

LONDA



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DRC Digital Rights and Inclusion Report

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DRC DIGITAL RIGHTS AND INCLUSION 2021 REPORT

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EXECUTIVE SUMMARY

This report focuses on the Democratic Republic of the Congo, taking stock of human rights issues in general with a particular focus on freedom of expression online.

Using an approach comprising documentary, policy and legal analysis as well as key informant interviews, this report aims to analyse aspects of online freedom of expression in the DRC. It also presents the legal environment as well as the specific provisions of the law which guarantee this right to citizens.

Based on the research findings, this report concludes with specific recommendations for different stakeholders, namely the government, parliament, civil society groups and telecommunications companies to ensure citizens' freedom of expression, information and association as provided for in the Congolese constitution.





INTRODUCTION

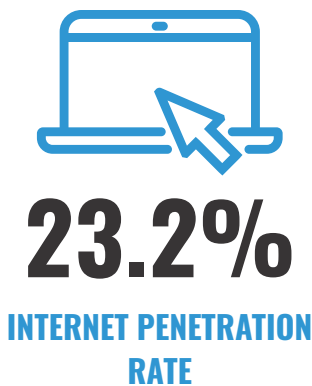
DIGITAL RIGHTS AND INCLUSION IN DEMOCRATIC REPUBLIC OF THE CONGO

The Democratic Republic of the Congo is a country in Central Africa with nearly 90.9 million inhabitants, having an internet penetration rate estimated at nearly 23.2% during the first quarter of 2021.¹

The country is covered by 4 mobile phone networks, which are Airtel, Orange, Africel and Vodacom; as well as several internet access service providers.

For more than 18 years, the telecommunications sector in the Democratic Republic of Congo was governed by framework law n°013/2002 of October 16, 2002, a legal provision that was too controversial because of the shortcomings revealed in certain questions which have been deemed “Mandatory” by the legislator in the new law in particular: State security, protection of the rights of users of the sector and the structure of the market.²

Over the past ten years, several reports published in the context of human rights and freedom on the Internet, present the Democratic Republic of Congo as one of the countries where violations of human rights, as well as freedom on the Internet, are recurrent and have serious implications for democracy.³



1. "Digital 2021 – The Democratic Republic of Congo", DataReportal.com, February 11, 2021, <https://datareportal.com/reports/digital-2021-democratic-republic-of-the-congo?rq=congo>
 2. "DRC: the innovations of the Telecoms Act adopted by the National Assembly", Zoom-eco.net, May 9, 2018, <https://zoom-eco.net/a-la-une/rdc-les-innovations-of-the-law-on-telecoms-adopted-at-the-national-assembly/>
 3. "Restoring DRC's Democratic Ideals Through Internet Freedom", Paradigmhq.org, August 2021, <https://paradigmhq.org/report/restoring-drcs-democratic-ideals-through-internet-freedom/>



ARREST OF JOURNALISTS AND CIVIL SOCIETY

Under Article 46 of the framework law governing the postal and telecommunications sector, the authorities had the power to interrupt “partially or totally and for a period that they determine the use of telecommunications installations” for reasons of public security and national defence. Under this same law, the government also had the power to control telecommunications facilities.⁴

During the existence of this legal provision, the country recorded several cases of internet shutdowns as well as the arrest of journalists and civil society actors whom President Kabila’s regime considered “hostile” to his power.⁵

COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

The Constitution of the Democratic Republic of the Congo, the supreme law of the country, guarantees in its articles 23, 24 and 25 the freedom of expression, information and association.⁶

Article 23

Everyone has the right to freedom of expression. This right implies the freedom to express one’s opinions or convictions, particularly speech, writing and image, subject to compliance with 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

Freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public order and good morals.

4. “framework law n°013-2002 of October 16, 2002 on telecommunications in the DRC”, Droit-Afrique.com, January 25, 2003, <http://www.droit-afrique.com/upload/doc/rdc/DRC-Law-2002-13-telecom-framework.pdf>

5. In Kinshasa, anti-Kabila masses dispersed in churches”, Voaafrrique.com, December 31, 2017, <https://www.voaafrrique.com/a/kinshasa-messes-anti-kabila-eglises/4186288.html>

6. “ Constitution of the Democratic Republic of Congo / Official Journal Special Issue February 5, 2011, cour-constitutionnelle.cd, February 5, 2011, <https://www.cour-constitutionnelle.cd/wp-content/uploads/2021/02/Constitution-of-the-DRC.pdf>



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, the protection of users' rights but also the structure of the market.

In this digital age, the protection of human rights and freedom of expression remain fundamental on the African continent.⁷

As formulated 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 the foundation of any democracy.

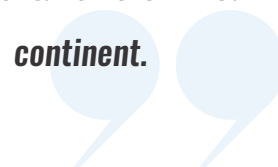
This freedom remains the first of the rights that any aspirant or totalitarian system suppresses in order to establish or maintain its power, through the systematically organized persecution of the population, intimidation, arrests, arbitrary acts, targeted killings, massacres, and the establishment of a climate of general insecurity.⁸

In response to this challenge, the African Declaration of Rights and Freedoms on the Internet has been an essential tool on the African continent, laying the groundwork necessary for the promotion of human rights standards as well as the principles of openings in the establishment and application of Internet policies.⁹

Freedom of expression on the internet is provided for in international human rights instruments, in particular, the Universal Declaration of Human Rights (UDHR) in its article 19 as well as the International Covenant on Civil and Political Rights (ICCPR) in article 19(2).¹⁰



***The protection of human rights
and freedom of expression remain
fundamental on the African
continent.***



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

8. "The need for the revaluation of freedom of expression in the DRC", Civicus.org, 2018, <https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3391-the-necessity-of-the-revaluation-of-the-freedom-of-expression-in-the-democratic-republic-of-congo>

9. "The African Declaration of Internet Rights and Freedoms in several languages", Apc.org, October 2017, <https://www.apc.org/en/news/the-african-declaration-of-rights-and-internet-freedoms-available-in-more-numbers>

10. "Freedom of expression and the internet", Rm.coe.int, December 2013, <https://rm.coe.int/prems-167417-gbr-1201-freedom-of-expression-on-internet-web-16x24/1680984eae>

FREEDOM OF EXPRESSION ON THE INTERNET IN THE DEMOCRATIC REPUBLIC OF THE CONGO

The internet penetration rate has evolved considerably, for example from 19.9% in 2019 to almost 23.2% during the first quarter of 2021. The democratic transition between former President Joseph Kabila and new President Félix Antoine Tshisekedi created a break in the political coalition. Current political actors are looking for an electorate for the elections scheduled for 2023. These are the indicators that can guide the analysis of any observer interested in the issue of freedom of expression on the Internet in DRC.

In 2021, Reporters without Borders, an international organization that campaigns for freedom of information, drew up an “*alarming*” report with regard to concerns press freedom violations in the Democratic Republic of the Congo by ranking the country 149th out of 180 countries and territories worldwide.¹¹

The organization Journaliste en Danger (JED) on the side-lines of the celebration of World Press Freedom Day on May 3, 2021, insisted on the need to carry out in-depth reforms in the press sector, without which journalism will remain a risky profession in the Democratic Republic of the Congo.¹²

Since the start of President Antoine Felix Tshisekedi's mandate, the Journaliste en Danger (JED) organization has reported a worrying increase in attacks against journalists and the media, with a

total of nearly 228 cases of non-respect for the freedom of the press throughout the national territory.¹³

On May 6, 2021, the provinces of North Kivu and Ituri were placed in a state of siege in accordance with Article 85 of the Constitution in order to deal with the worsening violence committed against the civilian population.¹⁴

The state of siege being a special regime of legality, the civil authorities are replaced by the military authorities. In this situation, the army is responsible for the security of citizens instead of the police.¹⁵

In this regime, civil liberties can also be reduced. The military authorities can in this case search homes day and night, and prohibit meetings considered a threat to public order. Under the regime of the state of siege, the military authorities can also prohibit the movement of people.¹⁶

Several actors working in the field of human rights in the DRC have expressed their fear that the state of siege regime will open a breach to human rights violations by restricting freedom of expression, information and association.

The authorities of the Democratic Republic of the Congo have been called upon to ensure that the “state of siege” established from May 6, 2021 in the provinces of North Kivu and Ituri does not further

11. “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>

12. “Celebration of World Press Day”, Jed-afrique.org, May 3, 2021, <http://jed-afrique.org/2021/05/03/rdc-sans-des-reformes-en-profondeur-journalism-will-remain-a-risky-job-in-dr-congo/>

13. “The NGO Journalist in Danger (JED) is sounding the alarm”, Rfi.fr, 04 May 2021, <https://www.rfi.fr/fr/afrique/20210504-m%C3%A9dias-in-drc-l-ong-journalist-in-danger-jed-sounds-the-alarm-bell>

14. “President declares “state of siege” in two provinces affected by violence”, France24.com, May 1, 2021, <https://www.france24.com/fr/afrique/20210501-rd-congo-the-president-proclaims-the-%C3%A9state-of-age-in-two-provinces-touched%C3%A9es-by-violence>

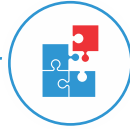
15. “Constitution of the Democratic Republic of Congo”, cour-constitutionnelle.cd, February 5, 2011, <https://www.cour-constitutionnelle.cd/wp-content/uploads/2021/02/Constitution-de-la-DRC.pdf>

16. “State of siege in the DRC: what results in Ituri and North Kivu with a 12th extension?”, Bbc.com, November 20, 2021, <https://www.bbc.com/afrique/59352140>

violate guaranteed human rights. by international human rights law.¹⁷

On August 28, 2021, through a campaign called “A candle for press freedom in North Kivu”, the corporation of journalists called on the military

authorities to guarantee journalists a free and independent press and finally pay tribute to their colleagues cowardly killed during this period of the state of siege in the province of North Kivu and in Ituri and whose investigations have so far remained silent.¹⁸



CONCLUSION AND RECOMMENDATIONS

The following conclusions and recommendations are key:

To the Government

With regard to Law No. 20/017 of November 25, 2020 relating to telecommunications and information and communication technologies, as provided for, on the proposal of the Regulatory Authority, an order of the Minister having the telecommunications and ICT sector in its attributions can set the conditions and procedures for the collection, recording, processing, storage and transmission of personal data.

To Parliament

There is a need for the Parliament to pursue and complete legislative and structural reforms in the press and communication sector by the adoption and promulgation of the law on access to information in the DRC and also by starting the revision of Law No. 96-002 of June 22, 1996 establishing the procedures for exercising press freedom.

To Civil Society Organisations (CSOs)

There is a need for CSOs to increase awareness-raising activities and also consolidate joint actions in multi-stakeholder meetings such as internet governance forums in order to improve or develop frameworks for the benefit of the digital ecosystem in the Democratic Republic of Congo.

To Telecommunications Companies

Telecommunications companies need to comply with the law and international standards to protect the private communications and personal data of their users. Also, they must not comply with illegal requests by government institutions for the personal data of users.

17. “DRC. The “state of siege” must not further undermine human rights”, Amnesty.org, 6 May 2021, <https://www.amnesty.org/fr/latest/news/2021/05/drc-state-of-siege-must-not-further-undermine-human-rights/>
18. “DRC: journalists pay tribute to their murdered colleagues”, Africanews.com, 28 August 2021, <https://fr.africanews.com/2021/08/28/rdc-les-journalistes-rendent-hommage-a-their-colleagues-assassins/>

Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights - respecting Africa.



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