

Joint submission to the United Nations Human Rights Council, for the 33rd
Session of the Universal Periodic Review for Democratic Republic of Congo

About

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the protection of fundamental rights and the internet's continued openness. Access Now engages through an action-focused global community, and Technology Arm operating a 24/7 digital security helpline.
2. Rudi International (<https://rudiinternational.org>) is a nonprofit organization based in the DRC. It works in different areas including education, women's empowerment and supports the development of ICT in the country. In this area, Rudi is among the main organizations in the African francophone region focusing its work on capacity building for civil society leaders in areas such as digital security and ICT policy, advocacy, and research on Internet freedom issues. Rudi International has been working on supporting the development of ICT legislation in the country that supports the rights of users such as their right to access information, to privacy, and freedom of expression.

Domestic and international human rights obligations

3. The DRC has ratified the International Covenant on Civil and Political Rights ("ICCPR"), and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").
4. Article 31 of the DRC Constitution provides the right to a "private life, for the confidentiality of their correspondence, telecommunications, and any other form of communication." This right may only be interfered within the "cases provided for by the law."¹
5. Article 23 of the DRC Constitution states that "all persons have the right to freedom of expression," not only in speech but also "in print and through pictures." However, the article continues to state that this right is "subject to respect for the law, public order and morality."²
6. Article 24 of the DRC Constitution protects the right to information and freedom of the press by radio, television, written press, or "any other means of communication." However, the article continues, stating that "the law determines the conditions for the exercise of these liberties."³
7. Framework Law 013/2002 on Telecommunications and Law 014/2002 are the main legislation impacting internet freedom in DRC ⁴

¹ <http://www.constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>

² <http://www.constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>

³ <http://www.constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>

⁴ https://cipesa.org/?wpfb_dl=234

Developments of digital rights in the DRC

8. Congolese government is working to amend a 2002 law that confers powers on the government to take charge of communication facilities in the interest of national security or public defense. This 16-year-old law is instrumental in the many internet shutdowns, or intentional disruptions of access to networks and mobile or fixed-line connectivity. However, the newly proposed bill still grants officials the power to interfere with communications and conduct surveillance.⁵
9. President Kabila announced on August 8, 2018, that he will not seek re-election for a third term. This announcement, coming after President Kabila has overstayed his two terms as President, pleases many governments and civil society groups that had urged him to not defy term limits and seek a third term.⁶

Violations of access to information & freedom of expression

10. The DRC was ranked 154 out of 180 countries in the World Press Freedom Index of 2018 by Reporters Without Borders. The Index reported that the "government seems ready to do anything to prevent both Congolese and foreign journalists from covering its increasingly ruthless authoritarianism," citing threats, abductions, arrests, and murders of journalists that go without investigation.⁷
11. The government asked telecommunications companies to block social media websites on December 19, 2016, which was the day that President Joseph Kabila was supposed to leave office after two terms. Protests were planned if he refused to step down. When the President chose to not step down, social media platforms were shut down, in what appears to be an intentional disruption of access to information to obstruct protests, as well as media coverage of the demonstrations.⁸
12. The DRC government ordered internet capacity to be slowed down on August 8, 2017, in order to discourage and make it more difficult to transmit images on social media. The Post and Telecommunications Chief Regulator, Oscar Manikunda Musata, instructed the General Director of Orange DRC to reduce the capacity to transmit "abusive messages." The letter mentions sites including Facebook, WhatsApp, Instagram, and Twitter.⁹
13. On December 30, 2018, in response to organized demonstrations to protest President Kabila's refusal to leave office, the DRC government ordered a nationwide shutdown of

⁵ <https://qz.com/africa/1187727/the-dr-congo-is-using-a-decades-old-law-to-shut-down-the-internet/>

⁶ <https://www.nytimes.com/2018/08/08/world/africa/joseph-kabila-congo.html>

⁷ <https://rsf.org/en-democratic-republic-congo>

⁸ <https://www.accessnow.org/ways-circumvent-internet-shutdown-democratic-republic-congo/>
<https://www.accessnow.org/telcos-warned-shutting-dr-congo-networks/>

⁹ <https://www.accessnow.org/democratic-republic-congo-orders-orange-cameroon-slow-internet-capacity/>

internet and SMS services.¹⁰ During the shutdown, security forces reportedly shot and killed at least seven protesters and arrested dozens more.¹¹ Blocking access to information regarding such violence interferes with journalistic work, prevents people from understanding important public events, and ultimately detracts from efforts to achieve accountability.

Violations of the right to privacy

14. The DRC does not have a law specifically on the interception of communications, besides the Framework Law 013/2002. This law protects the privacy of mail sent through telecommunications services, but states that this privacy can be infringed by public authority when “needed for public interest as described in the law.”¹² This vague language, and the lack of an explicit definition of “public interest,” leaves communications incredibly vulnerable.
15. A transparency report released by Orange, one of the leading telecom companies in the country, has revealed evidence of mass surveillance by the Congolese government, with the assistance of telecom service providers and ISPs. Orange revealed in its report that in 2015, it received up to 385 requests for customers’ data from the Congolese government. It has also been reported that social media profiles of journalists, activists, and politicians are monitored by intelligence agents and informants. Some suspect that the government uses mass surveillance tools such as RANDOM, which records telecommunications traffic, and SWITCH, which monitors social media.¹³
16. Opposition leaders Franck Diongo and Jean Claude Vuemba filed in court a complaint against ANR for allegedly blocking their phone numbers for four months. In the media, Diongo claimed that the telco companies produced a letter from the ANR, the national intelligence agency, requesting not only their numbers, but the phone numbers of four other opposition leaders (Samy Badibanga, Fidèle Babala, Delly Sessanga, and José Makila) to be blocked.¹⁴

Recommendations

17. The DRC should update Framework Law 013/2002 in line with international law and standards protecting the right to privacy, including ICCPR Article 17 and UN Human Rights Council and UNGA resolutions A/HRC/RES/34/7 and A/RES/71/199.
18. The government should not conduct surveillance beyond specific investigations that impartial, competent judicial authorities deem necessary and proportionate

¹⁰ <https://www.accessnow.org/pulling-plug-free-expression-rise-internet-shutdowns-silence-dissent/>

¹¹ https://www.ifex.org/democratic_republic_of_congo/2018/01/05/protesters-killed-internet-down/

¹² https://cipesa.org/?wpfb_dl=234

¹³ https://cipesa.org/?wpfb_dl=234

¹⁴ https://cipesa.org/?wpfb_dl=234

- to the harm sought to be mitigated and that are in pursuit of a legitimate aim, as defined by international law and as provided in national legislation.
19. The DRC should develop and pass a data protection law, raising its standards to those in Council of Europe Convention 108 or similar international agreements and legislation.
 20. The government should not shut down the internet, SMS, or other fixed or mobile networks and services. Rather, they should comply with UN resolutions that condemn such intentional disruptions, including A/HRC/RES/38/7 and A/HRC/RES/38/11. The government should pass the amendment to the 2002 law currently used to justify its disruptions, but not increase its surveillance powers through this law.
 21. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.

Contact information:

Access Now

Peter Micek

Email: peter@accessnow.org

Web: <https://www.accessnow.org>

Rudi International

Arsene Tungali

Email: arsenebaguma@gmail.com

Web: <https://rudiinternational.org>