

The Media and Internet Freedom in Angola, the Central African Republic and the Democratic Republic of Congo

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Introduction

This report analyses several laws and policies affecting media freedom in Angola, Central African Republic (CAR) and the Democratic Republic of Congo (DRC). From the onset, it is worth highlighting that Angola, CAR and DRC are state parties to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights which entrench the promotion and protection of freedom of expression and access to information under articles 19 and 9 respectively. This means all 3 States have an obligation to enact laws which enable the enjoyment of these rights. It is on this basis that the laws and policies discussed in this report are measured. Any restriction to freedom of expression must be prescribed by law and conform to the strict tests of necessity and proportionality.1

Guidance on reasonable limitation of media freedom is drawn from the Siracusa Principles² which state that whenever a limitation is required in the terms of the Covenant (ICCPR) it must be "necessary." The Declaration of Principles of Freedom of Expression and Access to Information in Africa (the Declaration) adopted by the African Commission on Human and Peoples' Rights (the ACHPR) similarly echoes the 3-part

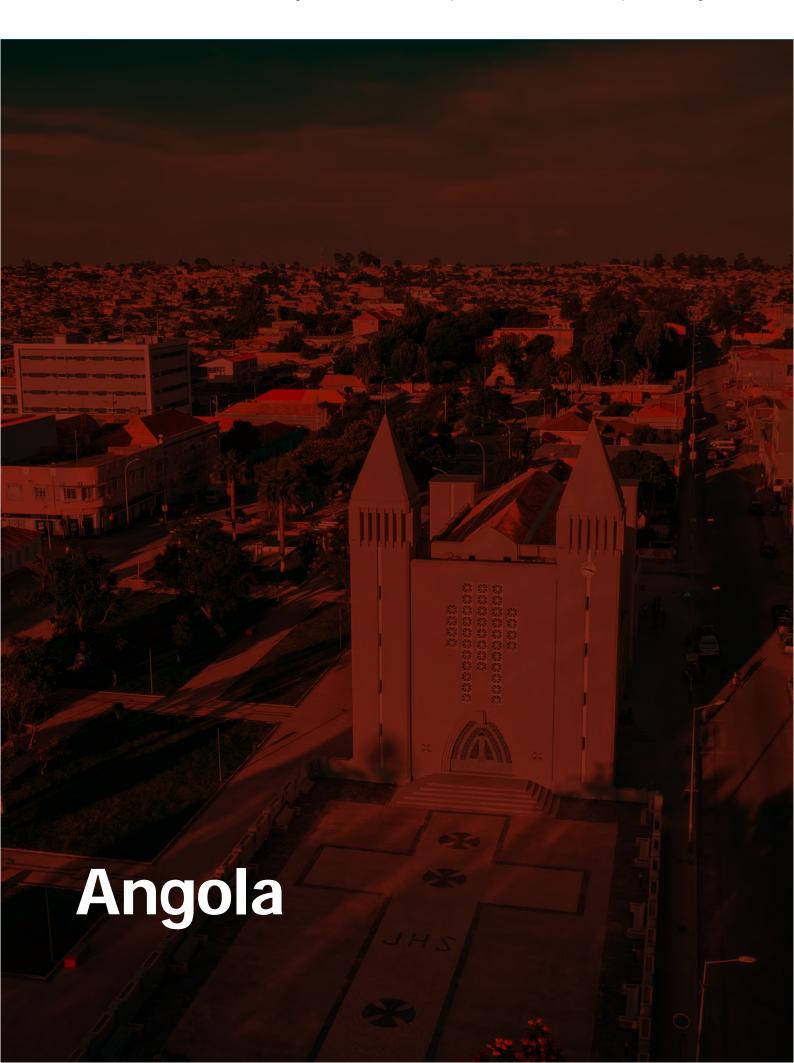
test that States may only limit the exercise of the rights to freedom of expression and access to information if the limitation is prescribed by law, serves a legitimate aim and is a necessary and proportionate means to achieve the stated aim in a democratic society.³

What the terms of the 3-part test mean is that freedom of expression and access to information are not absolute rights but there can be a derogation from them. When there is any limitation to freedom of expression and access to information, a law in a country must specifically provide for that derogation and it should be a law addressing a specific problem or mischief. It must be necessary to limit that right and the test also calls for a weighing of whether or not whatever means to address the problem or mischief are the appropriate and adequate means of meeting the standard of proportionality without exceeding the limits of reasonableness in addressing the problem. The laws analysed in this report may only limit media freedom in the event of them pursuing a legitimate aim, being necessary and proportionate. In assessing whether they meet this test, international human rights standards are the yardstick for the analysis.

¹ See the ICCPR https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights and the African charter on Human and Peoples' Rights https://www.achpr.org/legalinstruments/detail?id=49#:~:tex-t=The%20African%20Charter%20on%20Human,freedoms%20in%20the%20African%20continent, articles 19 and 9 respectively. See also the UN General Comment No. 34 on Article 19: Freedoms of opinion and expression https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and (accessed on 23 November 2022) is instructive on freedom of expression and the media..

² Siracusa Principles Principle 10 https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf (accessed on 26 September 2022).

³ See the ACHPR Declaration of Principles on Freedom of Expression and Access to Information file:///Users/thobekilematimbe/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019%20(3). pdf (accessed on 26 September 2022).



Angola



Background

Internet freedom in Angola improved in the first years of the administration of President João Lourenço. Under the government, freedom of expression was characterized by permanent violations and imprisonment of journalists on the grounds of protecting state security, but since President Lourenço's 2017 election, the government has taken steps to crack down on endemic corruption and has eased restrictions on the press and civil society. Angolans are more likely to use social media platforms for the purposes of activism and community building than in the past, even if some limitations still persist.4 Access to the internet in Angola remains very low but has been growing steadily - Angola's internet penetration rate stood at 36% of the total population at the start of 2022.5 Angola's powerful ruling party, the Popular Movement for the Liberation of Angola (MPLA), maintains effective control of regulatory bodies. The Ministry of Telecommunications and Information Technology⁶ is responsible for overseeing the ICT sector.

The Constitution of AngolaFreedom of Expression and Media Freedom

The Angolan Constitution⁷ provides for freedom of expression and the press. It guarantees the protection of citizens'

fundamental freedoms. For example, Article 34referstothe 'inviolability of correspondence and communications' where it states that (1) the secrecy of correspondence and other means of private communication, namely postal, telegraphic, telephone and telematic communications is inviolable; (2) interference by public authorities in correspondence and other means of private communication is only allowed by decision of a competent judicial authority issued in accordance with the law. Article 40 addresses freedom of expression and information which states that: '(1) everyone has the right to freely express, disseminate and share his thoughts, ideas and opinions through words, images or any everyone has the right to express, communicate and share freely his thoughts, ideas, and opinions, to be informed, without hindrance or discrimination; (2) the exercise of the rights and freedoms set forth in the preceding paragraph shall not be impeded or limited by any type or form of censorship; (3) freedom of expression and freedom of information shall be limited by the rights of all to a good name, honour and reputation, image and privacy, the protection of children and young people, State secrecy, legal secrecy, professional secrecy and other guarantees of those rights, under the terms regulated by law.'

⁴ Freedom House – Freedom on The Net 2021 https://freedomhouse.org/country/angola/freedom-net/2021 (accessed on 4 June 2022).

⁵ Digital in Angola (Hootsuite) https://datareportal.com/reports/digital-2022-angola (accessed on 4 June 2022).

⁶ The Ministry www.minttics.gov.ao (accessed on 4 June 2022).

⁷ Constitution of Angola, 2010 (the Constitution) https://governo.gov.ao/fotos/frontend_1/editor2/constituicao_da_republica_de_angola.pdf (accessed on 5 June 2022).

In addition, Article 42(1) and (2) address intellectual property highlighting that the expression of intellectual, artistic, political, scientific and communication activity is free, irrespective of censorship or licensing and authors have the exclusive right to use, publish or reproduce their works reproduction of their works, which may be transferred to their heirs for a period fixed by law.

Finally, Article 44 on freedom of the press provides as follows:

'(1) Freedom of the press shall be guaranteed, and shall not be subject to any censorship, particularly of a political, ideological, or artistic nature; (2) the State shall ensure pluralism of expression and guarantee the difference of ownership and editorial diversity of the media; (3) the State shall ensure the existence and the independent and qualitatively competitive public radio and television service.'

Analysis

The Angolan Constitution complies with international law by providing for freedom of expression as highlighted above. For as long as such positive provisions exist, the Angolan government's control telecommunications infrastructure via the state-owned Angola Telecom may enable the government to partially control internet connectivity, if desired. As highlighted in Principle 11 of the ACHPR Declaration, State or private monopoly over print, broadcast and online media is not compatible with the right to freedom of expression. States must thrive to ensure a diverse and pluralistic media enabling the free flow of information and ideas.8 In other words, the fact of holding

shares in telecommunication companies such as UNITEL, the largest mobile company, can give the executive access to data and personal information that is collected by these companies. Also, the Ministry of Telecommunications maintains control of the Regulatory Authority (INACOM).

This is provided for under Law No. 23/11 of 20 June, Law on Electronic Communications and Information Society Services⁹. In addition to that, a set of new media laws that took effect in 2017 has been restrictive, as highlighted in the following sections.¹⁰

Press Law¹¹ Media Freedom

The Press Law of 2017 establishes the General Guiding Principles of the Media and regulates press freedoms in Angola. Article 1 of the law establishes the guiding principles of the media and regulates the forms of exercising freedom of the press. Another positive provision is Article 10, which states that 'All media enterprises and organs have a social responsibility to ensure the right of citizens to inform, be informed and be informed in accordance with the public interest.' In addition to that, Article 25 provides that the concentration of media companies or organs in a single entity shall be prohibited, to prevent the establishment of monopolies or oligopolies that undermine impartiality, pluralism of information and healthy competition.'

While the press law promotes media diversity and pluralism, it is particularly problematic as media practitioners are threatened by chilling fines and criminal sanctions. For example, it holds authors, editors, or directors of a

⁸ ACHPR Declaration of Principles on Freedom of Expression and Access to Information file:///Users/thobekilematimbe/Downloads/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019%20(3).pdf (accessed on 26 September 2022)

⁹ https://minttics.gov.ao/fotos/frontend_10/gov_documentos/lei_das_comunicacoes_electro_19324146535f-1886da78b9b...s_sociedade_da_informacao.pdf

 $^{10 \}quad \text{Communications sector legislation package https://minttics.gov.ao/fotos/frontend_10/gov_documentos/pacote_legislativo_da_comunicacao_social_1__2611596306012dd9a7771d.pdf (accessed on 5 June 2022).}$

¹¹ Law 1/17 of 23 January 2017, Revokes Law 7/06 of 15 May 2006.

publication criminally liable for defamatory content, stating that "For acts committed through the press that damage interests and values protected by law, its authors shall be liable in disciplinary, civil and criminal terms"¹². Criminal sanctions lead to the self-censorship of the media unjustifiably interfering with freedom of expression and access to information making such a provision problematic. Principle 22(2) and (3) of the ACHPR Declaration is instructive on best practices. States must repeal laws that criminalise sedition, insult and publication of false news. They should also amend criminal laws on defamation and libel preferring civil sanctions which must be necessary and proportionate.¹³ The African Court on Human and Peoples' Rights in the Lohé Issa Konaté v. The Republic of Burkina Faso settled in 2014 that criminal defamation convictions are disproportionate and civil sanctions must be preferred.¹⁴ The Angolan government must consider abolishing the criminal defamation provision and providing for civil sanctions that are reasonable.

Article 29 gives the Ministry of Social Communication the authority to oversee how media organizations carry out editorial guidelines and to punish violators¹⁵ with suspension of activities, or fines. Such a provision in some instances may be abused and interfere with editorial independence in editorial processes. The appropriate guideline is found in Principle 12(3) of the ACHPR Declaration which mentions that States should develop regulatory environments that encourage media owners

and media practitioners to reach agreements to guarantee editorial independence and to prevent commercial and other considerations from influencing media content. Principle 13 (3) of the same also adds that editorial independence of public service media shall be guaranteed. Article 83 imposes excessive fees to establish a media group of 35 million kwanzas (US\$211,000) for a news agency and 75 million kwanzas (US\$452,000) for a radio station. Equally article 84 provides that the application of the fines referred to in article 83 is the mandate of the Ministerial Department responsible for Social Communication. The penalties are excessive and have a chilling effect which poses a barrier to freedom of expression defined in the Constitution.

Article 7 sets out the limitations on the exercise of press freedom in line with the Angolan Constitution. Article 7(4) states that "...the dissemination of any type of content through the internet is subject to the limits provided for in the previous paragraphs, (1) The exercise of freedom of the press is limited by the principles, values and norms of the Constitution and the law; (2) Freedom of the press does not cover the unlawful production of information and, therefore, journalists may not obtain information by information by illegal or underhand means; (3) Information obtained by fraudulent means shall be considered to be illicit or fraudulent means regardless of the origin or location of the server where the site or page is hosted.'16

Article 80(3) refers to 'Civil Liability' to mean that the author of the content and the

¹² Article 78 of the Press Law (Responsibility and Liability).

¹³ ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 22(2) & (3) https://www.achpr.org/legalinstruments/detail?id=69 (accessed on 26 September 2022).

¹⁴ Lohé Issa Konaté v. The Republic of Burkina Faso https://globalfreedomofexpression.columbia.edu/cases/lohe-issa-konate-v-the-republic-of-burkina-faso/ (accessed on 26 September 2022).

¹⁵ In this case, the violation is failure to develop editorial guidelines/statues and submitting to the ministerial department – Ministry of Telecommunications, Information Technology and Media (MINTTICS). The failure to comply with the editorial statute can result in suspension of circulation for a period of three to nine months, or cancelled

¹⁶ In October 2020, CPJ documented Angolan authorities' harassment, beatings, and detentions of journalists covering protests in Luanda.

person responsible for the site are jointly and severally liable for damage caused in cases of dissemination through the Internet. However, this article does not specify how the damage will be assessed and this can be prone to abuse, violating media freedom. Anyone can publish information on the Internet without necessarily knowing whether it will create damage or not. This article is an indication that if not properly clarified, can create an ambiguity that violates the Angolan Constitution. There is a need for more clarity.

Analysis

While the press law promotes media diversity and pluralism, it is particularly problematic as media practitioners are threatened by chilling fines and criminal sanctions. Principle 22(2) and (3) of the ACHPR Declaration is instructive on best practices. States must repeal laws that criminalise sedition, insult and publication of false news. They should also amend criminal laws on defamation and libel preferring civil sanctions which must be necessary and proportionate.¹⁷ The African Court on Human and Peoples' Rights in the Lohé Issa Konaté v. The Republic of Burkina Faso settled in 2014 that criminal defamation convictions are disproportionate and civil sanctions must be preferred.¹⁸ The Angolan government must consider abolishing the criminal defamation provision and providing for civil sanctions that are reasonable.

The Angolan Regulatory Body for Social Communication (ERCA)¹⁹

On 23 January 2017, this law established the Angolan Media Regulatory Entity. Article 3 aims to do the following:

a. Promote and guarantee pluralism and

- diversity of opinion and cultural, linguistic, religious and ethnic expression that represents the multicultural nature of Angola;
- b. Guarantee free dissemination and free access to content;
- c. Protect the most vulnerable social groups, namely children, young people, the elderly and people with special needs, from content that may be harmful to their development as citizens or that jeopardize the preservation of socio-cultural, ethical and patriotic values produced and disseminated by the entities subject to regulation and supervision;
- d. Ensuring that the content disseminated by the media is guided by rigorous criteria that correspond to the good practices of journalism;
- e. Ensuring the enforcement of editorial responsibility in case of violation of the law or of the principles that shape the activity of the media;
- f. Ensuring the protection of individual personality rights.

However, Article 7 states that ERCA has its scope of intervention focused on including online media and the Internet for the dissemination of editorial content. It states that all legal persons under public and private law, regardless of their legal form, who exercise media activities in the Republic of Angola are subject to the intervention and supervision of ERCA, namely a) Radio and television operators, in relation to services and complementary contents of their editorial responsibility that they broadcast by any means, including electronic; b) The publishers of periodic publications, irrespective of the distribution medium used c) News agencies; d) Entities using

¹⁷ ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 22(2) & (3) https://www.achpr.org/public/Document/file/English/draft_declaration_of_principles_on_freedom_of_expression_in_africa_eng.pdf (accessed on 26 September 2022).

¹⁸ Lohé Issa Konaté v. The Republic of Burkina Faso https://globalfreedomofexpression.columbia.edu/cases/lohe-issa-konate-v-the-republic-of-burkina-faso/ (accessed on 26 September 2022).

¹⁹ Law No. 2/17 of 23 January 2017, Organic Law of the Angolan Media Regulatory Entity, which establishes the Attributions, Competences, Composition Organization and Operation of the Angolan Media Regulatory Entity. Regulatory Entity of the Angolan Media. – Revokes Laws Nos. 7/92, of 16 of 16 April 1992 and 1/96, of 5 January 1996.

electronic media including online media, for the dissemination of editorial contents." This is a vague provision, as it does not specify the purposes of such intervention, much less what type of information is referred to when it mentions only 'electronic media'.

Analysis

The ERCA poses a potential problem in Article 3(c) where it states one of its objectives is to protect the most vulnerable social groups, namely children, young people, the elderly and people with special needs, from content that may be harmful to their development as citizens or that jeopardize the preservation of socio-cultural, ethical and patriotic values produced and disseminated by the entities subject to regulation and supervision. Other groups including women are then left out of consideration. Harmful content should therefore be defined as such for everyone and emphasis on more vulnerable groups would serve to ensure inclusion within the safeguards for everyone. In addition, the same provision is vague as to what jeopardises the preservation of sociocultural ethical and patriotic values. Freedom of expression is not confined to sociocultural, ethical and patriotic values and this is a problem posed by the ERCA. This provision violates freedom of expression by prescribing such a yardstick. Principle 23(1) of the ACHPR Declaration stipulates that States shall prohibit any speech that advocates for national, racial, religious or other forms of discriminatory hatred which constitutes incitement to discrimination, hostility or violence.²⁰ This is what falls within the ambit of prohibited speech and not unethical and unpatriotic speech.

Broadcast Law²¹

This Act regulates the Access and Exercise

of Television Activity, the Management and Operation of Transmission and Broadcasting Networks of Television Signal and the Provision of Audiovisual Media Services throughout the National Territory. One of the positive aspects is Article 4 which provides that the provision of television services shall respect the principle of freedom of expression and thought and guarantee the fundamental right of citizens to information that ensures pluralism of ideas, free expression and opinion. Article 33 states that audiovisual media service operators are independent and autonomous in programming and distribution, except as stipulated by legislation. This provision is important because it allows broadcast televisions to decide what type of information they want to produce and broadcast.

Article 56 refers to 'Virtual audio-visual commercial communications', providing that (1) virtual audio-visual commercial communications may only be inserted in places where commercial communications previously exist and are visible, provided that no greater prominence is given to them and the agreement of the sponsors of the event being broadcast, and the holders of the broadcasting rights is obtained. This is a positive element as it protects the consumer from information that is disseminated on the Internet without his consent. However, Article 8 on identification obliges broadcasters to publish their personal postal address and contact details on their websites or Internet pages but it does not specify the purposes for which such information should be shared. Likewise, requesting the sharing of personal information of the managers of the televisions such as their means of contact, namely telephone, postal and e-mail, goes against the Data Protection Law in force in Angola

²⁰ ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 23(1) https://www.achpr.org/public/Document/file/English/draft_declaration_of_principles_on_freedom_of_expression_in_africa_eng.pdf (accessed on 26 September 2022).

²¹ Law No. 3/17 of 23 January 2017, Law on the Exercise of Television Activity, which regulates the Access and Exercise of Television Activity, the Management and Operation of Networks Transmission and Broadcasting of the Television Signal and the Provision of Audiovisual Media and the Provision of Audiovisual Media Services throughout the National Territory.

since 2016²², since it is a law that limits under what conditions personal information can be shared in the online or offline sphere.

Article 15(3) refers to 'Modalities of access to the activity of Television Operator', where it states that the exercise of the activity of a television operator, when it consists of the transmission of channels, exclusively through the Internet, is also subject to the authorisation regime. This limitation does not allow for the expansion of the television signal and does not promote freedom of expression, which violates the general principles of the law which is to promote greater access to television in Angola, especially because it vaguely refers only to the Internet as a broadcast space. The law prevents the opening of new channels and radio stations, mainly because there is no clarity on who can or cannot obtain a television station.

Analysis

Where the Broadcast law calls for broadcasters to display their personal contact details this does not safeguard them and they can be prone to the attacks that media practitioners face such as abductions and killings. The government must ensure the safety of broadcasters and that happens by safeguarding them from submitting unnecessary personal details. Article 8 poses a threat to the safety of journalists, in essence.

Law on the Statute of Journalists²³ Media Freedom

This law which came into effect on 23 January 2017 defines the parameters of the exercise of the journalism profession, in respect and observance of the relevant legal norms and professional ethics and deontology, as well as professional rights, duties and responsibilities. It also guarantees

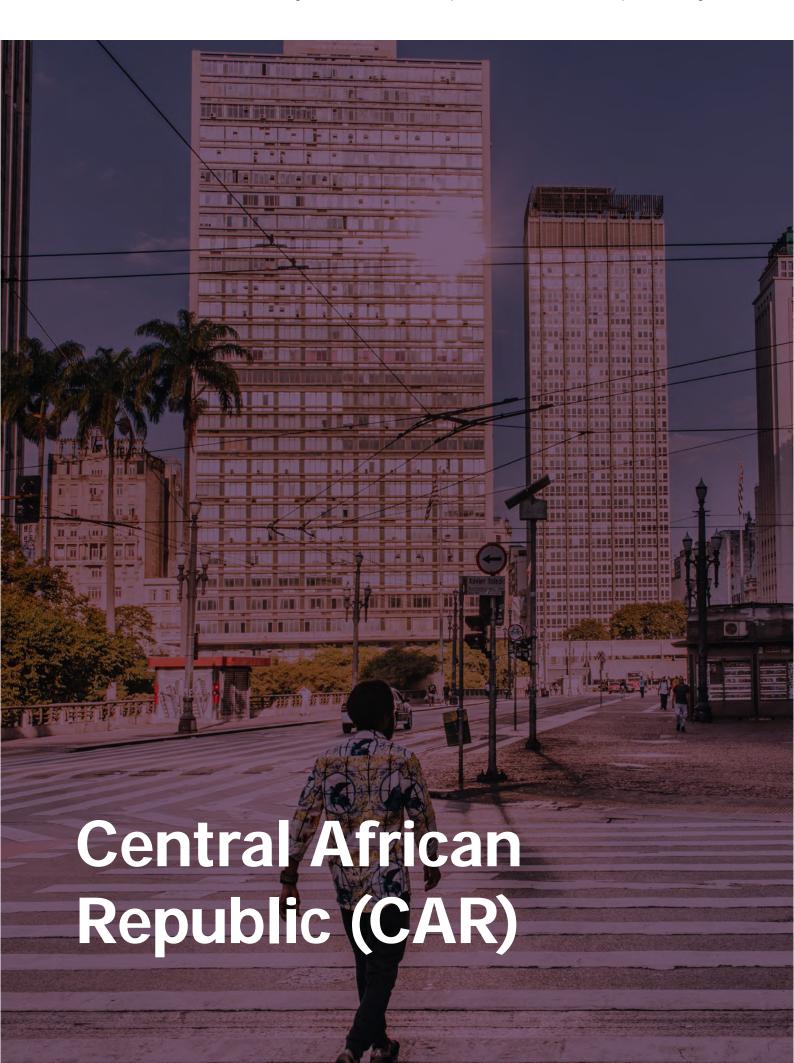
the rights of journalists to access sources of information, guarantees professional secrecy and establishes the principle of responsibility for acts carried out by them that infringe the law. Article 13(1) which defines the journalistic independence and conscience clause provides that a journalist shall exercise his or her profession based on the precepts of professional ethics and deontology and the editorial line of the media organization for which he or she works and shall not be forced to express or subscribe to opinions or to perform tasks contrary to his or her conscience, nor be subject to disciplinary action as a result of the refusal of such expression or subscription. Article 16 defines the journalist's duties in accordance with the Code of Ethics and Professional Deontology. In terms of punishment, Article 42 states that there are three forms: warning, registered censure, suspension, interdiction and fine. Article 42 also states that it is the responsibility of the Commission of Ethics and Discipline to investigate the disciplinary proceedings.

Analysis

The law on the Statute of Journalists is a law that defines the ethics of the profession and clearly aligns with the constitution as far as it promotes media freedom. Journalists must adhere to ethical conduct to ensure fair reporting which does not violate human rights.

²² Data Protection Law, Law 22/11 of 17 June, https://www.apd.ao/fotos/frontend_1/editor2/110617_lei_22-11_de_17_jun-ho-proteccao_dados_pessoais.pdf

²³ Law No. 5/17 of 23 January 2017, Law on the Statute of Journalists. - Revokes Decree No. 56/97, of 25 August 1997.



Central African Republic (CAR)



Background

CAR is a country with a population of 5 018 064 people as of 1 October 2022 with 43% of its population in the urban areas.²⁴ With most of the population in rural areas, the role of the media is critical to ensure access to information for all. The use of digital technologies and the Internet is key, enabling the easy transmission of communications. The landscape for the media to operate without fear of reprisal is rough with journalists constantly facing crackdowns from national security agents.²⁵ Hate speech and fake news have been cited as reasons for shutting down news outlets as witnessed in 2021 when the government blocked access to the Corbeau News and Le Tsunami while the outlets' publishers stated the decision was aimed at stopping the release of information about Russian mercenaries being in the country.²⁶

The Constitution

The Central Africa Republic's constitution entrenches human rights. Article 9 provides for free access to the sources of information through private and public institutions. Article 13 of this constitution also enshrines the freedom to inform, express and disseminate one's opinions by word, pen and image, subject to respect for the rights of others. It entrenches the secrecy of correspondence

as well as that of electronic postal, telegraphic and telephone communications. This also includes freedom of the press, including access for all to state media provided by an independent body whose status is determined by law. This provision also reaffirms the freedoms in intellectual, artistic and cultural creation which must be exercised in accordance with the Law.

Analysis

The Constitution adheres to international human rights standards and presents a basis for which all laws affecting freedom of expression and access to information can conform.

Law No. 18002 Governing Electronic Communications In CAR

This law was adopted for several purposes and listed in article 2 of this Law n ° 18002 governing electronic communications in the Central African Republic. ²⁷

Article 4 of this law provides for freedom of exercise of digital communications in the Central African Republic provided that the activity complies with certain fundamentals including, among others, fair competition, equal treatment of users and requirements of legality and compliance to good morals

Worldometer https://www.worldometers.info/world-population/central-african-republic-population/ (accessed on 26 September 2022).

²⁵ Freedom House (D1) https://freedomhouse.org/country/central-african-republic/freedom-world/2022 (accessed on 26 September 2022).

Freedom House (D1) https://freedomhouse.org/country/central-african-republic/freedom-world/2022 (accessed on 26 September 2022).

²⁷ Article 2, Law 18002 regulating electronic communications in Central African Republic.

and respect for the rights guaranteed to others. ²⁸

In addition, Article 6 establishes the Ministry of Communication and the Regulatory Authority. Regarding the guarantee of freedoms of these two provisions, the Central African Republic sets itself up as a guarantor of the equal enjoyment of all users of electronic communications and establishes a legal obligation of rental competition as a guarantee for all investors who would like to put resources into this sector. This provides for all citizens to enjoy their rights to freedom of expression online without discrimination and especially for people with disabilities as listed in the last paragraph of Article 2.²⁹

Several provisions relating to the regulation of competition, the granting of operating licenses as well as the functioning of the various procedures related to the electronic communications sector in the Central African Republic are within this law. Articles 79 and 80 provide for the establishment of a committee for the regulation of universal access and development services for universal communications.

It should however be noted that the authorisation and the prior declaration established in articles 98 and 99 of this law for any importation of satellite telephones and mobile telephones can have a largely negative impact in that it restricts the possibility for several actors' access to digital technologies and is a barrier as such, to Internet access. In addition to this requirement, there is an added obligation to pay 1% of the sale price of mobile phones to the Public Treasury as a contribution to renewable energies.

Chapter 1 is dedicated to the protection of the rights of the users of social media and electronic communications with a bearing on privacy and data protection. The key provision under international law regarding the right to privacy is contained in article 17 of the International Covenant on Civil and Political Rights (ICCPR). Importantly, sub-article (1) provides that no one shall be subjected to arbitrary or unlawful interference with his (or her) privacy, family, home or correspondence, nor to unlawful attacks on his (or her) honour and reputation. Sub-article (2) goes on to provide that everyone has the right to the protection of the law against such interference or attack. ³⁰ Articles 113 and 114 of this law emphasise the obligation of electronic communications users and providers to ensure effective protection of the right to privacy and secrecy correspondences under electronic communications.

Chapter 2 of this law deals with the protection of personal data that service providers collect in the course of their work and subscriber registrations. Article 116 makes this obligation a requirement in such a way as to guarantee free expression online without fear of reprimand or repression by the public authorities or any other person having any power whatsoever.

Analysis

By instituting the Ministry of Communication and the Regulatory Authority, the CAR governmentprovides regulation and oversight in the sector giving assurance for national security in the use of electronic tools and the digital space. However, having a specific law governing electronic communications in the absence of compliance with international

²⁸ Article 4, Law 18002 regulating electronic communications in Central African Republic.

²⁹ CAR joins other authoritarian regimes in shutting down the Internet as reported by CIPESA. See Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa (2019) https://cipesa.org/?wpfb_dl=283 (accessed 26 September 2022).

³⁰ Singh and Power, 'The privacy awakening: The urgent need to harmonise the right to privacy in Africa' African Human Rights Yearbook 3 (2019) 202 at p 202, http://www.pulp.up.ac.za/images/pulp/books/journals/AHRY_2019/Power%202019. pdf

human rights standards can translate this oversight into surveillance which breaches privacy and limits the enjoyment of freedom of expression. The function of the two entities is progressive in as far as it regulates tariffs and sanctions unfair competition. However, it can have adverse impacts in the event of abuse in regulation under the guise of national security to restrict access to the Internet, especially in view of the history of CAR shutting down the Internet.³¹

There has been a proliferation of attempts to address issues relating to terrorism and national security, cybercrimes, and the spreading of disinformation. Many of these attempts are, to varying degrees, in conflict with the right to freedom of expression. Although the right to freedom of expression is a fundamental human right, it is not absolute. As with most rights, freedom of expression may be lawfully restricted where the restrictions are reasonable and justifiable in an open and democratic society.³²

The Code of Ethics and Professional Conduct for journalists in CAR

The 18 June 2021 code of ethics and professional conduct in CAR draws its source from several other fundamental texts, including respectively the CAR Constitution of 30 March 2016, law n° 017.006 of February 16, 2017 on the composition, functioning and organization of the High Council of Communication (HCC) and Law No. 20.027 of December 21, 2020 on freedom of communication in the Central African Republic.

However, in this code, there are specific provisions that are likely to positively or negatively affect freedom of expression online. Beyond the preamble which announces the legal framework in general, some articles can be cited in this report.

Article 9 focuses on professional misconduct to enable journalists to work legally and avoid anything that could compromise their profession. This includes the prohibition of using unfair methods to obtain information, photographs, and illustrations. It prohibits plagiarism, slander, defamation, demeaning remarks, incitement to hatred, religious, ethnic, racial fanaticism, xenophobia, pimping, stigmatisation or any kind of discrimination. This prohibition extends to the publication of anything that is contrary to good morals, and to the use of children in any fact of cross-checking or verification of information. Specifically, this article paragraph 3, prohibits relaying any information published on online media or social networks without prior verification. The article, in paragraph 3, prohibits relaying any information published on online media or social networks without prior verification. If necessary, rectification must be within the time limit.33

However, for most online journalists, there are many restrictions that can range from blocking the website to interrupting internet access or hacking imposed by security services in the name of national security. Beyond these restrictions, it is important to mention the intimidation by electronic mail as well as all forms of obstacles to the easy exercise of their profession. This is addressed by Article 18 of the Code of Ethics and Professional Conduct for Central African Journalists which provides that the journalist has the right to denounce through the press or in court any hindrance, any threat, any kind of intimidation or any attempt at corruption

³¹ CIPESA Despots and Disruptions: Five dimensions of internet Shutdowns in Africa http://104.152.168.205/~cipesa/old/?w-pfb_dl=283 (accessed on 23 November 2022).

³² Media Defence, Training Manual on Digital Rights and Freedom of Expression Online Litigating digital rights and online freedom of expression in East, West and Southern Africa at (accessible at https://www.mediadefence.org/resources/ml-di-training-manual-digital-rights-and-freedom-expressiononline)

³³ Article 9, Coe of deontology and Ethics for Journalists in Central Africa 18th June 2021.

exerted on him within the framework of his profession. ³⁴

Analysis

The ability to post information on social media and the internet without the same degree of thought and review as traditional media, combined with a lack of awareness about defamation laws has led to an increase in online defamation cases and some ambiguity in how defamation applies in the online sphere. 35The protection of sources of information in journalism constitutes a solid basic principle to allow journalists to carry out their work without fear of breach of this confidentiality and privacy element. Article 15 of this code reinforces this provision and contributes to the improvement of the freedom of expression online by giving substance to the content published and shared with safe and protected sources. Article 19 emphasises the protection of these sources and the obligation of confidentiality. In addition to this protection against obstacles for journalists in their work, including those who work online by extension, the Code goes far by requiring the physical protection of the journalists without restriction on their person, their dignity and working materials. In practice, it is noted that journalists bear the brunt for any form of presumption of defamation or unspecified disinformation, particularly for those who work in the political and economic sectors. In some instances, their computer equipment is systematically destroyed to prevent them from disseminating information in real time. Article 19 of this code however provides that the journalist has the right, throughout the national territory, and this, without condition or restriction, to the security of his person, of his working material, to legal protection and to respect for his dignity. 36

which journalists must conform and within itself, highlights the need for the protection of journalist sources. However, the code of ethics needs to progressively make specific references to the ethical conduct of journalists in the digital age, considering emerging technologies and the need for more diligence in ensuring the privacy of sources for more particularity.

The code lays out the ethical standards by

³⁴ Article 18 Code of ethics and professional conduct for Central African Republic Journalists of 18th June 2021

³⁵ SAFLII Speculum Juris, 'An Analytical Look Into the Concept of Online Defamation in South Africa.' Desan Iyer, (2018) The (accessible at: http://www.saflii.org/za/journals/SPECJU/2018/10.pdf). (Ctd in Medias Defense Module Diffamation P.).

³⁶ Article 19 idem.



Democratic Republic of Congo (DRC)



Background

With a population of over 92 377 986 people,³⁷ the DRC is a Central African country with a history of disrupting the Internet. In 2018 the DRC was noted to request Internet service providers to shut down the internet effectively ordering the same.³⁸ On the other hand, journalists have faced a free and independent media.³⁹ The DRC has a bad record when it comes to the protection of journalists who have faced reprisals on the strength of the penal code.⁴⁰

The Constitution

The Constitution which came into force on 18 February 2006 aligns with the national and international legal Framework related to the promotion and protection of human rights in general. It establishes fundamental freedoms which are embraced in legal instruments and public policies with a bearing on internet freedoms. Articles 22⁴¹, 23⁴², and 24 of the Constitution enshrine freedom of expression, opinion, thought, assembly as well as religion which can manifest offline

and online.⁴³ Article 23 allows all Congolese citizens to express their opinions freely, publish them without fear and even to also express their religious convictions online without discrimination provided that the law, public order, good morals and the rights of others are respected. This implies that online restrictions on the right to freely express and publish opinions and express religious convictions online should be made in strict compliance with this provision.

Article 23 goes further, reassuring that all citizens can freely use their writings, including writings online, speech that can be made on audio recording placed online or images provided that the prescriptions of the law are respected, particularly the public order, good morals and the rights of others. Here it is appropriate to mention the protection of the image and privacy of others, which must be considered in the exercise and enjoyment of these rights expressed above.

³⁷ The World Bank https://data.worldbank.org/indicator/SP.POP.TOTL?locations=CD (accessed on 2 October 2022).

³⁸ Paradigm Initiative Again, Government Shuts Down the Internet in DR Congo https://paradigmhq.org/internet-shutdown-dr-congo/ (accessed on 2 October 2022). See also Aljazeera https://www.aljazeera.com/news/2019/1/20/dr-congo-internet-restored-after-20-day-suspension-over-elections (accessed on 2 October 2022).

³⁹ Paradigm Initiative Londa DRC https://paradigmhq.org/wp-content/uploads/2022/06/Londa-DRC-Report-2021-Ir.pdf (accessed on 2 November 2022).

⁴⁰ RSF https://rsf.org/en/country/democratic-republic-congo (accessed on 2 October 2022).

⁴¹ Article 22 provides that all persons have the right to freedom of thought, conscience and of religion. All persons have the right to manifest their religion or their convictions, alone or as a group, both in public and in private, by worship, teaching, practices, the accomplishment of rites and the state of religious life, under reserve of respect for the law, for public order, for morality and for the rights of others. The law establishes the modalities for the exercise of these freedoms.

⁴² Article 23 provides that all persons have the right to freedom of expression. This right implies the freedom to express their opinions or their convictions, notably by speech, print and pictures, under the reserve of respect for the law, public order and morality.

⁴³ provided that the law, public order, good morals and the rights of others are respected

Article 24 enshrines the right to information in writing or online, freedom of the press, and the right to the dissemination of information by all other traditional means as well as by digital means and at the same time gives the right to access online information via the internet. This provides constitutional guarantees for the exercise of freedom of the press and respect for legal requirements, to which must be added the impartiality, objectivity and pluralism of information required even for the public media. This helps to prevent surveillance, disinformation, hate speech etc.44 The internet allows people to communicate in real-time without a lot of constraints and most of the time, several cases of abuse and defamation are listed. As the provision says, privacy is sacred and every person has the right to respect his private life and to respect the secrets of correspondence. It is a way of fundamentally enshrining limits not to cross in the enjoyment of these rights.

Article 46 addresses intellectual, artistic, and scientific research property. It has been proven to date that the Internet is at the centre of scientific research and the new communication and information technologies are an essential tool for scientific training in schools and universities. Therefore, protecting digital rights does contribute to the protection of intellectual and artistic rights.

Article 212 ensures the establishment of a Superior Audiovisual Council (SAC) that oversees the good exercise of freedom of information and of communication. It provides technical opinions and produces recommendations on information and communications. This SAC has a bearing on the conduct of the media in this regard. Analysis

The Constitution of the DRC complies with international human rights standards in as far as it provides for freedom of expression and media freedoms, freedom of opinion and privacy.

LAW N°96-002 OF JUNE 22, 1996 Media Freedom

This law sets the terms and conditions for the exercise of press freedom in the DRC. enshrines fundamental internet freedoms which can be enjoyed through print or digital media. Article 8 stipulates that everyone has the right to freedom of opinion and expression while Article 9 reaffirms freedom of expression for Audiovisual communications. ⁴⁵The law also gives journalists the right to have access to various sources of information including those online and not to disclose them in case they require anonymity in accordance with the law.

On the other hand, article 34⁴⁶ of this law is likely to negatively affect freedom of expression and access to information insofar as there is the requirement of legal deposit⁴⁷ giving rise to the administrative deposit of two copies of each newspaper issue to the Ministry of the Interior, which may create a delay in publication on the part of the Agency. Failure to comply with these requirements may result in a fine corresponding to the price of 50 copies soldArticle 37 enshrines

The DRC Constitution of 18th February 2008, Art. 24.

⁴⁵

Article 34: At the time of publication of each issue of the newspaper or periodical, the director of publication and the owner or the publishing company are bound by the obligation of legal deposit in accordance with the law. They must, in addition, as an administrative deposit, submit two copies to the Ministry of the Interior, to the member of the Regional Executive College having information and the press in his or her attributions and to the national archives. A special deposit of two copies is made at the Ministry of Justice for any publication concerning young people. In the event of violation of the above provisions, the Director of publication, the owner or the publishing company will be punished with a fine corresponding to the price of the sale of 50 copies of the newspaper or periodical.

⁴⁷ This means that there is a legal and administrative obligation from the publisher to bring copies to the indicated service for approval which is giving the authority the possibility to stop and delay the article for any reason.

the right of reply and rectification to where a person has been quoted or identified in a newspaper or periodical. This avoids any defamation and misuse of publications and attacks on the freedoms of others online.

Articles 44,⁴⁸ 53⁴⁹ and 67⁵⁰ require that any ban on a publication that may be online can only be done by a court decision. In addition, it is reaffirmed the plurality of opinions and the right of reply for anyone who finds themselves injured by an online publication and at this level protects against arbitrariness.

Analysis

This law adheres to international human rights standards as far as it provides for the protection of journalistic sources and upholds the principle of anonymity. This law is not, however, adapted to online publications and needs to be amended to cover online media in a rights-respecting way.

CODE OF DEONTOLOGY AND ETHICS FOR CONGOLESE JOURNALISTS Media Freedom

The Code of Deontology and Ethics for Journalists in the DRC is a basic document that governs the conduct of journalists who practice their profession through audiovisual media, print or online media. Articles 1 to 16 in a global way give the requirements of the profession by reaffirming the freedom of opinion and expression by ensuring that this

ensures respect for public order, morality and the rights guaranteed to others. This includes the collection, processing and dissemination of information, opinions, comments and reviews. This is reaffirmed by providing for the right to information of the public. The media is obligated to demonstrate in performing its mandate, fairness, accuracy, honesty, sense of responsibility, independence and decency in the reporting of facts related to individuals and society. For instance, Article 1 states that journalists must always work in favour of freedom in the collection, processing and dissemination of information, opinions, comments and criticisms; this freedom is inseparable from the right of the public to be informed and freely express opinions.

Article 2 provides that journalists must demonstrate in their work fairness, accuracy, honesty, a sense of responsibility, independence and decency in the reporting of facts related to individuals and society. With a duty to safeguard the reputation of others, Article 5 prohibits insult, defamation, slander, accusations without proof, alteration of documents, distortion of facts, lies and incitement to hatred (religious, ethnic, tribal, regional or racial).

Article 7 prohibits any bribery or advantage of any information source, to disseminate or stifle information, nor any gratuity due to the publication, distortion or suppression of information even published

The Article 44 stipulates the following: the banning of the publication of a newspaper or a periodical can only be pronounced by the High Court at the request of the Public Prosecutor's Office, at the request of either the Superior Council for Audiovisual, seized ex officio or on complaint of the injured party, either by the member of the government or of the provincial executive college having information and press in his attributions.

The Article 44 stipulates the following: the banning of the publication of a newspaper or a periodical can only be pronounced by the High Court at the request of the Public Prosecutor's Office, at the request of either the Superior Council for Audiovisual, seized ex officio or on complaint of the injured party, either by the member of the government or of the provincial executive college having information and press in his attributions.

Article 67states as follows: Any physical or moral person has a right of reply in all cases where charges likely to harm their honor or reputation have been disseminated in the context of an audiovisual communication activity. The applicant must specify the imputations on which he wishes to respond.

online.⁵¹According to Articles 8⁵² and 9⁵³ publications and the online exercise of freedoms have the potential to give rise to several cases of abuse and the code requires journalists not to distort, the opinions of others.

Analysis

The code reaffirms systematic respect for public order, privacy and good morals,54 and includes respect for public institutions and authorities⁵⁵, who are often the subject of several criticisms that can go so far as to affect their honor or the reputation and credibility of institutions. However, Principle 21(1) (b) of the Declaration clearly states that public figures should tolerate a greater degree of criticism and this provision must not be used to interfere with the dissemination of information of public interest. In addition, any criminal sanction that may arise because of a breach of this code violates freedom of expression. Civil sanctions must be preferred over criminal sanctions.56

⁵¹ Article 7. Not to accept any present from sources of information, any advantage or gift to disseminate or stifle information, nor any gratuity due to the publication, distortion, or suppression of information.

⁵² Article 8. Identify all his sources of information, treat them with a critical sense, cite them and protect those which expressly require confidentiality, as well as cite his colleagues when they constitute sources of information for him.

Article 9. Not to distort, deform or denature by their formulation, by insistence, magnification, omission or manipulation, the opinions of others, the titles or the comments of the articles which must be treated with impartiality and published in good faith

⁵⁴

The law makes a clear difference between public authorities and public institutions. Disrespecting a public authority would refer to a personal attack and public institution will refer clearly to an attack to the institution. It may to say that the Judiciary is corrupted, or the Parliament is very weak or full of corrupted guys.

⁵⁶ See ACHPR Declaration above Arts. 21 and 22(1)-(3).

Conclusion

The crackdowns that occur or may follow the media in the performance of their mandate are unjustifiable as the identified laws in this report make a case that the media are a key sector advancing access to information in Angola, CAR and DRC. As such it is important that they have the necessary freedom to express themselves guided by codes of conduct that protect reputations within reasonable means as stipulated in international human rights standards. Rights have obligations and while media freedom is a fundamental right that must be promoted and protected, without adherence to

ethical conduct, this right can be exceeded resulting in disinformation, defamation and privacy breaches of journalistic sources. While the codes of ethics analysed in this report seek to establish the safeguards, freedom of expression must be promoted in the same vein. Pointedly, where electronic communications are regulated, this should not be a barrier to freedom of expression online and must not be a tool to order Internet shutdowns.

