State of Internet Freedom in Democratic Republic of the Congo 2016

Charting Patterns in the Strategies African Governments Use to Stifle Citizens' Digital Rights

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Credits

This research was carried out by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) as part of the OpenNet Africa initiative (www.opennetafrica.org), which monitors and promotes Internet freedom in Africa.

The report presents the findings of a study on what the government in Democratic Republic of the Congo (DRC) is doing to inhibit citizens' access to ICT, for example content blocks, censorship, filtering, infrastructure control, law-making, court cases; using ICT activity and data to monitor citizens; and how government bodies and functionaries are using propaganda, impersonation, threats, cloning, and other tactics to shape online content in their favour. Other country reports for Burundi, Ethiopia, Kenya, Rwanda, Somalia, Tanzania, Uganda, Zambia and Zimbabwe as well as a regional State of Internet Freedom in Africa 2016 report, are also available.

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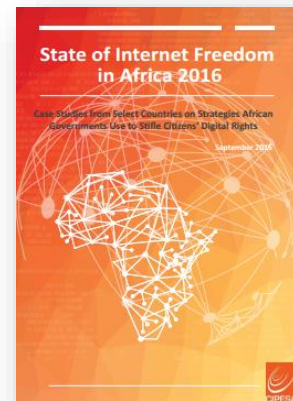Published by CIPESA | www.cipesa.org
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1.   Introduction

Information and Communications Technologies (ICT) are rapidly changing the nature of social and political interactions across the globe. The Democratic Republic of Congo (DRC), the second largest country in Africa with a population of 79 million inhabitants, is slowly embracing the use of ICT, although most laws and regulations governing digital communications are in draft form. Worryingly, the country also continues to register increasing violations of internet freedom as ICT user numbers grow.

In order to promote internet freedom in the country, there is a need to understand what the state of internet freedom is, what the obstacles are, which stakeholders are most at risk, and what tactics the government and other actors use to curtail internet freedom. This report therefore discusses the factors influencing ICT use in Congo and how laws and policies affect internet freedom. The report focuses on the controls initiated by the government to inhibit citizens' access to ICT, such as internet shutdowns, censorship, retrogressive law-making, court cases against internet users, and surveillance. Further, the report investigates how government bodies and functionaries are using propaganda and online activism to shape online content in their favour. The report concludes with a series of recommendations to address current challenges to internet freedom.

The research results presented in this report focus on recent legal and policy developments, as well as on abuses and violations of internet freedom over the 12 months period to November 2016. However, in order to establish trends on strategies used by the Congolese government, the study takes an interest in practices over the last five years.

2.   Methodology

The research presented in this report was conducted through a mixed methods approach. Researchers based in DRC interviewed key informants who were purposively selected. The informants were chosen on the basis of the known or presumed knowledge about issues related to or affecting internet freedom in the country. They included activists and human rights defenders that are advancing free expression and association, as well as some of those who had been victims of abuses and violations. Others were internet and telecom service providers, officials from the telecommunication regulatory authority of Congo and the ministry in charge of ICT. In total, 100 key informants were interviewed for this report.

Policy analysis was conducted to generate an understanding of the laws that affect internet freedom. The analysis took an interest both in policies and laws that have been used to curtail internet freedom and those that could potentially be employed in curtailing freedom of expression and access to digital technologies. Besides the existing laws, an analysis was done of relevant Bills currently under consideration by Parliament. Moreover, document review was done, including of open access sources such as media articles and secondary research reports, as well as analysis of records such as court orders and regulatory decisions, some of which are not readily available in the public domain.

3.   Country Context

3.1   ICT Access

The use of ICT is steadily growing in the Democratic Republic of Congo, a country of more than 79 million inhabitants.[1] The mobile phone penetration rate stands at 56% and continues to grow exponentially in this central African country, yet the internet penetration rate remains one of the lowest on the continent at 4.2%.[2] There are five telecom operators offering voice and data - Vodacom, Airtel, Orange, Africell and Standard Telecom – with most providing access to 3G connectivity. By mid-2016, there were more than 53 Internet Service Providers (ISPs).[3]

The annual average income in Congo is US$ 800, with an estimated 63% of the population living below the poverty line.[4] For less than US$ 2, subscribers can activate small daily data packages while monthly data packages start at US$ 10. However, some rural areas in the vast country have poor or no service. The Congo has not yet established a universal service fund. In 2014, the DRC launched the fifth phase of the Central African Backbone (CAB5) project with support from the World Bank to increase connectivity and facilitate a more inclusive digital economy.[5] The development objective of this phase of the CAB5 program is to increase the geographical reach and usage of regional broadband infrastructure and reduce the price of services to enable wider access to ICT services.

3.2   Political environment

Congo is governed by the People's Party for Reconstruction and Democracy (PPRD) under President Joseph Kabila, who has been in power since 2001. The country has since January 2015 seen increased unrest following government's crackdown on voices calling for president Kabila to abandon plans to contest for a third term in office.[6] In February 2016, opposition Member of Parliament (MP) Martin Fayulu was arrested and detained as the country was preparing for nationwide strike calling for the president to step down at the end of his constitutional term in December 2016.[7] Protests against the president's plans to stand for another term have attracted a brutal reaction from security forces, leading to numerous civilian deaths.

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[1] United Nations, Democratic Republic of Congo Country Profile,
http://data.un.org/CountryProfile.aspx?crName=democratic%20republic%20of%20the%20congo
[2] BuddeComm, Democratic Republic of Congo - Telecoms, Mobile and Broadband - Statistics and Analyses,
https://www.budde.com.au/Research/Democratic-Republic-of-Congo-Telecoms-Mobile-and-Broadband-Statistics-and-Analyses
[3] Fournisseur d'accès Internet (FAI) au Congo, http://www.pagesclaires.com/fr/Activites/Fournisseur-d-acces-Internet-FAI
[4] CIA World Fact book: DRC, https://www.cia.gov/library/publications/the-world-factbook/geos/cg.html
[5] Fifth Phase Of The Central African Backbone Program (CAB SOP5),
http://documents.worldbank.org/curated/en/2014/06/19745441/democratic-republic-congo-fifth-phase-central-african-backbone-program-project
[6] Human Rights watch, Democratic Republic of Congo at a Precipice: Ending Repression and Promoting Democratic Rule, https://www.hrw.org/news/2016/09/18/democratic-republic-congo-precipice-ending-repression-and-promoting-democratic-rule,
[7] Military Arrests Opposition Party Leader in DRC, http://www.trtworld.com/mea/military-arrests-opposition-party-leader-in-drc-47633

3.3   Media freedom

The *Agence Nationale des Renseignements* (ANR) is the national intelligence agency and is considered a threat to press freedom.[8] According to the World Press Freedom index of 2016, Congo ranked 152 out of 180 countries.[9] In 2015, there were 72 documented attacks on press freedom that included detention and harassment of journalists, impeding free circulation of information, closure of media houses, press censorship and internet shutdown.[10] This crackdown on the media has been criticised by human rights bodies. For instance, in February 2016, the Coalition for the Respect of the Constitution, a network of 33 Congolese democracy and human rights organisations, voiced its concern over frequent attacks on the media and human rights activists.[11]

Due to the media repression, some journalists and media houses practice self-censorship and often refrain from publishing information they consider sensitive. Many media houses are owned by politicians, which also undermines their independent reporting. In some instances, media practitioners wait for international media to publish stories critical of government activities before they pick up such stories and reference foreign media as the source of the story. Citizens and rights groups enjoy relatively more freedom of expression online than traditional media. As such, journalists that practice self-censorship within their media houses on content deemed controversial for publication often turn to blogs, Facebook and WhatsApp groups to share their insights – often anonymously. Those that speak out online under their true identities are careful not to be accused of "insulting the president" or "inciting people to civil disobedience."

3.4   Laws and Policies Affecting Internet Freedom

Articles 23-25 of the Congo Constitution guarantee citizens the right to freedom of expression, information and association.

- ☐ Article 23: "All persons have the right to freedom of expression. This right implies freedom to express their opinions and convictions, in particular by speech, in print and through pictures, subject to respect for the law, public order and morality."
- ☐ Article 24: "All persons have the right to information. Press freedom, freedom to access and broadcast information through radio, television, print or any other mean of communication are guaranteed as long as they respect public order, good mores and other people's rights […]"
- ☐ Article 25: grants freedom of association, and states: "Freedom of peaceful gathering without guns is guaranteed as long as it respects the law, public order and good mores."

In the absence of laws addressing specific issues on internet freedom, the Framework Law 013/2002 on Telecommunications[12] and Law 014/2002 establishing the Regulatory Authority[13] are the main legislation impacting internet freedom in DRC as they contain various provisions on online privacy,

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[8] The ANR: a threat to DR Congo's media freedom, http://www.dc4mf.org/en/content/anr-threat-dr-congos-media-freedom

[9] RSF -World Press Freedom Index 2016, https://rsf.org/en/news/drc-ranked-152nd-world-press-freedom-index

[10] In the Democratic Republic of Congo, Journalists Struggle with Threats and Self-Censorship, https://medium.com/local-voices-global-change/in-the-democratic-republic-of-congo-journalists-struggle-with-threats-and-self-censorship-7fc200d07d72#.cw570ru75

[11] Congolese Association for Access to Justice https://acaj-asbl.org/2016/02/02/enlisement-delibere-du-processus-electoral-fermeture-des-medias-prives-et-independants-par-le-gouvernement-entraves-aux-libertes-de-mouvement-reunion-et-manifestation-pacifique-absence-de-volonte/

[12] See the law here: http://www.daldewolf.com/documents/document/20151125094235-25_loi-cadre_n%C2%B0_013_2002_du_16_octobre_2002_sur_la_t%C3%A9l%C3%A9communication.pdf

[13] See the law here: http://unpan1.un.org/intradoc/groups/public/documents/unpan/unpan034864.pdf

data protection, and surveillance. Article 52 of the Framework Law 013/2002 on Telecommunications states: "the privacy of every piece of mail sent through telecommunications [services] is guaranteed by the law. This privacy can be infringed only by the public authority, when needed for public interest as described in the law." However, there is no explicit definition of public interest. The DRC does not have a specific law on interception of communications beside the Framework Law 013/2002. Despite this, the right of Justice Officers to access lands, buildings, boats and planes seeking to find out violations of the law remains.

Article 54 of the Framework Law 013/2002 states that interception of communications is forbidden "without prior authorisation of the Attorney General", while Article 55 explains what might motivate this authorisation and states, "Only necessities of information motivated by the need to uncover the ultimate truth in a judicial affair may allow the Attorney General of the Republic to prescribe interception, recording and transcription of exchanges sent through telecommunications." However, the phrase "ultimate truth" is open to misinterpretation and abuse.

Articles 57 and 58 of the Framework Law 013/2002 call for judicial oversight in the conduct of communications surveillance. Accordingly, the Attorney General has to nominate a magistrate who in turn approves a qualified agent to proceed with the interception. The magistrate should detail the proceedings of each interception and submit the report to the Attorney General.[14] According to articles 59-60, in exceptional circumstances, the internal affairs minister can grant authorisation for interception upon a written proposition from the defense minister and the head of the intelligence services. Apart from gathering intelligence regarding national security, interception can also be authorised when aiming to protect essential elements of DRC's scientific, economic and cultural potential. Prevention of criminality and organised hooliganism is also among reasons that can motivate interception of communication "in exceptional circumstances," - Article 59 of the Framework Law. According to Article 56, authorisation on exceptional grounds cannot last more than six months but can be renewed if conditions remain the same.

Moreover, Article 46 of the Framework Law grants the government the right to prohibit the use of telecommunication installations either for national security or "any other reason." According to Article 04 of the Decree-Law No 1-6l of 25 February 1961 on issues related to National Security, refusing to respect such an order in exceptional circumstances, such as emergencies, constitutes "presumption of guilt." When national security is cited, all mobile operators and ISPs are obliged to abide by this law.

However, anyone, including state agents, who violates telecommunication users' privacy risks six months in prison and/or a fine of 100,000 Congolese francs, (US$ 111), as stated in Articles 71-73 of the Framework Law 013/2002. Those who disturb or block the use of public telecommunications utilities risk paying a fine of not more than 5,000 Congolese francs (US$ 5.5).

The Law 14/2002 establishing the regulatory body - **Autorite de Regulation de la Poste et des Telecommunications du Congo** (ARPTC) - grants the right for the government, specifically the legislature, to "conduct site visits, conduct investigations and studies, and collect all the necessary data" from telecom service providers. This law authorises government to "collect all necessary data" from telecommunications companies when needed. The DRC does not have a specific data protection law apart from Article 21 (b) of Framework Law 013/2002, which only mentions that telecom operators are subject to some confidentiality and neutrality with regard to the content of messages exchanged by their clients.

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[14] See Article 57 and 58 of the Framework Law 013/2002

Article 7 of a 2015 ministerial order [15] entrusts telecommunication companies to protect their subscribers' privacy, but the wording is vague and too permissive for state actors. For example, if national security or a judicial case is cited, this article allows "authorities," namely ministries and other agencies, to violate subscribers' privacy without any documentation or consent from the attorney general. Article 11 of the same order requires telecommunication companies to send data collected about subscribers' identity to government services before deleting it from their database. This provides for easy state surveillance. The ministerial order was issued to enforce mandatory SIM card registration, a move which drew criticism from rights activists, but government did not back down.[16]

Article 31 of the DRC's constitution [17] and Articles 52 and 53 of the Framework Law 013/2002 guarantee the right to privacy to every DRC citizen.

- Article 31 of Congolese Constitution: "Everyone has the right to respect for privacy and confidentiality of correspondence, telecommunications or any other form of communication. This right cannot be infringed only in cases provided by law."
- Article 53 of Framework Law 013/2002: "The public operator, operators of utility, telecommunications and other providers of telecommunications services and members of their staff are required to respect the confidentiality of communications."
- Articles 54 (Section A) and 55 of the Framework Law 013/2002: prohibit any form of surveillance on citizens' communication, even by security agents, without prior authorisation from the General Prosecutor of the Republic.

The government agencies that can legally monitor citizens' communications include the **National Intelligence Agency** (ANR) created under Decree 003-2003 with the mandate to research, pursue the centralisation, interpretation, use and dissemination of political, diplomatic, strategic, economic, social, cultural, scientific information and other interesting internal and external security of the State;[18] **Military Detection of Anti-Patriotic Activities (**DEMIAP)[19] which is the military intelligence service that has been used to crack down on opposition and the **High Council for Broadcasting and Communication** (CSAC) created under Article 212 of the constitution in charge of media regulation.[20]

4.   Results

4.1   Using Internet Shutdowns to Stifle Political Dissent

Internet shutdowns have been experienced during major events such as elections and mass protests, while active monitoring of citizens' content, and intimidation of those raising an alternative voice, is also prevalent. On January 19, 2015, the government ordered telecommunication companies to suspend all internet and short message service (SMS) amid protests over a proposed electoral bill. Four days later, banks and government agencies were granted access to the internet but not the

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[15] See: http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/AIM.19.05.2015.html.

[16] ACAJ, Respect the privacy of telecommunications, https://acaj-asbl.org/2015/12/29/respecter-le-secret-des-correspondances-emises-par-la-voie-de-telecommunications-communique-de-presse/

[17] See Congo constitution: http://democratie.francophonie.org/IMG/pdf/Constitution_de_la_RDC.pdf.

[18] See the law establishing the national intelligence agency:
http://www.droitcongolais.info/files/4.69.7_decret-loi__agence_nationale_de_renseignemen.pdf

[19] Military Detection of Anti-Patriotic Activities, https://en.wikipedia.org/wiki/DEMIAP

[20] Conseil Superieur De L'audiovisuel ET De La Communication,
http://www.leganet.cd/Legislation/Droit%20administratif/Media/REGLEMENTLoi.2011.htm

general public. Twenty days after the initial shutdown, internet and mobile services were fully restored, but with new restrictions on some communications.[21] Users could access their emails and other websites, but not social media platforms such as Facebook and Twitter. These restrictions were later lifted on February 5, 2015 after the electoral law had been passed by both houses of parliament. Information minister Lambert Mende addressed a press conference at which he announced the restoration of services.[22]

Sources within the telecommunication sector informed the UN's Radio Okapi that the order to block access came from unnamed authorities who did not give a reason. Mende told other media outlets that the internet, and Radio France International (RFI), were blocked for "good reasons" related to controlling protests that he said were resulting into deaths and looting [23] Anonymously, telecommunications operators complained of the negative impact that blockages would have on their income. Some feared that clients would seek legal recourse by suing the telecom companies for going against the agreements they had with clients for internet services provision.[24]

This blockage created a hot debate in DRC due to its impact on the livelihoods of citizens and the media. A local journalist freelancing for an international media house said, "There was a lot going on in the country and my newsroom in Europe expected in-depth coverage of the protests from me but I could not even send them my story ideas. The government should find a different way of dealing with protests, not locking people in the country with a repressive police and no way to alert the world." A former Member of Parliament from the ruling party supported the ban. He said, "a lot of people published photos from other countries on Twitter and Facebook and claimed that this is DRC. All they wanted is to incite [the] international community [to] interfere in our internal affairs based on lies. If I was in power, I would have cut down internet and SMS too."

Much earlier, between December 3 and 28, 2011, the government ordered all SMS communications to be blocked as the country awaited the results of the presidential election that had taken place a month earlier. The order to block the SMS was made by the ministry in charge of internal affairs and security, in a December 3 letter to mobile phone operators which directed that SMS services should be suspended "until further notice" in order "to maintain public order and protect the safety of property and people." [25] The *Réseau national des ONG des droits de l'homme de la République Démocratique du Congo* (Renadhoc), a network of national human rights non-governmental organisations, condemned these actions on local and national media outlets, calling on the government to reconsider its decision.[26]

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[21] Network Shutdowns in the DRC: ICT Companies Need Clear Rules, http://www.ihrb.org/focus-areas/information-communication-technology/network-shutdowns-in-the-drc-ict-companies-need-clear-rules
[22] Radio Okapi, Lambert Mende annonce le rétablissement d'Internet dans «les heures qui suivent», http://www.radiookapi.net/actualite/2015/02/06/rdc-lambert-mende-annonce-le-retablissement-dinternet-dans-les-heures-qui-suivent
[23] RDC: l'Internet sera bientôt rétabli, assure Lambert Mende, http://www.radiookapi.net/actualite/2015/01/21/rdc-linternet-sera-bientot-retabli-assure-lambert-mende
[24] Coupure de l'Internet en RDC: Les opérateurs de la téléphonie mobile aux abois, http://7sur7.cd/new/coupure-de-linternetinternet-en-rdc-les-operateurs-de-la-telephonie-mobile-aux-abois/
[25] Government lifts three-week-old ban on texting, https://rsf.org/en/news/government-lifts-three-week-old-ban-texting,
[26] National Network of Congolese Human Rights NGO: Declaration of Suspension: https://rsf.org/sites/default/files/_declaration_du_renadhoc_sur_la_suspension_prolongee_de_s_sms_en_rdc_22.12.2011-2.pdf

4.2   Website Blockages

The Congo government has also ordered the blockage of some websites. For instances, www.desc-wondo.org and www.vacradio.com, which are critical of government and are owned by individuals sympathetic to the opposition, were reportedly blocked in March 2016. Jean Jacques Wondo, owner of desc-wondo.org which publishes political and security analysis on Congo, stated on March 25, 2016 that Congolese ISPs, on orders of the regulator, had blocked access to the site.[27] No government department claimed responsibility for the alleged blockage. Similarly, the website of Voice of Africa in Canada (VAC), managed by Congolese in the diaspora, well known for its critical voice against the DRC government, was not accessible during the same period.[28] Although the websites are now accessible in the DRC, it is unknown how long the blockages lasted.

4.3   Using and Abusing Courts of Law to Stifle Internet Freedom

The Congo government has also arrested and charged some citizens in courts of law over their social media posts. On June 20, 2015, Godefroid Mwanabwato, a lawyer and member of the pro-democracy platform Filimbi,[29] was arrested by the national intelligence service (ANR) without a court order. During his hearing, the provincial head of the ANR stated that Mwanabwato's arrest was related to a Facebook status he posted the previous day. The status message was protesting the arrest of his fellow activists Fred Bauma and Yves Makwambala. It read: "What kind of leaders do we have? How can they sleep at night knowing our friends are unfairly imprisoned? Who are they to do this?"[30] Ten months later, Mwanabwato was sentenced to two years in jail for "insulting the president" on Facebook. In a Facebook post published while under detention, Mwanabwato said the law was misused by the court to justify repression against him.[31] He was released at the end of August 2016, along with five other activists, following an order by the security minister, who deemed the release would ease political tension and enable dialogue among the country's rival political actors.[32]

Another case was the brief detention on June 11, 2016 by the police criminal brigade of journalist Patient Ligodi, co-founder of Politico.cd, one of the most read websites in the country that publishes news, analysis, and interviews on politics.[33] With four other journalists, Ligodi was covering the "Nuit debout de Kinshasa," a sit-in in front of a government building to protest the sudden hike in internet data costs.[34] The protest he was covering started on Facebook and Twitter under the hashtag #KinshasaNuitDebout, then went offline as well. The sit-in that was planned to last all night was stopped by the police who detained protestors. The journalists were freed a few hours later after the DRC's media union intervened.

Overall, the Congolese government and security services have not had active interest in arresting social media users and online publishers. Given the political upheavals in the country and the country's

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[27] Jean-Jacques Wondo Facebook page,
https://www.facebook.com/jeanjacques.wondo/posts/10209219986635589

[28] VAC Radio Twitter Page, https://twitter.com/vac_radio/status/714198579901034496

[29] Filimbi Facebook Page, https://www.facebook.com/Filimbi-406044376222695/

[30] Filimbi Communique, https://www.fichier-pdf.fr/2015/06/25/filimbi-dementi-comm-gouv-rdc-du-24-06-2015/preview/page/1/

[31] See, https://www.facebook.com/sosprison/posts/1698710127035340

[32] Five more detained activists freed as means to ease political tension, http://www.kinshasatimes.cd/en/four-more-detained-activists-freed-as-means-to-ease-political-tension/

[33] See a statement on the arrest, http://www.africa243.com/wp-content/uploads/2016/06/Cksy8jHXAAAHEQB.jpg.

[34] Trésor Kibangula, RD Congo : une première « Nuit debout de Kinshasa » écourtée,
http://www.jeuneafrique.com/332939/societe/rd-congo-premiere-nuit-debout-de-kinshasa-ecourtee/

growing penchant for internet shutdowns, it can only be expected that arrests and harassment of social media users will become commonplace.

4.4   Online Surveillance

Evidence suggests that the Congo government conducts surveillance with the assistance of telecom service providers and ISPs, who comply with government information requests as their licencing obligations require them to do so.[35] Orange, one of the leading telecom operators in the country, in their 2015 transparency report state their position on government requests as follows: "Our general process with regards to shut downs or blockages is clear. We require a written request (signed by a recognised authority) and based on local legislation. When any request is against the law, we reserve the right to alert the international community…"[36]

In the same report, Orange revealed that in 2015, it received up to 385 requests for customers' data from the Congolese government. The requests included details on calls (duration, the person called, etc.), caller identification data (name, address, birth date, etc.), the customer's GPS data, billing information, and more. In 2014, 43 data requests were made by the government to the French company.[37]

The Congolese government is using external expertise to reinforce its citizen surveillance program.[38] It has been reported that intelligence agents and informants monitor a number of social media profiles of journalists, activists, and politicians. Some sources suspect the government uses mass surveillance tools such as RANDOM,[39] which records the traffic of telecommunications companies, and SWITCH[40], which is used for social media monitoring. Although there is limited evidence to back up claims that government conducts active monitoring of leading opposition figures' phone communications, there are some indications that this could be happening. For instance, on February 25, 2015, opposition leaders Franck Diongo and Jean Claude Vuemba filed in court a complaint against the ANR for allegedly blocking their phone numbers for more than four months.[41] Speaking to the media, Diongo claimed that telecommunication companies produced a letter from the ANR requesting their phone numbers

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[35] Vodafone, Law Enforcement Disclosure Report, https://www.vodafone.com/content/dam/sustainability/2014/pdf/operating-responsibly/vodafone_law_enforcement_disclosure_report.pdf

[36] Orange, Transparency Report 2015, http://www.orange.com/fr/content/download/37558/1150685/version/1/file/Rapport+de+transparence+liberté+d'expression+données+2015+V3.pdf

[37] Orange Transparency Report On Government Demands On Customer Data, 2014, http://www.orange.com/en/content/download/31105/933231/version/3/file/Orange+2014+transparency+report.pdf

[38]http://desc-wondo.org/fr/rdc-falcon-eye-un-dispositif-securitaire-de-videosurveillance-inefficace-jj-wondo/

[39] A l'instar de la NSA, Kabila déploie ses oreilles électroniques en RDC par le dispositif Random, http://desc-wondo.org/fr/a-linstar-de-la-nsa-kabila-deploie-ses-oreilles-electroniques-en-rdc-par-le-dispositif-random-desc/

[40] Les manifestations du 26 mai 2016: Comment le régime de Kabila se prépare à contrer l'opposition ?, http://desc-wondo.org/fr/les-manifestations-du-26-mai-2016-comment-le-regime-de-kabila-se-prepare-a-contrer-lopposition-jj-wondo/.

[41] Téléphones bouchés : Vuemba, Babala et Diongo exigent une commission d'enquête parlementaire, http://www.lephareonline.net/telephones-bouches-vuemba-babala-et-diongo-exigent-une-commission-denquete-parlementaire/

as well as the phone numbers of four other opposition leaders – Samy Badibanga, Fidèle Babala, Delly Sessanga, and José Makila – to be blocked for months.[42]

In May 2016, it was reported that the ANR prepared to monitor social media posts and was intercepting mobile communications of various politicians and civil society leaders as the opposition was preparing for mass protests to request an electoral calendar.[43] However, the government did not react to these reports and it is unknown whether the surveillance was undertaken. Nonetheless, fears that government had stepped up its surveillance activity conceivably scared some citizens and activists away from engagement via digital platforms.

Nonetheless rising awareness on issues such as surveillance has made citizens in the DRC more cautious of what they say on the internet. Some interviewees noted that they even refrain from publicly discussing politics as they fear that government agencies might exert pressure on their employers to reprimand them for expressing opinions critical of government. A Kinshasa-based journalist working for the BBC stated that "What I do is I never talk about sensitive issues over phone or over email. I prefer to ask for a physical meeting, a one-on-one meeting. Also, I make sure I use encrypted emails whenever I communicate on sensitive issues or only use my work email instead of my Gmail, for example."

4.5   Activism and Propaganda

In many instances, the ANR, although not officially mandated, it is also involved in online propaganda. Officially, they are not mandated to push forward these kinds of activities yet reportedly use the general term "national security" to justify their actions. The online propaganda machinery saturates online spaces with often intense online confrontation, making other citizens' opinions almost invisible. Many people tend to merely become observers as they do not want to join what looks like needlessly confrontational and inconsequential discussions.

There are numerous online platforms and forums where internet users can have open debates. However, sensitive discussions remain in the realm of offline communication or closed online groups to avoid leakage of information, which could attract repercussions. A young active member from one of the opposition parties said, "Our leader created a private WhatsApp group where we hold strategic discussions such as campaign planning and counter strategy actions. This 30-member group is closed and not open for anyone to join. We then have a more open group with over 500 members where we discuss politics and mostly collect info about what people think of our leader. This kind of information helps us better strategise and plan the next public appearance of our leader."

Based on the current trends in the country, hashtags (mostly on Facebook and Twitter) are commonly used by activists to rally people and to focus their efforts on raising awareness on particular issues. For example, when there is an arbitrary arrest of an activist, a hashtag that includes information such as the name of the arrested activist will be used. Some of the more popular trending hashtags have included #FreeFred and #FreeYves. Fred Bauma and Yves Makwambala,[44] who are young activists imprisoned in March 2015, labelled "terrorists" and accused of planning to violently overthrow the government. Their arrest was the result of organising an event that encouraged the youth to hold the

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[42] Les numéros de téléphone de certains opposants coupés depuis un mois, http://www.radiookapi.net/actualite/2015/02/19/kinshasa-les-numeros-de-telephone-de-certains-opposants-coupes-depuis-un-mois/

[43] Les manifestations du 26 mai 2016: Comment le régime de Kabila se prépare à contrer l'opposition ? – JJ Wondo, http://desc-wondo.org/fr/les-manifestations-du-26-mai-2016-comment-le-regime-de-kabila-se-prepare-a-contrer-lopposition-jj-wondo/.

[44] Free Youth Activists, https://www.hrw.org/news/2016/03/15/dr-congo-free-youth-activists

regime to account. According to Amnesty International, if convicted they may face the death penalty.[45] Although released in August 2016, on orders of the justice minister, the charges against them were not dropped.[46]

In early 2016, members of the ruling party were using social media to advocate for President Kabila to stay in power after his mandated term ended in December 2016. On Twitter, they used the hashtag #wumela, meaning "be cautious" while on Facebook they send messages of support and praise for the leader. However, this was countered by the group opposed to the extension of term limits, who also initiated a social media campaign with the hashtag #yebela, meaning, "you better know." This created a social media war with some analysts trying to measure which one of the two was trending the most. Analysis from Twitonomy,[47] reveals the pro-Kabila hashtag #wumela had a total of 418 tweets sent from 116 different cities around the world in nearly 10 days with an estimated reach of nearly 2 million Twitter users.[48] Meanwhile, the anti-Kabila hashtag #yebela had 2,172 tweets recorded from 361 different cities around the world, with a reach of over 5 million users. These figures give a sense of how the ruling party and opposition groups use online platforms to convey their propaganda messages.

5.   Discussion

The use of very few legal frameworks to address an ever evolving online landscape in Congo has resulted in repeated infringements on internet freedom and criminalisation of internet use even though less than 5% of the population utilises the internet. This poses a threat to the true realisation of the potential of internet use as users come online with pre-established negative perceptions that could contribute to self-censorship, and ultimately limit their use of the internet for free expression and civic participation.

The loopholes which currently exist in laws, primarily the Framework Law 013/2002, do not comply with international best practice related to ICT and internet policy. This underscores the need for new progressive legislation that encourages internet use and offers protection to citizens rather than criminalising the use of digital technologies.

Current laws primarily favour government interests, not what is mutually beneficial for the government, citizens, and telecommunication companies. Security services intimidate dissenting voices online and offline, there are privacy breaches, surveillance and internet shutdowns and yet citizens have limited legal recourse to seek redress. Telecommunication companies do not have the capacity to refuse or even question government orders, such as requests for users' data or directives to block access to internet services.

Further, the reported government propaganda machinery saturates online discussion forums with pro-government stances while attacking opposing views, making legitimate contributions to debates almost invisible. With the limited number of users, such tactics have the potential of dominating the narrative online at the cost of increased dialogue between citizens and indeed with the state.

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[45] Risk of Death Penalty for Promoting Democracy in the DRC, https://www.amnesty.org/en/latest/campaigns/2016/03/risk-of-death-penalty-for-promoting-democracy-in-the-drc/

[46] Release of pro-democracy activists cause for celebration, https://www.amnesty.org/en/latest/news/2016/08/drc-release-of-pro-democracy-activists-cause-for-celebration/

[47] Twitonomy, https://www.twitonomy.com/

[48] RD Congo: #wumela vs #yebela, qui remportera la guerre des hashtags?, http://www.jeuneafrique.com/300908/politique/rdc-wumela-vs-yebela-qui-emportera-la-guerre-des-hashtags/

6.   Recommendations

Civil Society should invest time and expertise in training more citizens about rights and responsibilities in internet use and digital security safety, including how to better secure their online data and devices, utilise anonymity and safeguard against security breaches. Civil society organisations should also seek to undertake advocacy activities and multi-stakeholder engagements with members of parliament and senators, educating them about the importance of creating clear and progressive digital rights legislation.

Parliament should work with more stakeholders including civil society, internet users, private sector, academics and the media to review laws and amend those that limit and restrict citizens' right to privacy, assembly, expression and access to information. Drafting and amendment of laws should be in cognisance of international standards and regulations. As representatives of citizens, Parliamentarians should challenge the government when there are violations that undermine citizens' ability to enjoy telecommunication services.

Media outlets should invest in promoting awareness of internet freedom and how existing legislation limits the true potential of an inclusive knowledge society in the country. Media can play an important role in reporting abuses and should remain open, transparent and non–biased. Media should also collaborate with other stakeholders and seek solutions to current issues that pose a threat to freedom of expression and restrict civil liberties.

Government must recognise the role that ICT and internet plays as enablers of the socio-economic development of the country. Further, freedom of expression and access to information as enablers of civic dialogue and citizen participation should not be hindered by continued repression of citizens' right to access communication platforms, the promotion of self-censorship and intimidation of dissenting voices. An approach which encourages the freedom to participate in online discourse and multi-stakeholder engagements on policy development should be pursued.

The international community, including international human rights groups and development agencies, should support initiatives that improve access to affordable and reliable ICT services, and should support skills and knowledge building programs for youths, civil society and women, among others.

This report was produced by the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) under the OpenNet Africa initiative (www.opennetafrica.org) which monitors and promotes internet freedoms in a number of African countries including Ethiopia, Kenya, Rwanda, Burundi, Tanzania, Uganda and South Africa. As part of the project, we are documenting internet rights violations, reviewing cyber security policies and how they affect internet freedoms, promoting information availability and conducting awareness-raising.