and disadvantaged communities;
3. Promote the participation of the private sector in the provision of telecoms and ICT services in rural and peri-urban areas;
4. Promote the economic and social development of rural and semi-urban areas through access to telecoms and ICT services;
5. Identify the needs of rural and semi-urban populations.

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According to the law, the FDSU’s financial resources are constituted, among other sources, by a 3% levy on the annual turnover of telecoms and ICT operators. The current battle and challenge for this team will be to ensure that this fund is properly nourished, as this money is collected but has already been used to increase the national budget for the last 10 years. This is a difficult exercise,

135 Decree No 22/51 of December 30, 2022 : <https://drive.google.com/file/d/14q4rGuje6y1ygeuSBFrMbWALQE7Uneh/view?usp=sharing>

136 PTNTIC: Augustin Kibassa préside la réunion de présentation du FDSU aux opérateurs des télécoms : <https://www.african-ewsrdc.net/actu/ptntic-augustin-kibassa-preside-la-reunion-de-presentation-du-fdsu-aux-operateurs-des-telecoms/> (Accessed on Jan 5, 2023)

137 Ministerial order No CAB/MIN/PTNTIC/AKIM/KL/Kbs/009/2023 of May 24, 2023 appointing a mission manager and a deputy mission manager for the FDSU in the DRC: <https://drive.google.com/file/d/1xxugFqVw8JFKua0KLCLc0UXQ04ErdIHF/view?usp=sharing>

as the portion that goes into the national budget finances other aspects of the country's expenses and has to now be released so that it can be used to finance the Fund. By creating this entity, the Congolese Head of State aims to improve the national telecoms network "so that all Congolese, wherever they may be, have access to the Internet". This is essential in the context of accelerated digital transformation, where the government wants to dematerialise administrative procedures to make the administration's actions more transparent<sup>138</sup>. The provisional team managing the FDSU hasn't implemented any project as directed by the laws at the time of writing this report.

## Online Gender-Based Violence

The lack of digital knowledge and skills among some women human rights defenders in the DRC is an additional vulnerability that makes their work difficult and exposes them more to human rights violations. There is a rise in the rate of online gender-based violence in the DRC. Unfortunately, there is silence on this subject. For many, these acts of violence are at the root of technophobia (the fact that women tend to refrain from using technology as a consequence of the harm they are facing) that is increasingly noticed among women. Careful consideration is needed on this.

This technophobia and the gap between men and women in the use of digital tools and the internet, in particular, is said to have its roots in retrograde cultures and customs that have for years sought to exclude women and girls from public spaces and platforms of expression. Cases of sextortion, harassment and other forms of online threats discourage many women human rights defenders from continuing to use the Internet in their daily work. These forms of attacks often result in the publication of intimate content to discredit the victim or extort them for ransom. Some women activists and journalists continue to suffer violence from misogynistic Internet users when they speak out on public platforms, often without any reaction from the managers of these platforms nor public support from the rest of the community, as said<sup>139</sup> during this workshop organised by journalists on this topic. These sexist attacks must be discouraged by a common outpouring of solidarity from Internet users and platform managers.

## Cybersecurity and Data Protection

To date, in the DRC, no law in force specifically deals with cybersecurity and cybercrime issues. Other laws and related texts, such as the Telecoms and ICT law and the Digital Code, address these areas. The Digital Code enshrines the creation of the National Cybersecurity Agency in Article 275. It is a public body with legal personality and placed under the President's office. When instituted, it will take care of all matters related to cybersecurity and the security of information systems in the country. This is a significant step forward in the Congolese digital sector. The Digital Code applies to digital activities and services; writings, electronic tools and trust service providers; digital content; security and criminal protection of computer systems.<sup>140</sup> This code considers cybercrime offenses by defining them as a set of specific criminal offenses related to information and communication technologies whose commission is facilitated or linked to the use of technologies.

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138 RD Congo: vers l'opérationnalisation du Fonds de développement des services universels : <https://www.agenceecofin.com/telecom/2407-110570-rd-congo-vers-l-operationnalisation-du-fonds-de-developpement-des-services-universels> (Accessed on Jan 5, 2024)

139 RDC : les femmes des médias appelées à dénoncer les attaques dressées contre elles sur les réseaux sociaux: <https://zoom-eco.net/a-la-une/rdc-les-femmes-des-medias-appelées-a-denoncer-les-attaques-dressees-contre-elles-sur-les-reseaux-sociaux/>

140 Article 1 of Ordinance-Law No. 23/010 of March 13, 2023, on the Digital Code of the DRC



Women human rights defenders are also victims, like all Congolese, of the government's prerogatives to violate the rights of access to the internet. Indeed, article 125 of the 2022 ICT and Telecoms Law maintains that the State may, for the time it determines, either for reasons of internal and/or external security, national defense or public order, or in the interest of the telecommunications service, or for any other reason deemed necessary, suspend, restrict, filter, prohibit or close certain services and applications, in whole or in part, including the use of their facilities. In the past, this has been relied on to order internet disruptions, such as Internet shutdowns. Calls from civic groups have been made to amend this section to address its vague nature and the possibility of abuse.

Women human rights defenders are not exempt from these measures which can lead to censorship, surveillance and/or deprivation of rights of access to information and freedoms of association and assembly. This agency, like those of the intelligence services, being under the direct authority of the President's office, can become a tool of repression used by the public authorities. Articles 323<sup>141</sup> and 324<sup>142</sup> of the Digital Code reiterate the prerogatives granted to the National Cybersecurity Agency, which may authorise the interception of personal data, their retention and integrity protection as well as the interception of correspondence sent by electronic means. This is for several reasons, including the maintenance of national sovereignty, territorial integrity, and national defense, as well as the breach of public order. This provision, however, can be abused to violate encryption and privacy of communications; there is a need for a balanced approach that upholds human rights.

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141 Article 323 of the Digital Code: The National Cybersecurity Agency authorizes: 1. the interception of correspondence sent by means of electronic communications, in accordance with the provisions of this Ordinance-Law; 2. the preservation and protection of the integrity and collection, including in real time in accordance with the procedures provided for in Articles 25 et seq. of the Code of Criminal Procedure, of data and information on personal data and in Article 273 of this Ordinance-Law. The detailed rules for implementing the provisions of this Article shall be specified by regulation.

142 Article 324 of the Digital Code: The interception operations referred to in this Ordinance-Law are authorized by the National Cybersecurity Agency when they are necessary: 1. the maintenance of national sovereignty, territorial integrity or national defense; 2. the preservation of the major foreign policy interests of the Democratic Republic of Congo; 3. the safeguarding of the major economic, industrial and scientific interests of the Democratic Republic of Congo; 4. the prevention of terrorism, collective violence likely to seriously undermine public order or organized crime and delinquency.

# ▶ Conclusion & Recommendations

## Conclusion

The major highlight of this year is that the DRC has done well in 2023 regarding its digital rights record, with no internet disruption recorded during the 2023 electoral cycle. Citizens and the international community were calling on the government not to violate citizens' digital rights as it did during the 2018 cycle, which saw a 20-day internet shutdown starting the day after the general elections until a few hours before the final results were published.

In line with the above, the following recommendations are made to various bodies in the DRC landscape:

## Recommendations

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### Government

- » Ensure the entity managing the Universal Service Fund (FDSU) receives the necessary funds, allowing them to start deploying their work on the ground immediately and supporting internet connectivity for rural areas.
- » Ensure the Regulator plays their role, including advocating for the rights of users of telecoms and internet services across the country.
- » The Parliament must play its legislative role by granting the country the appropriate and up-to-date laws and regulations that take into account the global standards and practices in the telecommunications and internet service provision industry;
- » Ensure the public interest is taken into account as a priority in all government actions, especially regarding connectivity matters;
- » Implement laws fairly in line with international human rights standards to ensure fairness to the benefit of the population.

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### Civil society organisations and individuals:

- » Multiply awareness-raising activities but also 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.
  - » It takes a surge of solidarity from all Congolese internet users to stop sexist attacks and other forms of harassment against women human rights defenders online.
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**Telecom-  
munications  
companies:**

- » Comply with the law and international standards to protect their users' private communications and personal data.
  - » Refrain from consenting with illegal requests by government institutions regarding access to personal data.
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