INPUTS ON THE "*DRC TELECOMMUNICATIONS AND INFORMATION AND COMMUNICATIONS TECHNOLOGIES (ICT) DRAFT BILL*"

CATEGORY : END-USERS

Introduction

From June 15 to 16, 2018 met in Lubumbashi (Democratic Republic of Congo, DRC), a group of Internet users, most of them members of civil society groups, including human rights defenders, bloggers and humanitarian actors, as part of a workshop on policies governing the digital sector.

It was under the initiative of Rudi International, a Congolese civil society organization working, among others, on digital rights issues, to discuss the draft law on Telecommunications and Information Technologies and of communication (ICT) in the DRC. The participants used the version that left the National Assembly's Infrastructure and Land Planning Committee and were inspired by the key principles contained in the "*African Declaration of Rights and Freedoms on the Internet".*

Recognizing that this bill is the essential instrument dealing with various aspects of Telecommunications and ICT, participants at this workshop decided to take the time to make recommendations/inputs to share with the legislator, with the hope that these will be taken into account in the final document.

We therefore hope that the comments contained in this document will be taken into account in the final deliberations of the Senate's Committee on Territorial Infrastructure and Development. We thank the Honorable Senators for their time in reading these comments.

Content :

These comments are divided, apart from the Introduction and the Conclusion, in a few points, according to the following categories:

- High-Level comments
- The rights and obligations of users
- The need for a multi stakeholder governance of the sector
- Protection of privacy and personal data
- On the issue of cyber security and crime

Our comments

High-Level Comments

1. The current legal framework governing the Telecommunications sector in the DRC, Framework law No. 013/2002 of 16 October 2002, was no longer adapted to the recent developments in the telecommunications sector, moreover, it did not sufficiently cover the ICT sector, an area that has grown considerably since 2002. We therefore welcome this initiative of the Government to review the framework law by the submission of this new bill which includes in a detailed manner aspects related to ICT.

2. This proposed bill also clarifies and revises all technical-legal terminology, emphasizes values and innovations such as the opening of the basic operating sector of the network to the private sector (we advocate the full liberalization of this sector, which has the potential to increase access to a large number of users), the protection of privacy and personal data, the regulation of competition between operators, the introduction of the universal service, the clear separation of powers and responsibilities between the Ministry and the Regulatory Authority (thus avoiding, once and for all, any form of overlap).

3. We would like to bring the attention of the legislator to the amounts of the fines provided for in this bill. As an example: in Article 375 sixties of Title VI on Penal Provisions where a fine of between Congolese Francs (FC) 200,000,000 and 300,000,000 is fixed for *"... any telecommunication and ICT network operator who violates the decision to suspend its exploitation title* "which, years after the adoption of this law, could be derisory and favor violations. We suggest that these amounts be reported in Tax Francs (FF) or legal tender currency in the DRC.

4. On the same point of "Penal provisions", we suggest that provisions be introduced that punish political-administrative authorities who, by abuse of power, would act in contrary to the provisions of this law. Because we have noticed that the planned sanctions are directed more towards the operators and the individuals.

On the rights and obligations of users

5. Article 69a has attracted our attention, especially in its 2nd paragraph where we suggest adding the precision as to the exact wording that the identification form should contain. The article reads: *"For this purpose it keeps the physical or electronic data sheets duly completed by its subscribers, containing obligatorily the minimum essential i**dentity** mentions*»

Operators need only the identity of the subscriber and no other data identifying the person and which may be subject to discrimination. We recommend that this aspect also be taken into account in the "*Ministerial Decree which determines the terms and conditions of identification of subscribers*", as mentioned in Article 69d.

6. Article 69c is problematic. It says that "*the State reserves the right to interrupt any connection of the subscriber not or badly identified*". We propose that the liability be charged to the operator and not to the subscriber who is not or badly identified. In such a case, the State should not punish the subscriber but rather the operator. Our position is consistent with Article 69 ter, which obliges the operator to identify the subscriber before accessing his service. If this provision is respected by the operator, no subscriber would have access to a service before their identification.

7. We welcome the fact that Article 69f provides a non-exhaustive list of the rights of the consumer of electronic communication services. We would also like to draw the attention of the legislator to the need for these operators to provide services that are non-discriminatory, making access possible to people in vulnerable situations such as the visually impaired, the deaf, etc. For example, we found that there are no devices that are specific and suitable for these categories of users.

8. We propose an amendment to Article 69i so that it reads as follows: "*Consumers have the right to organize as a trade union (a syndicate)* ***or to use other means of redress in accordance with the laws in force*****".** This is because the process of forming unions (or other forms of associations) in our country can be very long (and sometimes complicated), which can discourage consumers if they have that only option to speak about their rights.

9. Article 123 is important and we recognize that the development of the telecommunications sector through the installation of facilities on public roads or not, will promote access. We also suggest that the legislator insists that when the work must be done on public roads, there must be a prior announcement through the media. We have noticed that some works of this kind have handicapped the normal circulation in the concerned part, especially when the time of completion of the works is not known.

On the need for a multi stakeholder governance of the sector

10. It is appropriate to highlight some elements that are not yet well explained and still ambiguous in this bill and that would affect certain principles of multi-stakeholder management of the telecommunications and ICT sector in the country (a practice that we highly recommend). This form of governance, praised in many other global economies, avoids the power of decision-making to be hold by a single stakeholder, but rather it is exercised collegially, including other parties such as the government, private sector, civil society (consumers), the technical community, etc.

11. In the area of naming, we welcome the fact that the legislator provides in Article 56 that "*the country domain name (ccTLD) falls within the domain of the State*" because it is an important and critical resource, the digital identity of our country. On the other hand, we recommend that it be managed in a way that is representative of the various stakeholders. We are of the opinion that an agency should be created (with representatives of civil society, government, the technical community and the private

sector) and not a public entity at the image of the other ones which doesn't respect the governance model we are suggesting.

12. Article 124 is of concern to us because it grants the State (alone, when it deems it necessary) the right to "... *suspend, restrict, filter, prohibit or close certain services and applications ... for reasons of internal/external security*…" This provision violates the multistakeholder principle and may lead to possible violations by the State.

We also suggest, on the same article, that paragraph 3 be amended and supplemented to reflect the following: "*In this case, the State shall examine with the operator concerned the possibility of compensation.* ***This compensation must benefit not only the operator but also the consumer who would be affected at the same level as the operator".***

We also welcome the 4th paragraph which provides that "*None of the provisions of the first paragraph of this article can be executed without prior written notification from the competent authority*). Although clarification on the nature of the "competent authority" is needed, we insist on prior consultation that must include all stakeholders.

On the protection of privacy and personal data

13. In the chapter on privacy and the protection of personal data, a lot of work has been done by the legislator, because we consider that the management of personal data is of paramount importance in the digital age.

We welcome the following provision of Article 124 bis (which is supplemented by paragraph 1 of Article 124 ter): "*The confidentiality of correspondence is lifted upon authorization and requisition of the Public Prosecution Service or the Courts within the framework of judicial investigation* ".

However, the third paragraph of the following Article 124a concerns us: "*The competent public services of the State derogate from the confidentiality of correspondence for reasons of internal and / or external security of the State, national defense or public order*. "

We consider this section to be problematic and should either be pruned or otherwise clarified to conform to the spirit of the preceding paragraph. For us, there is a contradiction in that the latter gives power to the "competent" public services (one wonders which ones are here) instead of leaving it to the judiciary system.

As users of the Internet, we continue to believe that giving all power to the government may be subject to increased or often unjustified interference or violations in the name of "national security".

14. We welcome the fact that this draft law provides for the protection of the confidentiality of personal data, as stated in paragraph 1 of Article 125. On the other hand, we would like to suggest a clarification on its second paragraph (also in the first paragraph of Article 125 bis) adding that it is a "*written consent or written*

authorization" that is required, because we believe that this word strengthens the data protection of the data subject.

Paragraph 2 will therefore read as follows : "*Any processing of personal data shall be carried out only with the WRITTEN consent of the person concerned or at the request of the public prosecutor.*"

15. We suggest that the Minister's Order referred to in Article 125 ter which "*sets the terms and conditions for the collection, recording, processing, storage and transmission of personal data*" includes a clause on the modalities of appeal in the event that the subscriber feels or learns that their personal information has been used without their consent.

16. We note that articles (from 126 to 191) on the same issue of privacy and protection of personal data have been deleted and "*sent to a separate arrangement* ". We have not found enough explanations about where these rules are.

On the issue of cyber security and crime

17. We are satisfied by the provisions of Article 192 bis, paragraph 3 which requires suppliers to inform users of the particular security risks associated with the use of their services. Nevertheless, we request that a provision be inserted obliging suppliers/operators to use the same communication strategy that they use to promote their products and services, to raise awareness of the potential dangers associated with the use of their services. This is reinforced by Article 193 and all its paragraphs.

18. We have noticed that the legislator has not sufficiently covered the cybercrime-related aspects in this proposed bill, because the whole of Chapter 3 on this subject is almost empty. We ask that particular attention be paid to this issue given the rapid development of the Internet worldwide and the potential dangers in the cyber space.

Conclusion

We thank the members of the DRC Senate Committee on Infrastructure and Territorial Development for this opportunity to contribute with these reflections.

In general, we welcome the work done to provide our country with a legal instrument that will manage the Telecommunications and ICT sector, replacing the old law that no longer reflected the current state of affairs in the sector.

In our comments above, we wanted to draw the attention of the honorable senators of our country to use their wisdom to reassure themselves that the comments, covering the aspects below, are taken into account:

- The multi-stakeholder management of the sector;
- The protection of the rights of telecommunications operators and suppliers, as this may affect us as end-users of their services;
- Enhanced protection of privacy and personal data;
- A good and clear constituency of the circumstances and cases most often mentioned during the violation of fundamental rights by the government such as undermining the security of the State, internal and external security of the State, national defense, high treason or protection of public order.

For all contact,

Arsene Tungali, Executif Director, Rudi International

Email adress: arsenebaguma@gmail.com

Telephone: +243 993810967