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OP-ED :

**THE NEED TO RESPECT INTERNET RIGHTS AND
FREEDOMS DURING THE COVID-19 PANDEMIC
IN THE DEMOCRATIC REPUBLIC OF THE
CONGO**



Rudi International

INTRODUCTION

Rudi International is a Non-Governmental Organisation, registered under Decree-law No. 004 of July 20, 2001 under Congolese law, which has been working in various fields including new information and communication technologies (ICT) for the past five years. Our work is at the crossroads between ICT and human rights, with programmes focusing on research, training and advocacy.

This letter of opinion is motivated by the fact that the measures taken to fight the Covid-19 pandemic all over the world, and more particularly in the Democratic Republic of Congo (DRC), have been, or could be, preventing the enjoyment and/or exercise of fundamental rights and freedoms on the Internet.

This opinion piece offers suggestions on how the Government, through the Postal and Telecommunications Regulatory Authority, and the private sector (telecom operators, Internet Service Providers and ICT end-users) should act in order to guarantee and promote rights and freedoms on the internet and other ICT services in the DRC, both during the tenure of the Covid-19 pandemic and after it has been attenuated.

The internet has been playing a pivotal role during the course of the Covid-19 pandemic as it facilitates widespread communication, provides for the transfer and flow of money and has enabled people to work from their homes where physical interactions have been minimized. The Élan RDC agency, in an article citing measures taken by the Central Bank of Congo to slow the spread of Covid-19,¹ notes that the circulation of cash has been flagged as one of the transmission channels of Covid-19. Mobile payment service providers across Africa have reduced or eliminated transaction fees, and governments are encouraging electronic payments to reduce person-to-person contact in order to slow the spread of the virus. Therefore, any disruption to the serene climate of the Internet and ICT services will disrupt the strategies of response against the Covid-19 virus as well as the production and work of several state² and private institutions.

This opinion piece is premised on several international, regional and national legal instruments that protect human rights, both online and offline; including the United Nations Universal Declaration of Human Rights,³ the Constitution of the DRC,⁴ and the Framework Law No. 013-2002 on telecommunications in the DRC (Framework Law).⁵ For human rights on the internet, we rely on some other important instruments such as the African Declaration on Internet Rights and Freedoms of 2016,⁶ and the Declaration of Principles on Freedom of

¹ *Elan RDC, Financial inclusion: does Covid-19 force us to take the next step?* Available at: <https://bit.ly/2BqCpHH> on June 15, 2020.

² *DRC: Félix Tshisekedi held the 30th Council of Ministers by video conference;* available at <https://bit.ly/3ef7QAV> on June 15, 2020.

³ *United Nations, The Universal Declaration of Human Rights,* available at <https://bit.ly/37Hjthr> on June 15, 2020.

⁴ *The Constitution of the DRC, 2006,* available at: <https://bit.ly/2YNiziz> on June 15, 2020.

⁵ *Framework Law No. 013-2002 of October 16, 2002 on telecommunications in the DRC,* available at: <https://bit.ly/2UW32sq> on April 16, 2020.

⁶ *The African Declaration of Internet Rights and Freedoms* available at <https://bit.ly/30XdzY0> on June 15, 2020.

Expression and Access to Information in Africa adopted by the African Commission on Human and Peoples' Rights in 2019 (ACHPR Declaration).⁷

In addition to these instruments, we have also taken into consideration statements made by various personalities and international organizations calling on stakeholders to respect internet rights and freedoms in particular and human rights in general during the period of the Covid-19 pandemic. According to the United Nations High Commissioner for Human Rights, Michelle Bachelet, containment, quarantine and similar measures to contain and combat the spread of Covid-19 must always be carried out in strict compliance with human rights standards and in a manner that is necessary and proportionate to the risk identified - but even if they are, they can have serious repercussions on the lives of populations.⁸ The UN Special Rapporteur on Freedom of Expression, David Kaye, in his April 2020 report on the promotion and protection of the right to freedom of opinion and expression during the Covid-19 pandemic notes that some efforts to combat the coronavirus disease may not meet standards of legality, necessity and proportionality.⁹ Any restrictions must be clear, precise and enshrined in law. They must also be necessary, proportionate and capable of being challenged by anyone who feels aggrieved by them.

Any measures or behavior contrary to national and international law and motivated by the deprivation of the enjoyment of human rights cannot be tolerated. It is the responsibility of all stakeholders to ensure respect for internet rights and freedoms by playing their part in consolidating our young democracy and taking advantage of the resources offered by the Internet.

This opinion piece is premised on 4 of the 13 fundamental principles of the African Declaration on Internet Rights and Freedoms (hereinafter the Declaration),¹⁰ which represent the rights which could potentially be violated by measures taken or to be taken during the Covid-19 pandemic. The four principles are listed below;

- Principle 2: Access and accessibility to the Internet,
- Principle 3: Freedom of expression,
- Principle 4: The right to information, and
- Principle 8: Privacy and protection of personal data.

These four fundamental principles of the Declaration effectively corroborate with the three rights that form the foundation of human rights in the digital age: freedom of expression, access to information, and protection of privacy. Permanent access to good quality and affordable Internet should be guaranteed to all Congolese citizens during this period of the

⁷ ACHPR, *Declaration of Principles on Freedom of Expression and Access to Information in Africa*, Banjul, Gambia, 2019, available at: <https://bit.ly/2YSZgkE> on June 15, 2020.

⁸ Michelle Bachelet, *Coronavirus: Human rights must be at the heart of decisions*, available at: <https://bit.ly/30Vsthy> on June 17, 2020.

⁹ David Kaye, *Disease pandemics and the freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, april 23rd 2020, available on <https://bit.ly/2YNAsL4> on June 15, 2020.

¹⁰ *The African Declaration of Internet Rights and Freedoms* available at <https://bit.ly/30XdzYQ> on June 15, 2020.

Covid-19 pandemic to enable them to work remotely, access and share information, express themselves and communicate safely.

INTERNET ACCESS AND ACCESSIBILITY

The right to access and accessibility to the internet is enshrined in Principle 2 of the Declaration.¹¹ This principle supports the existence of policies that promote fair and transparent market regulation in the provision of Internet access, universal service requirements and licensing agreements, direct support to facilitate high-speed internet access, etc. The Declaration also calls for the development of policies that promote the development of a "market-based approach" to internet access. It also recalls the importance of establishing Internet Exchange Points at national and regional levels to reduce the cost of traffic, providing electricity and high-speed Internet connection in rural areas, connecting community centres, schools and clinics to make the Internet accessible and affordable for all. This would enable all Congolese to have access to the internet in a non-discriminatory and unimpeded manner.

Another legal instrument which speaks to internet access and accessibility is the ACHPR Declaration which, in Principle 37 (3), calls on States to adopt laws, policies and other measures, in cooperation with all relevant stakeholders, to ensure universal, equitable, affordable and meaningful access to the internet without discrimination.¹² The question is whether all stakeholders involved in internet governance in the DRC are doing what is necessary to ensure equitable and permanent access to the Internet for all segments of the population in this time of crisis. This includes, but is not limited to, low-income people, those living in rural areas, those living with disabilities, etc.

With the Covid-19 pandemic, many institutions and organizations in the DRC have set up computer systems/solutions, which require access to the Internet, to reduce physical contact but also allow information on the Covid-19 pandemic to be disseminated quickly. This has been mandated by the Central Bank of Congo, in its Instruction 43, in collaboration with all financial institutions and mobile phone operators in the country.¹³ The objective is to facilitate and encourage financial transactions by electronic means.

At the E-RDC conference held in February 2020, the Congolese government revealed that for about 90 million inhabitants, the internet penetration rate is at about 15%; the infrastructure for transporting broadband bandwidth is almost non-existent; data processing centres do not exist; and there are two operational exchange points throughout the territory (Kinshasa and Lubumbashi) with a third expected to be set up in Goma.¹⁴ The lack of exchange points

¹¹ *The African Declaration of Internet Rights and Freedoms* available at <https://bit.ly/30XdzY0> on June 15, 2020.

¹² ACHPR, *Declaration of Principles on Freedom of Expression and Access to Information in Africa*, Banjul, Gambia, 2019, available at: <https://bit.ly/2YSZqkE> on June 15, 2020.

¹³ *Elan RDC, Financial inclusion: does Covid-19 force us to take the next step?* Available at: <https://bit.ly/2BqCpHH> on June 15, 2020.

¹⁴ *E-RDC: Internet access rate less than 15%, mobile phone rate less than 45% (Kibassa Maliba)*, available at: <https://bit.ly/2USXAGP> on June 16, 2020.

means that all internet traffic first leaves the country and then returns, which increases the cost of the internet service.

Sources of income have also deteriorated due to the pandemic. Many companies have had to close their doors or reduce their staff, sending several Congolese into unemployment and reducing their production capacity. Congolese citizens working in the informal sector are experiencing serious difficulties as a result of the containment measures. Many citizens find it difficult to afford an internet package of US\$1 per day, which is equivalent to an average of 1 gigabyte of data.

Instead of taking steps to reduce the cost of internet access, the government is in the process of introducing a new tax on the ownership and use of mobile phones, a measure that could further increase the cost of access to many telecommunications services, including the Internet.¹⁵

Recommendations

- The government must work on a plan for an equitable supply of electricity for the cities affected by Covid-19. This plan must include a steady supply to poor areas which are often the victims of untimely power cuts.
- The declaration of the state of emergency must include concrete measures to alleviate the expenses of telecommunication companies and internet providers through subsidies and/or exemptions. This will enable them to make up for the loss of income by reducing the cost of their services for the duration of the pandemic.
- The Presidency of the Republic, which is directly overseeing the response to the Covid-19 pandemic, must send formal correspondence to all stakeholders, the judiciary and security services prohibiting the cutting off of internet and ICT services, except in cases enshrined in the relevant international laws and standards. Such disconnection should not be abrupt, disproportionate, unjustified and decided without consultation with all stakeholders.
- The State should establish open hotspots in rural areas affected by the pandemic to facilitate access to real information online.
- The Regulatory authority must establish an independent monitoring mechanism guaranteeing the availability and quality of the Internet connection provided by telecom operators and internet service providers (ISPs) throughout the territory. This monitoring mechanism must be composed of representatives of government, telecoms & ISPs and civil society, and it should produce a report every two weeks with recommendations to telecoms and ISPs to improve the quality of their services, as needed and as the epicenter of the pandemic shifts.
- Telecommunications operators and Internet service providers must manage traffic in a fair and non-discriminatory manner throughout the national territory.

¹⁵ DeskEco: the new ARPTC tax on certification of smartphones strikes the low purchasing power of the majority of Congolese; available at <https://bit.ly/3fBv30j> on June 18, 2020.

- Internet end-users must form a consumer association and denounce, through legal channels, any malfunctioning that tends to prevent them from accessing the internet or that disrupts access altogether. These users must adopt responsible behaviour that will not serve as an excuse for other parties to cut off or restrict access to the internet.

FREEDOM OF EXPRESSION

Freedom of expression is a universal right that is an element of any democracy. It encompasses several distinct freedoms, including freedom of the press, freedom of entertainment, freedom of education and the collective freedom to disseminate opinions (freedom of assembly, association, demonstration, etc.). This right is subject to certain restrictions which must be spelled out in laws and covered by international human rights law. This right must also be exercised on the internet in all circumstances.

This right is enshrined in several international, regional and national legal instruments such as the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights (ACHPR), the Declaration of Principles on Freedom of Expression in Africa adopted by the ACHPR (Principle 1) as well as the Constitution of the DRC.

The right to freedom of expression is also exercised on the internet and is best understood as supported by Principle 3 of the Declaration which holds that everyone has the right to express their opinions without interference.¹⁶ This encompasses the freedom to seek, receive and impart, regardless of frontiers, information and ideas of all kinds through the internet and digital technologies.

The UN Special Rapporteur on Freedom of Expression, in a report released in April, states that the Covid-19 pandemic is a time of intense global challenge to health and to the foundations of democratic societies.¹⁷ It is a challenge to public health, but governments are also using the crisis to challenge the kinds of freedoms guaranteed in a democratic society.

Indeed, information on the Covid-19 pandemic must be available, accessible and freely shareable to everyone. Any behaviour likely to prevent individuals from receiving the right information, such as the propagation of false information (fake news or infox), the making of hateful or racist remarks, or remarks of a nature to disturb public order on online platforms, or of a nature to block access to certain online sources of information (blocking websites, content filtering, deletion of online content, etc.) are to be discouraged in order to respect the rights and freedoms of the internet.

We express a fear that journalists, bloggers and other opinion leaders could be intimidated, arrested or even tortured if they speak out against or contradict the government on certain

¹⁶ *The African Declaration of Internet Rights and Freedoms* available at <https://bit.ly/30XdzYQ> on June 15, 2020.

¹⁷ *David Kaye, Disease pandemics and the freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, april 23rd 2020, available on <https://bit.ly/2YNAsL4> on June 15, 2020.

aspects of the management of the Covid-19 pandemic. These facts are being decried in other nations during this period and it would be important for the consolidation of our young democracy not to come to that point.

A collective awareness is, therefore, necessary. All stakeholders must behave responsibly, especially since the harm caused by the violation of freedom of expression on the internet during this period of the Covid-19 pandemic could affect the entire community by slowing down or sabotaging each other's efforts.

Recommendations

- The State must protect the right to freedom of expression, even if it is used to provide constructive criticism of the conduct and management of the response to Covid-19, without allowing insults, defamation or the spread of misinformation about the pandemic. This includes refraining from and preventing any other stakeholders from censoring content related to the response to Covid-19, from resorting to filtering, intimidation and other techniques that impede the enjoyment of the right to freedom of expression.
- The Regulatory authority and ISPs must apply a procedure of total transparency in compliance with the texts and laws in force. They must inform end-users of any filtering, removal of content or other self-regulatory measures that may prevent access to well-defined online resources and platforms.
- End-users of the internet must avoid disseminating and propagating fake news intended to sabotage the efforts made by the community in the fight against the Covid-19 pandemic.
- Journalists and other opinion leaders must be protected by the State as they play a very important role in the formation of public opinion at a time when information is too crucial and scarce as a result of containment.
- Internet users must give preference to online platforms for meeting, expressing themselves and claiming their rights, within the limits of the law, in order to avoid any physical gathering at the risk of increasing the spread of Covid-19.

THE RIGHT TO INFORMATION

The Right to Information is conceived as a universal, inviolable and unalterable right of modern man. It is both an active and passive right - on the one hand, the search for information, and on the other, the possibility for all to receive it. In other words, the right to information is the fundamental right of the individual or the community to know and to let people know what is going on and what they have an interest in knowing.¹⁸ The right to

¹⁸ Pierre Trudel, *Information and Communication Law*, Faculty of Continuing Education- University of Montreal, available at <https://bit.ly/2NdDYzZ> on June 14, 2020.

information is really two inseparable rights - the right to inform ie. the right to produce information, and the right to be informed ie. the right to have access to that information.

The right to information is guaranteed by numerous legal instruments at universal, regional and national levels, for example, Law No. 96-002 of 22 June 1996 laying down the modalities for the exercise of press freedom in the DRC.¹⁹ The African Declaration on Internet Rights and Freedoms is well in line with the international and regional legal instruments in force in the DRC, except that the right to access information online is not enshrined in a specific law so far. Regardless of this, information, including scientific and social research produced with the support of public funds, should be made freely available to all, including on the internet.

In the context of the Covid-19 pandemic, real information tends to be scarce, rumors circulate quickly and a certain mistrust is created between the authorities and the population. To date, there is no online portal where all data/information collected by the government on Covid-19 is available, accessible and free for reuse. Our government is still lagging behind in adopting Open Data policies when this is another possibility to make information available through the internet and to manage the country with transparency.

Transparency creates a climate of trust between citizens and their leaders. We all observe this crisis of confidence between the response teams and the population caused, among other things, by the poor management of information on the pandemic (especially on the number of people infected with and/or dead from Covid-19). As stated by Michelle Bachelet, the UN High Commissioner for Human Rights, "being open and transparent is key to encouraging people to participate in measures to protect their own health and the health of the general population, especially when people have lost confidence in the authorities. It also helps to combat false or misleading information, which can do great harm by stirring up fear and prejudice".²⁰

There are other means that the government can use to provide information to the population in the absence of an open data portal or in exceptional circumstances such as the current context of the DRC and the Covid-19 pandemic. The UN Special Rapporteur speaks on this point in his April 2020 report, cited above. The aim is to give the media access to officials, documentation and other sources of information. This may include regular press briefings in which the public health official provides detailed information to the public and answers questions from an independent media outlet.

The Ministry of Health and some developers have set up digital solutions to fight against Covid-19 and at the same time to inform the general population about the pandemic in all 4 Congolese national languages. These are efforts that we salute. However, there are still other categories of the population who still do not have easy access to information, either because

¹⁹ Law No. 96-002 of June 22, 1996 laying down the procedures for the exercise of press freedom in the DRC, available at <https://bit.ly/3hDDWZf> on June 17, 2020.

²⁰ Michelle Bachelet, Coronavirus: Human rights must be at the heart of decisions, available at: <https://bit.ly/30Vsthy> on June 17, 2020.

they do not have access to the Internet or because the format in which the information is shared is not adapted to their living situation.

The Government must ensure that everyone, without exception, has access to all relevant information, including in "languages and formats that are easy to understand and adapted to the specific needs of everyone, including children, the visually and hearing impaired, and people who are illiterate or have poor reading skills".²¹

It is not enough to just have or obtain information, but also to transmit or disseminate it. It is at this level that this right is exercised in conjunction with the right to freedom of expression. Online platforms serve as a means for any holder of information to share it with the public. This right should be recognized for everyone within the limits prescribed by law.

Recommendations

- The State must ensure that information on Covid-19 made available to the public via the internet is converted into formats that are easily accessible and digestible for all social strata. These formats must also take into account the needs of minority groups in terms of language and those of persons living with disabilities.
- Civil society organizations and civil society groups should establish or support civic education programmes to teach the population how to detect, verify and counter rumors and misinformation about Covid-19.

PRIVACY AND PROTECTION OF PERSONAL DATA

Privacy and protection of personal data is a complex and highly evolving field following the course of technology. This principle is enshrined in principle 8 of the Declaration and other international, regional and national legal instruments.

The Declaration maintains that personal data or information should only be collected and/or processed by States and non-State actors, such as access providers, email service providers, hosting providers and other intermediary ISPs, in strict compliance with established data protection principles, including the following:

- Firstly, personal data or information must be processed fairly and lawfully;
- Secondly, personal data or information must only be collected for specified, explicit and legitimate purposes;
- Thirdly, personal data or information must not be excessive in relation to the purpose or purposes for which it is collected;
- Fourthly, personal data or information must be erased when it is no longer necessary for the purposes for which it was collected.

²¹ Michelle Bachelet, *Coronavirus: Human rights must be at the heart of decisions*, available at: <https://bit.ly/30Vsthy> on June 17, 2020.

The Constitution of the DRC recognises the importance of protecting the privacy of every human being. In article 31, it provides that everyone has the right to respect for his or her private life and to the secrecy of correspondence, telecommunications or any other form of communication. This right may be infringed only in the cases provided for by law. According to the Commission Nationale de l'Informatique et des Libertés (CNIL) personal data is any information relating to an identified or identifiable natural person.²² However, because it relates to individuals, they must retain control of it.

International laws and all international, regional and national legal instruments maintain that personal data must be processed in a way that respects the privacy of its owners. This is an area that needs to be regulated by clear and explicit laws that are consistent with international standards. We deplore the DRC's delay in adopting a law on the protection of personal data and an updated law that will regulate the ICT sector, replacing the Framework Law No. 013-2002 on telecommunications in the DRC.

Since the announcement of the Covid-19 pandemic, the Congolese government and some private sector actors have multiplied initiatives to combat it. The initiatives of interest to us are mostly web platforms and mobile applications that collect telephone numbers, email addresses, geographical data, etc. Unfortunately, there is no information on how this data will be managed, and this is of great concern to us, especially since we are aware that there is no legislation in the DRC regulating the collection of this data and there is no data processing centre in the country.

The identities and other personal data of those infected with Covid-19, once disclosed or in the wrong hands, can have a detrimental effect on individuals who are at risk of stigmatization in society. As a result, they need to be protected.

Recommendations

- The Government and all other actors who collect data from internet users during this period must only use it for lawful purposes and not for practices that would violate privacy, such as the use of mass surveillance, interception of communications, etc. This management of personal data should be carried out in accordance with international standards.
- The State must allocate a considerable budget to cyber security in order to guarantee the protection of data related to the private life of Covid-19 patients, contact persons and health care personnel, by setting up relevant bodies.
- The State must undertake to condemn and punish any violation of the right to secrecy of communication of all its citizens on the grounds of stopping the spread of the Covid-19 pandemic.

²² CNIL, *Personal data*, available at: <https://www.cnil.fr/definition/donnee-personnelle> on June 17, 2020.

- The regulatory authority must hold State and non-State actors that collect data from users of internet services accountable and ensure that they do not use this data for purposes other than the Covid-19 response.
- Users of ICT services must question the legality and legitimacy of an entity requesting access to their personal data, even if this is a condition for accessing an online service or platform.
- Users of ICT services should also refrain from sharing and disclosing personal data of third parties without their written consent, to mitigate the violation of their right to privacy.

CONCLUSION

Internet access and accessibility, freedom of expression, the right to information and privacy and protection of personal data are all protected by international, regional and national legal instruments and require certain efforts, measures and actions by all stakeholders to be effectively observed.

Rudi International and its partners remain convinced of the unquestionable usefulness of the internet, especially in this period of the Covid-19 pandemic, of its importance to ensure that access and accessibility to the internet and ICT services are effective, that freedom of expression and the right to information remain guaranteed and fully exercised, and that online privacy and protection of personal data is ensured.

All measures of restrictions related to the right to freedom of expression and access to information according to the ACHPR Declaration and other legal instruments must be contained in law. This law must, in turn, be clear, precise, accessible and predictable (to avoid confusion and abuse by any stakeholder); be supervised by an independent body in a non-arbitrary or discriminatory manner (to reassure all parties of the well-founded motivation of any restriction/action); and must provide effective protection against abuse, including through the recognition of the right to appeal to independent and impartial courts (to ensure due process for any party who feels aggrieved or offended).

We believe that it would also be very important to provide the DRC with a telecommunications law that complies with the standards of international law, since the law in force is outdated and is not in line with certain international instruments relating to the protection of human rights on the Internet. The new law will have to include provisions on universal service, protection of personal data, access to information and other new fields of new information and communication technologies before specific laws are adopted.

As UN experts articulated in a March 2020 communiqué, we believe that a state of health emergency should not be a pretext for any stakeholder to violate human rights.²³ End-users of ICT services must refrain from any behaviour or actions that may induce the government or any other stakeholder to violate certain digital rights recognized by the former. This may include actions that may spread false information or rumours about the Covid-19 pandemic, harass victims and/or survivors of the Covid-19 virus, encourage or spread hate, racist and other comments that may disturb public order and threaten social peace. It is only in this sense that the rights and freedoms on the Internet will be respected during this period of the Covid-19 pandemic in the DRC.

²³ UN experts, *COVID-19: States must not abuse emergency measures to suppress human rights*, available at: <https://bit.ly/3fFueDO> dated June 17, 2020.



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