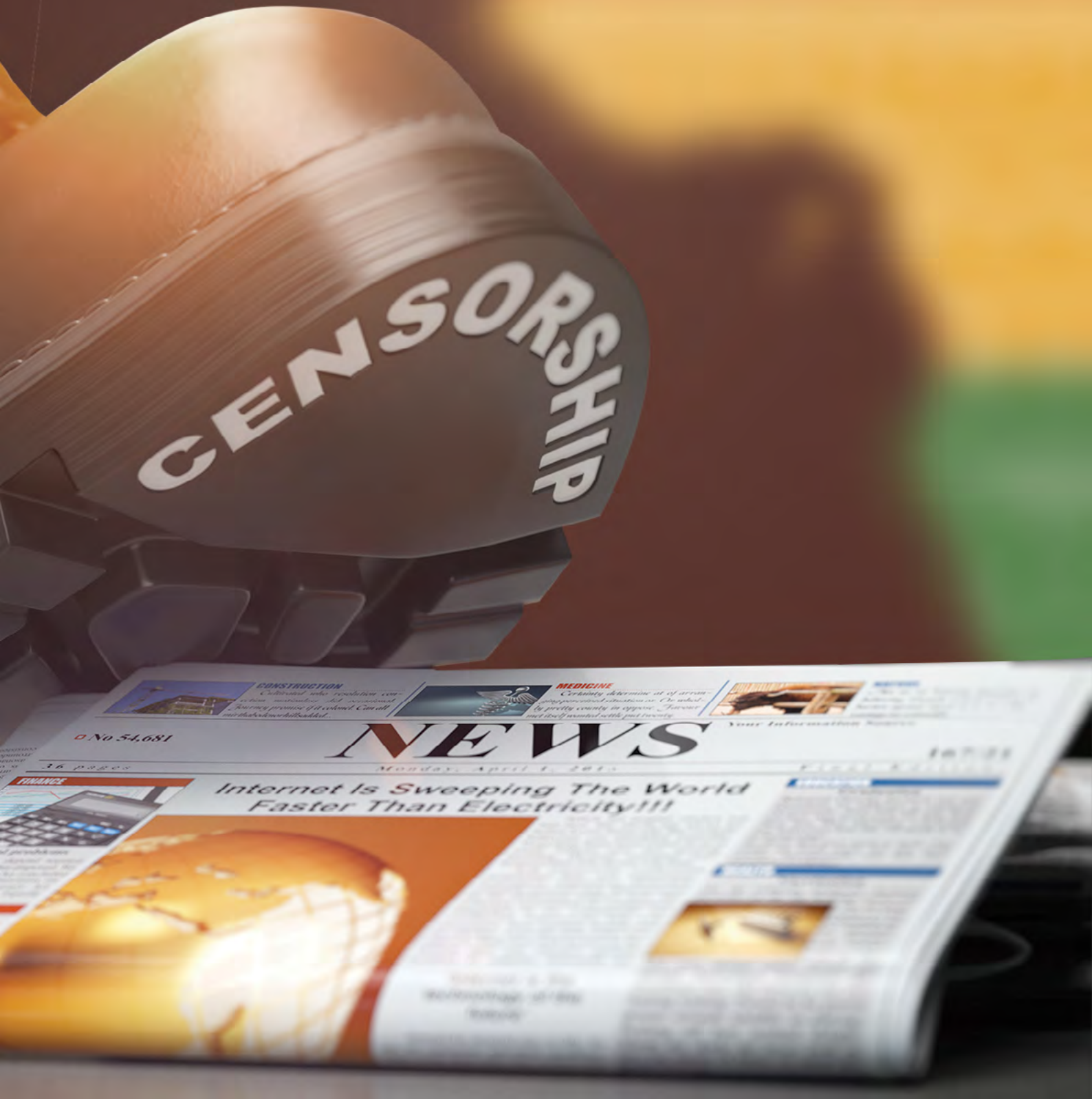


Censorship & Content Moderation

in Angola, Central African Republic and
Democratic Republic of Congo

December 2021



POLICY BRIEF

Censorship and Content Moderation in Angola, Central African Republic and Democratic Republic of Congo

December 2021

Authors:

Bulanda T Nkhowani, Rigobert Kenmogne

Editorial Team:

Thobekile Matimbe, Nnenna Paul- Ugochukwu

Design and Layout:

Kenneth Oyeniya



Creative Commons
Attribution 4.0 International (CC BY 4.0)



PARADIGM
INITIATIVE



@ParadigmHQ

Table of Contents

Executive Summary	4
Context/Background: Censorship and Content Moderation	5
Definition of Terms	6
Applicable International Standards	7
Censorship and Content Moderation: Legislative and Policy Frameworks	8
Conclusion and Recommendations	11

POLICY BRIEF



Censorship & Content Moderation

in Angola, Central African Republic and
Democratic Republic of Congo

I. Executive Summary

This policy brief examines policies and development on online content moderation to increase awareness on censorship, content filtering and increased knowledge on global trends and developments in Angola, Central African Republic (CAR) and Democratic Republic of Congo (DRC) in a context where several countries in Africa have initiated content moderation laws. It examines the actions and commitments of the governments of the three countries based on the relevant laws in these countries, regional and global legal instruments, in particular, the Constitution in Angola¹, CAR² and DRC.³ The policy brief measures the legislative and policy frameworks against international standards such as the African Charter on Human and Peoples' Rights (African Charter),⁴ the International Covenant on Civil and Political Rights (ICCPR),⁵ African Commission on Human and Peoples' Rights Declaration on Freedom of Expression and Access to Information and the African Union Convention on Cyber Security and Personal Data Protection. The policy brief ends with critical recommendations for the three countries regarding content moderation and censorship.

1 Constitution of Angola (2010) http://biblioteka.sejm.gov.pl/wp-content/uploads/2016/05/Angola_fr_010116.pdf (accessed 27 December 2021).

2 Constitution of CAR (2015) <https://www.ilo.org/dyn/natlex/docs/SERIAL/104713/127839/F1101593134/CAF-104713.pdf> (accessed 27 December 2021).

3 Constitution of DRC (2006) <http://www.unesco.org/education/edurights/media/docs/30fc959de50075fb86d-6f23e93148d2f48056a21.pdf> (accessed 27 December 2021).

4 African Charter on Human and Peoples' Rights (African Charter) (1998) <https://www.achpr.org/legalinstruments/detail?id=49> (accessed 27 December 2021).

5 General Data Protection Regulation, 2016, <https://gdpr-info.eu/> (accessed 27 December 2021).

II. Context/Background: Censorship and Content Moderation

The Internet provides fantastic new possibilities for expression, entertainment, free opinions, association, and assembly and has enhanced the freedom of expression and opinion in several countries of the world, especially in African countries where human rights are regularly violated by governments. In heavily restricted countries, the Internet has created a multitude of new opportunities for exercising human rights including the rights to freedom of expression, freedom of assembly, freedom of thought and religion and others. However, this environment has also fostered opportunities for the dissemination of illegal or potentially harmful content or behaviour with social and political consequences. In Angola, CAR or DRC, the Internet must be used as an instrument to promote respect for human rights through all the documents regulating the Internet space.

Long before the advent of the Internet, governments have always attempted to moderate the written and spoken word through regulatory bodies. Since 1990, several governments in Africa have set up various means of moderating spoken and written content. This moderation policy has spread to the Internet and social media and may result in human rights violations targeted at media practitioners and human rights defenders. Over the past decade, the governments of the DRC, Angola and CAR have developed several online content moderation and censorship policies. These policies are often criticised by civil society and private companies because of the probability to violate digital rights. The CAR's National Plan on Combating Hate Speech Online⁶ which is clearly based on a self-regulatory approach, addresses this issue explicitly, emphasizing the need to uphold freedom of expression. Self-regulation is the regulation of a company or a sector of activity to achieve an industrial or public policy objective.

For 30 years after independence, Angola was governed by the Movement for the Liberation of Angola (MPLA) party under the leadership of former President José Eduardo dos Santos. At the time, the party held a monopoly of the only radio and television stations that broadcasted across the entire country, including the official news agency⁷. The MPLA's tenure was marked by a closed civic space that greatly affected the way Angolans and the press exercised their freedom of expression and assembly, and access to information both online and offline⁸. With a restricted civic space, the Internet, social media in particular, became the last avenue for Angolans to exercise their civil and political rights⁹. However, in 2016, President Dos Santos declared war on social media, by stating that "social media should comply with certain rules in treating ruling politicians, and that the government should take appropriate action to guide both society and the institutions, and avoid unacceptable practices", further implying that violators would be faced with repression and censorship¹⁰.

In CAR and DRC, content moderation on the Internet has seen its development in several crises that the two states have gone through, in particular, the security crises between the Séléka, the Anti-balaka and the government in CAR; and the security crises in eastern DRC. The content moderation and censorship on the Internet aim, in this context, to limit violent speech online that could endanger peace in the country and in the sub-region in the long term.

6 MINUSCA, National plan to prevent hate and violence (2020) <https://minusca.unmissions.org/sites/default/files/plan-national-20pour-20la-20prevention-20de-20le-28-09-20incitation-20a-20la-20haine-20et-20a-20la-20violence-2.pdf> (accessed 24 December 2021).

7 Reporters Without Borders Press freedom still fragile despite the old dictator's departure (2021) <https://rsf.org/en/angola> (accessed 22 December 2021).

8 Open Democracy How free is freedom in Angola? (2015) <https://www.opendemocracy.net/en/democraciaabierta/how-free-is-freedom-in-angola/> (accessed 21 December 2021).

9 n 8 above.

10 Open Democracy Angola's Digital Last Frontier (2016) <https://www.opendemocracy.net/en/democraciaabierta/angola-s-digital-last-frontier/> (accessed 21 December 2021).

III. Definition of Terms

Content moderation is the process by which a company that hosts online content assesses the illegality, legality or compatibility with the terms of service of third-party content, in order to decide whether certain content uploaded, or which has been attempted to be uploaded, must be demoted and marked as potentially inappropriate or incorrect, demonetized, not sanctioned or withdrawn, for all or part of the public, by the service on which they were uploaded.¹¹ Content moderation often gives rise to censorship.

Censorship is the restriction of the use of certain images, words, opinions or ideologies. Between content moderation and censorship, platforms practice content curation: the process of deciding what content should be presented to users (in terms of frequency, order, priority, etc.), based on the business model and platform design.¹² Nevertheless, whatever the degree, content moderation inevitably involves human rights considerations. States must ensure their legislative and policy frameworks do not violate their obligations under international law concerning content moderation and censorship. Essentially, states must ensure their laws do not violate freedom of expression, privacy, freedom of assembly and association, equality and non-discrimination. The content that can be moderated due to public policies is very diverse. Each category of content represents a distinct public policy issue that has its own characteristics. The respective public policies must aim to clearly distinguish the different categories of illegal content from one another and to develop targeted, effective and proportionate responses, adapted to the particularities of the concrete problem to be addressed.

¹¹ Solike, Qu'est-ce que la modération de contenu ?(2020) <https://www.solike.eu/definition-moderation-de-contenu/> (accessed 7 January 2022).

¹² Encyclopedia Britannica (2020) <https://www.britannica.com/topic/censorship> (accessed 8 January 2022).

IV. Applicable International Standards

Angola, CAR and DRC are signatories of the African Charter on Human and Peoples Rights (ACHPR) and International Convention on Civil and Political Rights (ICCPR) which affirm the protection of Access to Information and Freedom of Expression. As of June 2020, only Angola had signed and ratified the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention)¹³.

Article 19 of the ICCPR affirms that everyone has the right to freedom of opinion and expression, and this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 9 of the ACHPR affirms that every individual shall have the right to receive information and the right to express and disseminate his opinions within the law. Furthermore, the Africa Commission on Human and Peoples' Rights Resolution on the Right to Freedom of Information and Expression on the Internet in Africa affirms free speech and access to information online.¹⁴ For guidance to states, the ACHPR Declaration on Freedom of Expression and Access to Information offers clear guidelines on content moderation and censorship which if adhered to, article 9 of the African Charter will be promoted and protected.¹⁵

The International Covenant on Civil and Political Rights in article 20 prohibits any propaganda in favour of war and any appeal to national, racial or religious hatred, any incitement to discrimination, hostility or violence. The International Convention on the Elimination of All Forms of Racial Discrimination calls for condemnation of "all propaganda and organizations which are inspired by ideas or theories based on the superiority of one race or group of people of a certain colour or ethnic origin, or who claim to justify or encourage any form of racial hatred and discrimination in Article 4. This means hate speech has no place in a democratic society and cannot be allowed online.

The Convention on the Prevention and Punishment of the Crime of Genocide provides in article 3 that the following acts will be punished: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempted genocide; and complicity in the genocide. The 35th General Recommendation (RG) entitled "Combating racial hate speech" adopted in August 2013 by the United Nations Committee on the Elimination of Racial Discrimination (CERD) underlines, for its part, that racial hate speech leads to massive human rights violations and genocides. Harmful content online may have the adverse impact of leading to xenophobic attacks or genocides.

While content moderation and censorship for hate speech, disinformation, and segregationist speeches can be justified to prevent the space of social media from becoming a field of war, such content moderation and censorship must happen within rights respecting confines. However, in the last 5 years in the DRC and the CAR, content moderation laws have been exploited to violate the fundamental rights of online users in the process of regulation or co-regulation. The Siracusa principles¹⁶ provide in article 31 that "national security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse. The conflicts in the two countries have certainly hardened the process of moderation, but governments must not violate the rights of citizens under the pretext of national security, against hate speech or war.

¹³ See Status List, African Union Convention on Cyber Security and Personal Data Protection <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection> (accessed 29 December 2021) .

¹⁴ African Commission on Human and Peoples' Rights Resolution on the Right to Freedom of Information and Expression on the Internet in Africa <https://www.achpr.org/sessions/resolutions?id=374> (accessed 30 December 2021).

¹⁵ ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019 <https://www.achpr.org/legalinstruments/detail?id=69> (accessed 30 December 2021). See Principles 12, 16, 38 and 39.

¹⁶ UN Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles) <http://hrlibrary.umn.edu/instreet/siracusaprinciples.html> (accessed 27 December 2021).

V. Censorship and Content Moderation: Legislative and Policy Frameworks

Self-regulation and co-regulation are common and often very effective approaches to addressing broad socio-political concerns. However, in DRC and CAR, these terms are understood in different ways and different contexts due to multiple socio-political crises. This section examines the mechanisms of self-regulation, the regulation of a company or a sector of activity in order to achieve an industrial or public policy objective and of co-regulation, when the State and private actors cooperate to create an ad hoc framework in order to solve a public policy problem, in the three countries.

In general, it is essential that any self-regulation or co-regulation project includes adequate guarantees to prevent the content from being suspended or withdrawn unfairly, or just for political reasons. Laws should take into account the logic that rights are the rule and restrictions the exception – content should be left online if possible or removed only in exceptional cases where necessary. The main causes of the increased moderation of content in Angola, DRC and CAR are implicitly linked to the socio-political and cultural contexts of the countries. In particular, the wars of secession and the struggle for political power which generated hate speech between ethnic groups and at the supra-national level.

Angola

The Constitution of Angola guarantees freedom of expression¹⁷, access to information¹⁸, privacy¹⁹, association²⁰, the press²¹ and], protection of correspondence and communications²².

In 2017, a set of new media laws which threatened free speech were enacted. The laws known as the Social Communication Legislative Package included a new Press Law, Television Law, Broadcast Law, Journalists' Code of Conduct, and several statutes to establish the Angolan Regulatory Body for Social Communication (Entidade Reguladora da Comunicação Social Angolana- ERCA)²³.

The Social Communication Legislative Package provides overly broad provisions and gives government entities excessive powers thus making the law subject to abuse with the potential to penalise free speech and stifle access to information by Angolans. In addition, the law could be used to silence critics, political opponents and journalists through imprisonment based on what they have said or published. Moreover, activists have criticised the law for being able to grant the government and ruling party broad powers to interfere with the work of journalists and to potentially prevent reporting on corruption or human rights abuses. Furthermore, the activists called for the complete abolishment of Criminal Defamation as this provision was subject to abuse and could lead to imprisonment, a call that is in line with the ACHPR's call to abolish such laws²⁴.

Problematic laws like the State Security Law and Penal Code penalise individuals who insult the country or president with prison sentences of up to three years, and those that engage in incitement, hate speech and spread fake news through texts, images, or sounds²⁵.

17 See note 1 above, Constitution of Angola, Article 40.

18 See note 1 above, Constitution of Angola, Article 40.

19 See note 1 above, Constitution of Angola, Article 32.

20 See note 1 above, Constitution of Angola, Article 44.

21 See note 1 above, Constitution of Angola, Article 48.

22 See note 1 above, Constitution of Angola, Article 34.

23 Human Rights Watch Angola: New Media Law Threatens Free Speech (2016) <https://www.hrw.org/node/297051/printable/print> (accessed 21 December 2021).

24 ACHPR, Resolution on Repealing Criminal Defamation Laws in Africa, <https://www.achpr.org/sessions/resolutions?id=343> (accessed 28 December 2021).

25 Freedom House Freedom on the Net Report: Angola (2020) <https://freedomhouse.org/country/angola/freedom-net/2020> (accessed 20

In 2017, President João Lourenço was elected, still under the MPLA party. While his tenure is noted to have promoted free speech and reversed a culture of fear that limited public discussion of governance issues²⁶, the 2020 Afrobarometer noted that about half of Angolans still do not feel free to express their ideas²⁷ and this could be attributed to the introduction of the Social Communication Legislative Package that was enacted after President Dos Santos expressed displeasure at the way Angolans were using the Internet²⁸. Rights affected by content moderation and censorship in Angola

1. Press freedoms

The Social Communication Legislative Package threatens press freedoms (online & offline) by criminalising criminal defamation and granting government actors extensive powers to interfere in journalists' duties especially when they are reporting on high profile or corruption cases. Article 29 gives the Ministry of Social Communication the authority to oversee how media organizations carry out editorial guidelines and proposes to punish violators with suspension of activities or fines. Additionally, the law under Article 82 vaguely criminalises the publication of a text or image that is 'offensive to individuals' without clearly stating what images or texts could be considered as being offensive. The Constitution notes that Freedom of the press shall be guaranteed, and may not be subject to prior censorship, namely of a political, ideological, or artistic nature, shall ensure pluralism different ownerships and editorial diversity in the media and that the state shall ensure the independence and qualitatively competitive functioning of a public radio and television service²⁹.

From all the detentions made overtime, traditional journalists and media houses face more threats of intimidation as compared to online journalists who face less intimidation³⁰. However, this is projected to grow as digital activism and online media become widely used in the country.

2. Freedom of expression and access to information

In November 2020, an activist Luaty Beirão was arrested in Angola while live-streaming a demonstration from his Facebook page and detained on unclear charges for disturbing order and promoting public violence³¹. Article 47 of the Constitution of Angola guarantees the right to meet and demonstrate, however, Luaty's detention goes against article 19 of the ICCPR and article 9 of the African Charter. Furthermore, Article 82 of the Social Communication Legislative Package criminalises publication of a text or image that is offensive to individuals. This provision is vague and poses a direct threat to freedom of expression and access to information by citizens as it is grossly subject to abuse by authorities. The constitution of Angola guarantees that everyone shall have the right to freely express, publicise and share their ideas and opinions through words, images or any other medium, as well as the right and the freedom to inform others, to inform themselves and to be informed, without hindrance, discrimination or censorship³².

Moreover, the Angolan Regulatory Body for Social Communication (Entidade Reguladora da Comunicação Social Angolana- ERCA) has power to regulate the conduct of journalists, investigate online content producers and ban websites without judicial oversight.

December 2021).

26 n 23 above.

27 Afrobarometer About half of Angolans feel unfree to speak their minds (2020) <https://afrobarometer.org/press/about-half-angolans-feel-unfree-speak-their-minds-afrobarometer-survey-shows> (accessed 20 December 2021).

28 Open Democracy Angola's Digital Last Frontier (2016) <https://www.opendemocracy.net/en/democraciaabierta/angola-s-digital-last-frontier/> (accessed 21 December 2021).

29 See note 1 above, Constitution of Angola, Article 44.

30 Human Rights Watch Angola: New Media Law Threatens Free Speech (2016) <https://www.hrw.org/node/297051/printable/print> (accessed 21 December 2021).

31 Sic Noticias Luaty Beirão receives arrest order live on Facebook (2020) <https://sicnoticias.pt/mundo/2020-11-11-Luaty-Beirao-recebe-ordem-de-detencao-em-direto-no-Facebook> (accessed 21 December 2021).

32 See note 1 above, Constitution of Angola, Article 40.

CAR and DRC

The reestablishment of democracy in Central African Republic and DRC at the beginning of the 1990s was accompanied by the emergence of private media and the Internet, characterized by an advanced freedom of expression often misinterpreted by the actors. Several media have seized this opportunity for a wider readership on social media in recent years. The advent of the internet and social media have exacerbated social intolerance with hate speech posts that unscrupulously attack tribes, causing serious social crises. DRC and the CAR do not have any explicit law on content moderation. However, the law of November 25, 2020, in DRC provides in its article 6 that the controls and regulation of ICTs are technologically neutral, without discrimination or privilege for any particular type of technology³³.

Rights affected by Content Moderation and Censorship in DRC and CAR

Over the past decade, content moderation has seriously affected three types of human rights online, including freedom of expression, freedom of online assembly, and the right to privacy.

1. Freedom of expression and content moderation

In CAR, the country has two regulatory and co-regulatory bodies, all secular arms of the state. The co-regulation system in CAR is managed by the Central African Telecommunications Regulatory Agency. It is a public law establishment endowed with legal personality and management autonomy; according to law 07-020 of December 28, 2007. Content moderation is also done through ARCEP, the regulatory authority for electronic communications and the role of the regulatory authority is created by law 17.020 of May 19, 2017, which may restrict freedom of expression, in the case where the state keeps the monopoly of the content regulation process. The two regulatory bodies are based on the different laws of the country to better work out the moderation of content. We can cite the constitution of the CAR, the law of December 28, 2007 on the regulation of telecommunications and related laws.

In the DRC, content is moderated by the Congo Post and Telecommunications Regulatory Authority (ARPTC). The law of June 22, 1996 on freedom of the press and the modalities of exercise, the law of June 5, 2020 on cybersecurity, the law of November 25, 2020 on ICT and communications are legal instruments regularly used in the content moderation process. DRC and CAR have different content moderation mechanisms, based on their past and different social context. In the context of serious breaches, the country's regulatory bodies must meet minimum criteria³⁴ in terms of respect for freedoms of expression and speech.

2. Right to privacy

Content moderation requires the processing of a series of private and personal data. A series of personal and non-personal data must be stored by the company or by state departments, such as the person's username, the name of the complainant, the justification for removing the content, dates and hours of downloads and withdrawals as is the case with Facebook and Youtube. In addition, the processing of such data may include the processing of special categories of data such as those relating to political opinions, trade union membership, religious beliefs or others. The data collected by the content moderation bodies may be subject to digital rights violations if no legislation describes a protection mechanism.

3. Freedom of assembly and association

Content moderation and freedom of assembly are explained in General Comment 37 (2020) on the right of peaceful assembly³⁵ of the United Nations Human Rights Committee. This document explains

33 Legal rdc loi n.20-017 du 25 novembre 2020 relative aux communications et aux technologies de la communication (2020) <https://legalrdc.com/2020/11/25/loi-n-20-017-du-25-novembre-2020-relative-aux-telecommunications-et-aux-technologies-de-linformation-et-de-la-communication/> (accessed 24 December 2021).

34 UNESCO, Liberté d'expression, https://fr.unesco.org/70years/liberte_dexpression (accessed 24 December 2021).

35 UN Human Rights Committee General Comment 37 (2020) on the right of peaceful assembly, 2020, <https://digitalli->

in paragraph 9 that “full protection of the right to peaceful assembly is only possible when other rights, which often overlap, are also protected, including freedom of expression, freedom of association and political participation”. It also underlines, in article 34, the positive obligation of States to ensure that “Internet service providers and Internet intermediaries do not unduly restrict gatherings or the privacy of participants in gatherings”, which would cover both self-regulation and co-regulation measures. Freedom of assembly and association can be compromised in two ways by inappropriate content moderation, offline or online. Online planning of physical events may be hampered and, second, freedom of assembly and association online may be restricted.

VI. Conclusion and Recommendations

At the regional level, content moderation is framed by regional instruments, in particular, and international instruments. To improve content moderation and limit human rights violations online, the following recommendations are made to the governments of Angola, DRC and CAR:

- Ensure laws on content moderation in Angola, DRC and CAR conform to human rights standards stated in the ICCPR and ACHPR and protect users in crisis situations.
- Promote a clear legal and operational framework for content moderation within the national laws and revise problematic provisions in Angola’s Social Communications Legislative package.
- Ensure transparency and judicial oversight in the content moderation process, which is essential to ensure accountability, flexibility, nondiscrimination, efficiency and proportionality.
- Proactively identify the rights of users that could be threatened in the process of regulation and co-regulation and provide remedy to the identified problems.
- Prioritise freedom of expression and access to information in each content moderation process.
- Involve all stakeholders in the content moderation process while taking into account local, multinational and global contexts.
- Employ clear and accessible service terms and conditions to avoid content moderation violations.
- In the context where rapid moderation of content is essential, clear, predictable and responsible rules should be in place to ensure that restrictions can be temporarily enforced pending a final assessment.
- Ensure any criminal restrictions on online content based on public order and security conform to human rights standards and not used to crack down on dissent.
- Laws in Angola, DRC and CAR must protect freedom of expression by defining mechanisms to fight against disinformation and hate speech online.
- States must ensure transparency and accountability in content moderation through regulatory and co-regulatory bodies and self-regulation processes.



© 2021 Paradigm Initiative
HQ: 374 Borno Way, Yaba, Lagos - Nigeria.