

State of Internet Freedom Democratic Republic of the Congo 2019

Mapping Trends in Government Internet Controls, 1999-2019

January 2020

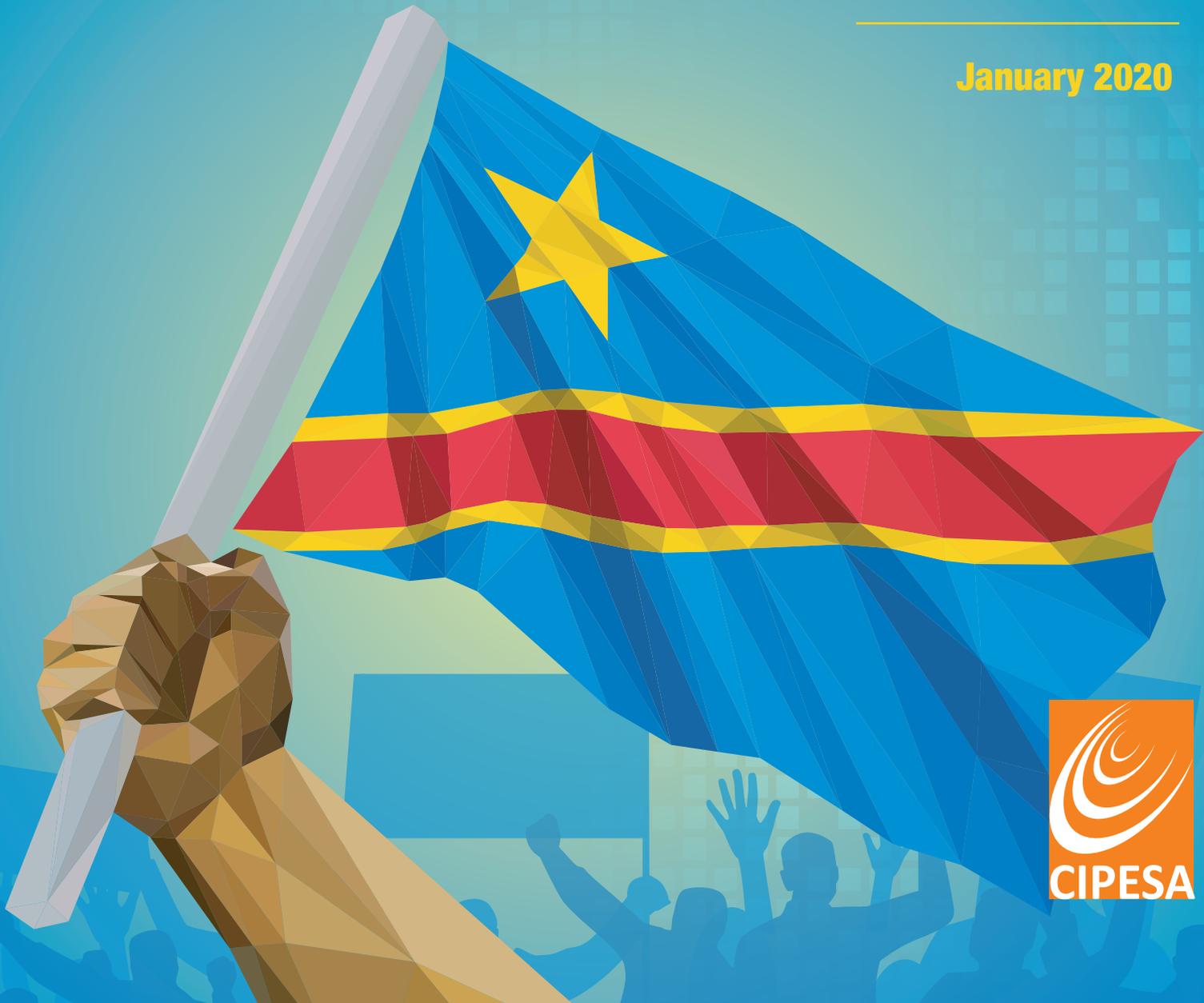


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Credits

This research was carried out by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) with support of various partners.

This research documents the trends in government internet controls, 1999-2019 in The Democratic Republic of the Congo (DRC), tracking key trends in recent years, analysing the key risk factors, and mapping notable developments on data protection and privacy legislation and violations, and users' understanding of protecting their privacy online. Other country reports for Botswana, Burundi, Cameroon, Ethiopia, Kenya, Malawi, Nigeria, Rwanda, Senegal, Tanzania, Uganda, and Zimbabwe. The research was conducted as part of CIPESA's OpenNet Africa initiative (www.opennetafrica.org), which monitors and promotes internet freedom in Africa.

CIPESA recognises Arsene Tungali and Blaise Ndola as the main content contributors to this report.

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1 Introduction

The Democratic Republic of the Congo (DRC) is the second largest country in Africa by size with a population of nearly 85 million people, and it borders nine countries. The DRC has a history of internet and press freedom violations, which are mostly committed by state actors and backed by repressive legal provisions. Most of these violations occur around moments of political tensions such as elections.

Before Felix Tshisekedi was elected president in January 2019 after long-awaited elections, the DRC had been led by Joseph Kabila, who became president in January 2001 following the assassination of his father, Laurent-Désiré Kabila. The reign of Joseph Kabila was characterised by suppression of freedoms both online and offline. Journalists, opposition politicians, human rights defenders, and activists were routinely harassed or prosecuted; and elections were often reported to have been rigged in favour of the incumbent.

The DRC has some of the lowest penetration rates of Information and Communications Technology (ICT) in Africa. As of June 2019, internet penetration was 17%, while mobile phone penetration was 39.7%.¹ However, this low spread of technology did not deter the Congolese government from blocking access to the internet to thwart citizen mobilisation against poor governance and the abuse of human rights. In fact, the DRC was among the early adopters of both SMS blockages and internet shutdowns and is among the top African countries that have disrupted communications the most.

This research documents how government controls have affected internet freedoms in the country over the last two decades. It focuses on a select set of issues including the proliferation of retrogressive policies and laws; government surveillance; digitisation programmes; censorship; and demands on private sector actors.

¹ ARPTC Q2 (April, May, June 2019) Report

2

Methodology

This study employed a qualitative approach including literature review, policy and legal analysis. Reports of previous studies, media reports, academic works, government documents, and other literature was reviewed so as to generate an understanding of the past and current debates, trends and issues around internet freedom in the DRC. In addition, key informant interviews were conducted with select respondents chosen because of their conversance with the issues under study.

3

Country Context

3.1 ICT Status

According to World Bank data, the internet penetration rate in DRC was estimated at less than 1% in 2000, 0.23% in 2005 and 0.72% in 2010 before it raised to 3.8% in 2015.² In the second quarter of 2019, the internet penetration rate was 17%, according to the telecoms regulator.³

According to the Congolese Regulatory Agency (ARPTC), as of 2019, the DRC has four mobile operators - Vodacom RDC, Airtel Congo, Orange RDC and Africell RDC. Vodacom is the leader in the voice segment, with 35.2% of the market, followed by Orange (30%), Airtel (23.9%) and Africell (10.9%). In the mobile internet market, Vodacom has 37.44%, Airtel 31.25%, Orange 28.14% and Africell 3.17%. The country has several Internet Service Providers (ISPs) but few have a national presence.

In 2018, all the mobile operators in the DRC acquired 4G licences and started deployment across the country, with the expectation that the operator with the quickest 4G network deployment in the largest number of cities would attract most of the new subscribers.⁴ Vodacom and Orange announced around the same time their 4G deployment plans. All operators started with the capital Kinshasa. It is worth noting that in 2017, only 20% of the Congolese population had access to a 3G network, compared to 59.3% in Africa and 85% globally.⁵

The DRC is connected to various international fibre cables, including the West African Cable System (WACS) in the western part of the country, which the DRC joined in 2006, and inaugurated its first landing station in Muanda on July 8, 2013. Although the government invested USD 60 million and deployed up to 40,000 kms of fibre across the country, there are reports that mismanagement of the cable has resulted in high user prices.⁶

² Internet users for the Democratic Republic of the Congo, <https://tinyurl.com/smgkf63>

³ ARPTC Q2 (April, May, June 2019) Report

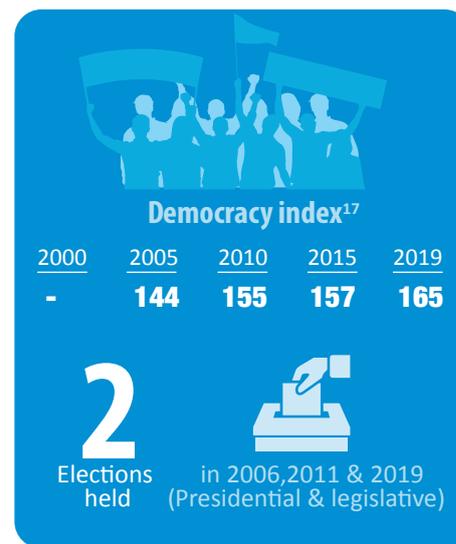
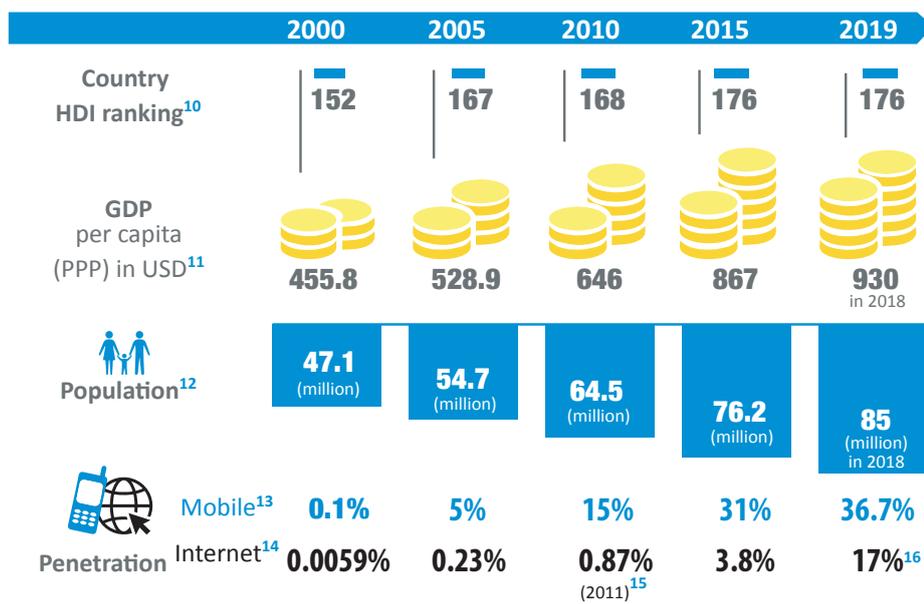
⁴ Orange and Vodacom announce the 4G, <https://tinyurl.com/tjbcif3>

⁵ Experience de la RDC sur les statistiques et les indicateurs des TIC, <https://tinyurl.com/tp6aze8>

⁶ DRC officially connects to the WACS cable: <https://tinyurl.com/sw4gxeg>

When President Tshisekedi took power in January 2019, his special advisor on digitalization led a team of Congolese experts to come up with a National Digitalisation Plan,⁷ that was adopted in September 2019, after a multi-stakeholder consultative process. The plan aims to "modernise the administration and pool resources and infrastructure in order to achieve significant gains in terms of effectiveness and efficiency; allow citizens and businesses to interact online with public administration and partners; provide users with better quality services that reduce costs and lead times, with the added guarantee of maximum transparency."⁸ A month earlier in August 2019, the Government responded⁹ to a provision of the Telecommunications Act of 2002 on the creation of a public body to be in charge of managing the Universal Service Fund while also ensuring the promotion of ICTs nationwide. This body, the National Digital Development Agency, is expected to increase the internet penetration rate in Congolese rural areas.

The Democratic Republic of Congo (DRC) at a glance.



⁷ The National Digitalization Plan's online portal, <https://tinyurl.com/rcb6dw9>

⁸ The National Digitalization Plan adopted, <https://tinyurl.com/tj36or2>

⁹ Digital transition: The 6 big announcements by Tshisekedi, <https://tinyurl.com/tk7xrfc>

¹⁰ UNDP, Human Development Reports, <http://hdr.undp.org/en/global-reports>

¹¹ Comparison of GDP per capita, PPP (Current Int'l \$), Bank, International Comparison Program database, <https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=CD>

¹² Congo, Dem. Rep., available at <https://data.worldbank.org/country/congo-dem-rep>

¹³ Digital inclusion and mobile sector taxation in the Democratic Republic of the Congo, <https://tinyurl.com/t7lkelu>

¹⁴ ARPTC; Federal Reserve Bank of Saint Louis, <https://fred.stlouisfed.org/series/ITNETUSERP2COD>

¹⁵ Statistiques Radio Okapi, <https://tinyurl.com/ufoxub7h>

¹⁶ ARPTC Q2 (April, May, June 2019) Report

¹⁷ Democracy Index 2018, <https://www.eiu.com/topic/democracy-index>

3.2 Political Environment

The decade from 1995 to 2005 was quite tumultuous in the political history of the DRC. The country experienced a transition from the long dictatorial regime of Marshal Mobutu Sese Seko, whose reign of more than three decades was ended with the triumph of the rebellion led by Laurent-Désiré Kabila on May 17, 1997. Upon capturing power, Kabila changed the country's name from the Republic of Zaire to the Democratic Republic of Congo. Kabila was assassinated in his office on January 16, 2001. His son Joseph Kabila, then chief of the army, became president for the next 18 years, until January 2019 when there was a peaceful transfer of power from Kabila to the newly elected president, Tshisekedi.¹⁸

President Tshisekedi, who stood on the ticket of an opposition party, was welcomed by many Congolese citizens, partly because of his campaign promises and his track record as an opposition leader. However other citizens, including his main challenger, Martin Fayulu, believe that the election was rigged in his favour after he entered a deal with Kabila.¹⁹ Tshisekedi has nonetheless maintained that he will advance civil and political rights.²⁰ Shortly after he assumed power, human rights organisations implored him to take swift action to address the country's abysmal human rights record.²¹

Like he promised during his inaugural address,²² Tshisekedi has so far freed up to 700 political prisoners.²³ However, some observers, including Amnesty International, think he has not done enough, a year after he entered office. His government is yet to fully restore the right to peaceful assembly and stopping extrajudicial killings in conflict-affected areas.²⁴ The slow reforms could have something to do with the fact that Tshisekedi's party does not have a majority in parliament, and had to enter a coalition with Kabila's party (which won majority of seats)²⁵ - but the coalition is not functioning properly.²⁶

3.3. Economic Status

In 2018, the DRC emerged from the economic recession triggered by the decline in the global prices of its main export commodities between 2015 and mid-2017. The economy continued to expand, growing at a rate of 4.1% in 2018, up from 3.7% in 2017 and 2.4% in 2016—the country's weakest performance since 2001.²⁷ This economic rebound was largely driven by the recovery in mining activity and strong world copper and cobalt prices, following an upturn in global demand for these products. The value of the Congolese Franc depreciated by only 5.9% in 2018, compared to 31% in 2017, while inflation plummeted from 54.8% in 2017 to 7.2% in 2018.²⁸

The minerals sector - copper, cobalt, gold, coltan, diamond, tin and tungsten, along with oil from offshore fields, provide over 95% of DRC's export revenue.²⁹ But the extractives sector barely makes 20% of the government's revenue, and faces

¹⁸ France24, <https://tinyurl.com/yd6lkbdd>

¹⁹ Martin Fayulu files a complaint, <https://www.bbc.com/news/world-africa-46850690>

²⁰ UN News : <https://news.un.org/en/story/2019/03/1034971>

²¹ Amnesty International's call, <https://tinyurl.com/rw8p6sg>

²² Tshisekedi sworn in as new DRC President, <https://tinyurl.com/yxybz9nf>

²³ An NPR article, <https://tinyurl.com/yysuvmmmb>

²⁴ Amnesty International, <https://tinyurl.com/tkh8x8s>

²⁵ Kabila wins majority in Parliament, <https://tinyurl.com/y5yscdr>

²⁶ Washington Times, <https://tinyurl.com/rm9kktf>

²⁷ World Bank, DRC <https://www.worldbank.org/en/country/drc/overview>

²⁸ *Ibid*

²⁹ US Embassy in DRC 2019 ICS, <https://tinyurl.com/yx7eyemj>

some challenges including conflicts between the state and mining companies over licensing conditions. The country is working to diversify the economy, including by improving the agriculture sector that employs 60% of Congolese.³⁰

3.4 Overview of Policy and Legislative Environment

Articles 23 and 24 of the Congolese constitution guarantee citizens the right to freedom of expression and information. Article 23 states, "Everyone has the right to freedom of expression. This right implies the freedom to express one's opinions or beliefs, including speech, writing and image, subject to respect for the law, public order and good morals." However, despite of these constitutional guarantees, state actors have orchestrated steady abuses of freedom of expression, the right to peaceful assembly, and the right to access information offline and online.

The DRC does not have clear, comprehensive and updated laws governing the ICT sector. Currently, the entire telecommunications sector is governed by a single law enacted in 2002, that is Law No 013-2002 of October 16 on Telecommunications in the Democratic Republic of Congo.³¹ Aside from being outdated and not taking into account the recent developments in the ICT sector, this law has also been criticised by different actors for being pro-security and less rights-focused. It is also focused on the telecommunications sector and less on other ICTs, as it hardly covers issues such as cybersecurity, privacy and data protection.

A draft law on telecommunications and ICT, which aims to amend and supplement the one of 2002, was adopted by the National Assembly in May 2018. Subsequently, it was submitted to the Senate where the Infrastructure Commission made a report to the full Senate in June 2018. Since April 2019 when the draft law had a second reading in the house, it has not progressed further.

The industry regulator, the ARPTC, was established through the Framework Law No 014-2002 of October 16, 2002.³² Meanwhile, the press is governed by an older law, the Law No. 96-002 of June 22nd, 1996, which sets the modalities for the exercise of freedom of press (referred to as the Freedom of the Press Act in this report).³³ This law has over time undergone minor revisions through ministerial decrees but remains criticised by human rights defenders for undermining press freedom.

Further, the Congolese constitution in Article 212 provides for the creation of the Higher Council of Audio-visual and Communication (CSAC) as the organ to regulate media operations. The Council was operationalised through the Law No. 11/001 of January 10, 2011, which stipulates its composition and functions.³⁴ The CSAC replaced the former Higher Media Authority, which had been in place since 2002, and it is responsible for "guaranteeing and ensuring the freedom and protection of the press as well as all means of mass communication in compliance with the law; ensuring equal access of political parties, associations and any other person to the official means of information and communication."

³⁰ The 12 labors of Felix Tshisekedi, <https://tinyurl.com/ufqns3>

³¹ Law No 013-2002 of October 16 on Telecommunications in the DRC, <https://tinyurl.com/t6zy6hy>

³² See law establishing the telecoms regulator, <https://tinyurl.com/wrgnbgh>

³³ See Law No. 96-002 of June 22, 1996 governing the press, <https://tinyurl.com/wmu29kr>

³⁴ See law establishing the Council, <https://www.leganet.cd/Legislation/JO/2011/JOS.16.01.2011.Loi.11.001.pdf>

4

Results

This section traces the history, evolution and shifts of internet control measures in the DRC since 1999 and seeks to provide a deeper appreciation of the intervening political and socio-economic considerations behind the different control measures as introduced and applied by the government.

4.1 Key Trends of the Internet Control Over the Last Two Decades

Most of the time, it is the interpretation of legal provisions that has led to media or internet freedoms violations. Some of the provisions are vague, while others clearly favour the state and do not protect citizens' rights. The excuse of protecting "national security" is common in the laws.

4.1.1 Proliferation of Retrogressive Policies and Laws

Between 2000 and 2005, the Congolese government put in place laws and regulations to regulate the telecommunications sector. The two primary laws that regulate the sector to-date were enacted during this period. They are the Telecommunications Act of 2002 and Law establishing the Regulatory Authority of 2002. Beside these two, there were other measures and decisions taken to control the telecommunications and internet space, as presented in this report. It was also in 2002 that the DRC enacted the Ministerial Order No. 04/MCP/011/2002 of August 20, 2002 on Press Freedom³⁵ amending the law on the press.

The Congolese government has been slow in updating the laws related to telecoms and internet use or introducing new ones that reflect current technological developments. Nonetheless, it is evident that the Congolese government was not oblivious to new developments in the tech sector, and it took some regulatory measures in response to what was seen as an area that required institution of control measures. The DRC government issued Decision No. 005/ARPTC/CLG/2007 of 29 June 2007 requiring the telecoms regulatory authority to register mobile telephone services subscribers in the interest of national security.³⁶ Mobile operators were given six months to collect their subscribers' personal data such as a copy of their national ID, their full physical address at the time of subscription, and they were required to continue transmitting this information to the ARPTC, the regulator, every six months. In ordering the registration, the regulator stated that using telephone services without the possibility of identifying subscribers presented a threat to public safety.³⁷

³⁵ Ministerial Order of August 2002 on Press Freedom, <https://www.leganet.cd/Legislation/Droit%20administratif/Media/AM.04.20.08.2002.htm>

³⁶ Decision on Identification of mobile phone users in the DRC, <https://tinyurl.com/v3zvmra>

³⁷ Airtel DRC Facebook Page, <https://tinyurl.com/ucwhvkx>

At the time, the Congolese Association for Access to Justice (ACAJ), a civil society organisation, asked government to extend the registration deadline to 12 months instead of six, and urged the Attorney General to prosecute public officials and telecom staff who would unlawfully intercept citizens' communications or abuse subscribers' data. Many citizens were apprehensive about the registration, fearing that the government had a hidden agenda in collecting their data.³⁸

Furthermore, the government through Ministerial Order No.011/CAB/M-CM/LOM/2018 of 14 June 2018 introduced guidelines requiring anyone seeking to operate an online media to register. Under the regulations, which are yet to be implemented, the minister of media and communication would set up a register at his office where all online media would register before they operate.³⁹ The regulations define online media as "any online public communication service published in any capacity whatsoever for the public, consisting of the production and making available to the public of original content of general interest, and which has been the subject of journalistic processing".⁴⁰ Tshivis Tshivuadi, secretary general of Journaliste en danger (JED), was quoted by the BBC as stating: "If this decree is applied as it is, it will have the effect of suffocating the online media and further restricting areas of freedom and expression as we approach major political deadlines, with elections announced." Patient Ligodi, Director of actualite.cd and President of the DRC Online News Media Association (MILRDC), remarked: "We already have to declare the sites to the competent authorities but registering with the ministry in advance does not make sense, which means that they will have the possibility to authorise or not the existence of a website."⁴¹

While this 2018 regulation has not been implemented, it continues a pattern set by earlier laws and policies that sought to deny citizens their freedom of expression, and which were utilised to curb various rights and freedoms.

4.1.2 Enhanced Surveillance and Surveillance Capacity

Certain provisions of the Telecommunications Act of 2002 give full power to the specialised services of the state to restrict the confidentiality of communication, freedom of expression, and freedom of access to information. Though these restrictions happen in some circumstances, the laws remain unclear and contradictory, thus bringing jurisdictional confusion.

Article 52 of the Telecommunications Act protects the privacy of correspondence. It states: "The secrecy of correspondence issued by telecommunications is guaranteed by law. This secrecy can be infringed only by the public authority, only in cases of necessity of public interest provided by the law and within the limits fixed by it."

³⁸ Reactions to the SIM card registration, <https://tinyurl.com/ro49oyl>

³⁹ BBC, La presse en ligne sous surveillance en RDC, <https://www.bbc.com/afrique/region-44860197>

⁴⁰ Radio Okapi: Online media to register, <https://tinyurl.com/vvvpdbb>

⁴¹ La presse en ligne sous surveillance en RDC, <https://www.bbc.com/afrique/region-44860197>

Despite the protection of the privacy of private communications, the law provides for instances in which state agents can access the communications of individuals. Besides the reason of “public interest” it stipulates in Article 52, that the interception of telephone calls or other forms of correspondence is enshrined in Article 59 of the law, which provides that in “exceptional” circumstances, state services (without naming them) may intercept communications. It states, “Exceptionally, the interception of correspondence transmitted by means of telecommunications for the purpose of searching for information concerning national security, safeguarding the essential elements of the scientific, economic and even cultural potential of the Democratic Republic of the Congo may also be authorised, or the prevention of crime and organised crime.”

Article 54 of the Telecommunications Act of 2002 prohibits any form of surveillance of citizens' communications, even by security agents, without the prior authorisation of the General Attorney. According to Article 55, surveillance is permitted only when it is necessary for establishing the truth in a judicial case. The Attorney General authorise the interception, recording and transcription of telecommunications. The communications of political opponents and human rights activists are repeatedly tapped and monitored with or without following the entire legal procedure in the law.

Meanwhile, organs of the Congolese government have in the past official requests to telecom companies for either the interception of communications or for the release of customer data. The Orange annual Transparency Report on Freedom of expression and protecting privacy for 2017 states that the company received 981 customer data requests from the DRC authorities (compared to 43 requests in 2014), as well as 26 interception requests.⁴² A single request may relate to many customers, and one customer may be the subject of successive requests.

Sometimes, political authorities may not need to go through official requests for personal interests. For example, it was reported ‘that President Kabila had in June 2019 hired an Israeli company, Black Cube, as he wanted “to know everything about his political opponents, but also about his own troops, where traitors” could hide.’⁴³ The Israeli intelligence agents are said to have taken up residence at the Grand Hotel in Kinshasa to conduct, inter alia, telephone tapping - a claim they denied.

Meanwhile, the law also states circumstances in which the regulator can disrupt telecom services. Article 46 stipulates that: “The State may, either for reasons of public security or defence of the territory or in the interest of the public telecommunications service or for any other reason, prohibit in whole or in part, and during the time it determines, the use of telecommunications facilities.”

The same law compels service providers to hand over data to the regulator upon request. In this regard, Article 50 of the Telecoms Act states that “the refusal to grant the requests of the authority may lead to the temporary or definitive withdrawal of the operating license or to other penalties.” This provision buttresses Article 4 of the Decree Law of February 25, 1961, which provides that in a matter of national security, the refusal to cooperate with law enforcement implies complicity and “presumption of guilt”.

⁴² Orange 2017 Transparency Report, <https://tinyurl.com/wnldebs>

⁴³ Black Cube accused of interception, <https://tinyurl.com/vpb7odv>

On the media and press freedom side, Article 3 of the Ministerial Order on Press Freedom states that the broadcast of programmes, films or documentaries whose content is contrary to the law, to public order or which violates the good morals and or the security of the country, is prohibited. Many journalists have been arrested as the content they produced was critical of the regime.

4.1.3 Silencing Dissent and Criticism through Criminalising Free Speech

In article 74, the Freedom of the Press Act establishes "press offenses" which it defines as "any infringement committed by means of written press or audio-visual". The Penal Code similarly provide for press offenses. In article 77, it describes offending the head of state as a press offense and anyone who is accused of this offense must face the law. In addition, Article 84 of the Freedom of the Press Act provides for penalties for an author of information that is contrary to the law, public order, or morality. However, it does not define the terms "public order" and "morality", giving leeway to law enforcement agents to interpret the law subjectively. This provision encourages self-censorship of the media and journalists for fear of prosecution under this law.

In order to further put pressure on the media and press houses, this law (articles 28, 29 and 30) condemns the owners of the media, the printer (in the case of a printed newspaper) or the publisher of the newspaper if the author (journalist) of the article or information in question cannot be found. Article 28 of the Freedom of the Press Act states that "criminal offenses are primarily criminal offenses in the following order: the author of the article; in the absence of the author, the director of the publication or the publisher; and the printer, when neither the author nor the director of the publication nor the publisher is known".

The National Intelligence Agency (ANR)⁴⁴ has been feared since its inception in 1996. The agency was used to repress all political opponents during the regime of president Laurent Désiré Kabila. When he took power, Joseph Kabila maintained this tool of surveillance and harassment, and even worked to formalise it. Article 3(3) of the law establishing the ANR which states that the agency's roles include "the surveillance of national or foreign persons or groups of persons suspected of carrying on an activity likely to endanger the security of the state". The ANR may justify any surveillance or wiretapping by mere suspicion.

Article 21 of the law establishing the ANR grants special protection to its staff it provides that: "The staff and officials of the National Intelligence Agency have, in the exercise of their functions, the right to assistance and to special protection of their identity and their person and their property." This special protection given to ANR agents has made the Agents to be above the law, and consequently, feared by the public. .

⁴⁴ Law establishing the Intelligence agency, <https://tinyurl.com/r7x3dk8>

The former head of the ANR, Kalev Mutond, was one of the most feared individuals in the Congo. Together with his colleague, the head of the agency's Department for Internal Security, Roger Kibelisa, they were mentioned in many reports of serious human rights violations. Under their leadership, the ANR was an instrument of political repression against opposition leaders and human rights and pro-democracy activists during the country's protracted political crisis.⁴⁵ In March 2019, President Tshisekedi removed Mutond and Kibelisa from the ANR but the latter was appointed as an assistant to the president's security adviser.

In the 2006-2010 period, a series of violations were noted, many of them affecting media. These actions were justified by existing legal provisions. The government harassed media outlets, banned stations from operating and censored the content of their broadcasts. The High Authority of Media continued to regulate outlets despite a constitutional provision mandating its dissolution. In October 2007, then Communications Minister Toussaint Tshilombo banned 22 television stations and 16 radio stations for alleged non compliance with registration procedures. In September 2008, then Communications Minister Emile Bongeli banned several radio-television stations. Later, in July 26, 2009, the government suspended Radio France Internationale's channel for the third time that year, alleging that one of its programmes had encouraged soldiers to revolt.

In the 2006-2010 period, internet use remained highly limited in the DRC. This low internet usage level probably dissuaded the otherwise repressive Congolese government from disrupting the internet. Instead, during this period the information control measures instituted by the government were directed at print and broadcast media.

On November 28, 2011, the DRC government banned the Future Channel Radiotélévision (CFTV), owned by opposition leader Vital Kamerhe, from broadcasting, accusing it of having published unofficial results of that year's presidential election.⁴⁶ President Kabila was re-elected in that poll, which was marred by irregularities. The ban was lifted on August 19, 2016 as part of the conditions set by opposition leaders for them to be part of the "national dialogue".⁴⁷

Similarly, in December 2013, the provincial office of the CSAC in Kisangani suspended the bi-monthly newspaper Kisangani News for three months. The editor of the newspaper, Sebastien Mulumba, claimed the suspension was politically motivated.⁴⁸ He also stated that he only learnt about the suspension through the national broadcasting corporation (RTNC), not through an official notification from the CSAC. He stated, "This suspension of Kisangani News is irregular. It does not respect any norm, neither the law of CSAC, nor the law on the freedom of the press in DRC. When we produce analyses and present true and verifiable facts on the ground, they consider this as an outrage..."

Given the country's history of repression against the media, Ministerial Order No.011/CAB/M-CM/LOM/2018 of 14 June 2018⁴⁹ was received with utmost suspicion, as it was unveiled a few months ahead of long-awaited elections. The Order set new conditions for the online press in Congo, that any media or professional blog online needed to comply with and obtain official authorization prior to commencing operations.

⁴⁵ Human Rights Watch investigating on Ex Intelligence Officials, <https://tinyurl.com/r4enmmu>

⁴⁶ Kamerhe's media in trouble, <https://tinyurl.com/tjs38vo>

⁴⁷ New Management at Kamerhe's media, <https://tinyurl.com/rkk654s>

⁴⁸ Le journal Kisangani News suspendu pour trois mois, <https://tinyurl.com/rwd69ov>

⁴⁹ Ministerial Order No. 011 / CAB / M-CM / LOM / 2018 of 14 June 2018 amending and supplementing Order No. 0 / MIP / 020/96 of 26 November 1996 implementing Act No. 96-002 22 June 1996 laying down the procedures for the exercise of the freedom of the press, <https://www.droitcongolais.info/7b-subdivision-rs-735-753.html>

4.1.4 Disrupting Networks – From SMS Censorship to Social Media Blockage to Internet Throttling

In the DRC, the first shutdown of SMS services was witnessed in December 2011 following the disputed November 2011 election. The government claimed the move was necessary to prevent the spread of fake results online prior to the official announcement of results by the electoral commission.⁵⁰ The SMS disruption lasted 25 days.⁵¹ In subsequent years, the DRC government in similar fashion ordered various other network disruptions that went beyond SMS, including in 2015, 2016, and 2018.

In January 2015, the DRC government ordered a shutdown of SMS and the internet in response to protests against a proposed Electoral Bill. The services were reinstated to banks and government agencies after four days, while access to the general public was restored after three weeks. In a brief communication with journalists, Thomas Luhaka, the ICT Minister, stated: "Today, January 22, 2015, we invited operators from the telecommunications sector. We have communicated 'relief security measures' that have been taken by the government, resulting in the internet signal being cut off ... The technicians are working to restore the situation."⁵²

The following year, 2016, the DRC experienced another network disruption on the day Kabila was expected to step down as president. The government in December 2016 ordered telecom operators to block social media sites in an attempt to thwart the mobilising by protestors against the president's continued stay in power beyond his two-term limit. The request to block social media was made in a letter by the ARPTC. It listed Facebook, Twitter, Skype, YouTube and LinkedIn as services to be blocked temporarily.⁵³

Later, in August 2017, a letter signed by the telecoms chief regulator, Oscar Manikunda Musata, to telecom operators to restrict communications, was widely shared on social media across the country. In that letter, he stated: "In order to prevent the exchange of abusive images via social media by your subscribers, I ask you to ... take technical measures to restrict to a minimum the capacity to transmit images."⁵⁴ He listed social media platforms such as Facebook, WhatsApp, Instagram and Twitter.

In December 2018, the DRC witnessed another internet disruption which lasted 20 days. The disruption occurred during the election period and commenced a day after general elections on December 31, 2019. While the ICT minister Emery Okundji said he was unaware of the situation,⁵⁵ internet provider Global said in text messages to customers that the government had ordered the shutdown and a Vodacom official confirmed the same. Meanwhile, Barnabé Kikaya Bin Karubi, a senior adviser to then president Joseph Kabila, said internet and SMS services were cut to preserve public order after "fictitious results" started circulating on social media, which according to him, "could lead us straight toward chaos."

⁵⁰ Chris Welch, *SMS and social media banned in Congo, deaf residents lose critical means of contact*, <https://www.theverge.com/2011/12/19/2646721/sms-social-media-banned-congo>

⁵¹ Arsene Tungali, *The Evolution of Internet Shutdown in the DRC*, <https://tinyurl.com/v5azcao>

⁵² ICT Minister announces shutdown, <https://tinyurl.com/sgedd5l>

⁵³ Congo asks companies to block social media before anti-Kabila protests, <https://tinyurl.com/qk6t3yp>

⁵⁴ Patient Ligodi, *Congo orders internet slowdown to restrict social media: telecoms source*, <https://tinyurl.com/rlrvf8d>

⁵⁵ DR Congo election: Internet shut down after presidential vote, <https://tinyurl.com/yc8sua9w>

He added that networks would remain blocked until the official announcement of the election results.⁵⁶ The blockage was lifted on January 19, 2019, the day the Constitutional Court was to announce the final results of the general election.⁵⁷

It is worth noting that all these shutdowns happened during periods of political tensions either before a planned protest or around contested elections. The interruption of telecommunication services is backed by the Telecommunications Act of 2002 that requires operators to comply whenever there is any such request from the Government. Article 46 provides that the state may, either for reasons of public security or the defence of the territory or in the interest of the public telecommunications service or for any other reason, prohibit in whole or in part, and during the time it determines, the use of telecommunications facilities. From the various incidences of networks disruptions witnessed in the DRC, the practice has been for a Minister or the regulatory authority to send a written directive to operators asking them to disrupt networks. The directives have often listed the services and applications to be blocked or slowed down.

4.2 Key Positive Developments Promoting Internet Freedoms

4.2.1. Advocacy and Push-back by Non-State Actors

Civil society continues to play a key role in resisting unconstitutional laws and practices by the government, with sustained civic action helping to counter the internet control measures introduced by governments. The Congolese Association for Access to Justice (ACAJ) expressed concern on the mandatory SIM card registration implemented in December 2015, citing the potential misuse of the information by security services. The ACAJ protection officer, Venance Kalenga, stated that: "We are concerned about some security services, we know the ways in which they operate. This is why we call on our government to be more vigilant in respect of the commitments it has made regarding the secrecy of communications, as the law also provides."⁵⁸

Further, several online media and journalists' organisations denounced the December 2016 shutdown of the internet and social media restrictions by the DRC government. They noted that the restrictions would stifle online media and restrict freedom of expression as the country approached elections.⁵⁹

In 2018, a group of civil society actors coordinated by Rudi International sent recommendations to the Senate on the draft telecommunications law to ensure it is supportive of digital freedoms.⁶⁰ In 2019, Rudi International conducted an advocacy campaign as part of the Universal Periodic Review (UPR) of Congo and focused on encouraging states to make recommendations to the DRC on digital rights.⁶¹ These recommendations included the quick adoption of the Telecom and ICT law as a way to guarantee respect for digital rights.

Meanwhile, the first of its kind litigation was initiated by the Congolese Union of Consumers against telecom operators and the state with regards to internet shutdowns. This is a positive step towards making telecom companies accountable to their customers.⁶²

⁵⁶ DRC electoral fraud fears rise as internet shutdown continues, <https://tinyurl.com/yazg3vqp>

⁵⁷ DR Congo internet restored after 20-day suspension over elections, <https://tinyurl.com/y9tsevms>

⁵⁸ RDC: les sociétés cellulaires bloquent les numéros de téléphones non identifiés, <https://tinyurl.com/usnus3w>

⁵⁹ La presse en ligne sous surveillance en RDC, <https://www.bbc.com/afrique/region-44860197>

⁶⁰ The Congolese Senate received inputs to the Telecom and ICT draft bill, <https://tinyurl.com/vbpth4p>

⁶¹ UPR 33: A Pressing Need for recommendations on digital rights for the DRC, <https://tinyurl.com/t6mo8ps>

⁶² DRC – Litigation on Internet shutdowns, <https://tinyurl.com/w5yrnmw>

5 Conclusion and Recommendations

5.1 Conclusions

This research has identified the prominent legislations that have governed the telecoms, internet and media sector in the DRC since 2000. These include the Telecommunications Act of 2002; the framework establishing the Regulator Authority; the law creating the National Intelligence Agency; the decision creating the CSAC; and the Press Freedom Act of 1996 and its amendments. Many of these laws have provisions with vague, unclear terminologies that have often been interpreted to stifle citizens' freedoms. Many of them cite "national security" or "public interest" – broad, undefined terms – as the basis for permitting state agencies to curtail media freedom, freedom of expression, and the right to access information.

These laws have been invoked to arrest and prosecute journalists and activists, to disrupt communications, and to conduct surveillance on users of communication services. The DRC was among the early adopters of both SMS blockages and internet shutdowns and over the years it has earned the dubious distinction of among the African countries that have disrupted communications the most. Additionally, it is among the countries that have consistently asked telecom companies to offer it interception support and to hand it user's call data. These repressive measures were inextricably linked to the authoritarian Kabila regime, forming a central plank in its attempt to maintain a tight grip on power, silence critics, and thwart citizen mobilisation. In turn the DRC government paid lip service to growth of the ICT sector. It did not pass laws to reflect current technological developments, neither did it endeavour to make ICT accessible and affordable to the majority of its citizens. The DRC has some of the lowest phone and internet penetration rates on the continent. For the new government, the work appears well cut-out: enacting laws that strongly protect and promote citizens' rights including in the digital sphere, curbing state powers over surveillance, increasing transparency and judicial oversight over communications monitoring, working constructively with private sector actors and civil society, and taking meaningful measures to expand network coverage, access and affordability.

5.2 Recommendations

a. Government

- Define clearly in policies and laws the acceptable measures, terms, and circumstances in which internet controls may be applied, in line with constitutional and international human rights standards, and ensure there is transparency, accountability and judicial oversight.
- Ensure public service agencies are designed to serve and protect citizens rather than being instruments of repression.
- Consider inputs from different stakeholders when reviewing or updating existing laws and policies so that they cover and respond to the need of every group in the country.
- Encourage investments in the telecommunications and media sector as a way to create revenues and generate employment, as well as to increase the level of appropriation of technologies among Congolese citizens.

b. Companies

- Adopt and implement the UN Business and Human Rights principles and safeguard the rights of customers by default.
- Encourage the specialised services of the state to follow the procedure described in the law for any request for interception of communications or release of personal data of users of telecommunications services.
- Support civil society efforts to grow awareness about the need for respect for privacy, data protection and other digital rights.

c. Media

- Promote digital safety and the protection of journalists.
- Report, cover and highlight incidents relating to threats to internet freedom.
- Highlight advocacy efforts calling for review of the country's laws to make them strongly protective of press freedom and digital rights.

d. Academia

- Continue to produce analyses, comments, and reports to enlighten Congolese lawmakers on how the country's laws and policies affect human rights including in the digital sphere.
- Include internet freedom in their curriculum to ensure students are made aware of these issues

e. Civil Society

- Strengthen advocacy activities so that the government puts in place measures to ensure respect for the privacy of users of telecommunications services.
- Advocate for the creation of a neutral and independent agency to manage personal data.
- Support strategic litigation efforts that challenge the legality of policies, laws, and practices that undermine digital rights.



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