# GLOBAL INFORMATION SOCIETY WATCH 2016

*Economic, social and cultural rights and the internet*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
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# Global Information Society Watch

## 2016

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Economic, social and cultural rights and the internet

# CONGO, DEMOCRATIC REPUBLIC OF (DRC)

## OUTSOURCING IN THE MOBILE SECTOR BENEFITS ONLY THE COMPANIES, NOT THE WORKERS

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## Introduction

In February 2013, about 400 dealers in SIM and prepaid cards for the French-owned telecoms multinational Orange – which became a major player in the Democratic Republic of Congo's (DRC) telecoms sector after buying out Congo Chine Télécom – went on strike. The reason was the poor working conditions they were subjected to by an Orange subcontractor.[1] Subcontracting or outsourcing is quite common in what is said to be one of the most profitable markets for the mobile sector in Africa. But telecom companies often turn a blind eye and demand no accountability from their subcontractors on their treatment of their Congolese workforce – treatment that is frequently in contravention of their rights.

## The legal provision for decent work in the Democratic Republic of Congo

The DRC signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Article 7 of the ICESCR states the right of everyone to the enjoyment of "just and favourable conditions of work which ensure, in particular, remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value."[2]

Although there were several attempts to turn most of the ICESCR's provisions into national law, it was only in 2002[3] that a comprehensive labour and social security code was adopted. Since then it has been updated to include nine new provisions related to, among others, gender equality, HIV status and the organisation of unions.[4]

The DRC is one of the poorest countries in the world, with a gross domestic product (GDP) per capita of USD 475 in 2014 and 64% of the population living below the poverty line according to 2012 statistics. Social and political unrest have also affected the country in recent years. Only a decade ago, the DRC surfaced from years of civil war and chaos. Although there has been gradual progress, the consequences of this vast humanitarian crisis still reverberate and cast a shadow over all aspects of life in the country.

Despite this, the DRC is said to be a large, lucrative market for information and communications technology (ICT) companies. There is regulatory freedom to operate in the sector for new investors and an untapped market share waiting to be profited from, making it an attractive and competitive business climate for the private sector. A sustained economic growth rate of 9% has accompanied the rapid development of internet-based services, from small dealers to franchises to mobile banking.

In this environment, mobile telephony represents a success story for the country. Mobile penetration grew from 2.2 million unique subscribers in 2005 to over 22 million in the second quarter of 2015, a ten-fold increase. There are currently around six million mobile internet users, half of whom adopted mobile internet within the last two years.[5] The contribution of mobile operators to the Congolese economy is substantial: the International Telecommunication Union (ITU) reports that in the five year period from 2006 to 2010, their contribution to GDP was over USD 5.2 billion, amounting to 5.9% of GDP each year on average. According to the World Bank, in 2008 the mobile industry contributed more than USD 160 million to the government budget, over 37% of the revenue collected by the national tax collection agency. The GSMA, an association representing mobile operators worldwide, estimates the sector's contribution to be a little lower, but still substantial: it says that in 2010 mobile industry revenues comprised 4.1%

1    Radio Okapi. (2013, 28 February). Congo Recruitment, sous-traitant d'Orange, accusé de ne pas respecter les contrats de travail. www.radiookapi.net/economie/2013/02/28/kinshasa-grogne-des-vendeurs-des-cartes-prepayees-de-la-societe-orange

2    www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

3    www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

4    www.leganet.cd/Legislation/DroitSocial/Loi%2016.010.15.07.html

5    Deloitte. (2015). *Digital inclusion and mobile sector taxation in the Democratic Republic of the Congo*. London: GSMA. www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/01/gsma-digital-inclusion-and-mobile-sector-taxation-in-the-democratic-republic-of-the-congo-report.pdf

of GDP, growing to 4.9% in 2014. The mobile sector can be compared to fixed-line penetration which currently stands at around 1%.

Despite these developments, the DRC lags behind many African countries in mobile connectivity: the average mobile penetration in sub-Saharan Africa stands at 40%, compared to the DRC's 31%. 3G penetration stands at 3% compared to 10% in sub-Saharan Africa.[6]

The liberalisation of the ICT sector in the framework of economic reforms enabled the mobile sector to rank among the key growth sectors of the Congolese economy.[7] Mobile services also create opportunities for investment, innovation and employment in a variety of other jobs that form part of the mobile ecosystem, such as hardware providers, workers in the network, the engineering and maintenance industry, and providers of mobile-related business services.[8]

International telecoms companies operating in the DRC such as Airtel, Orange and Vodacom are all using local subcontracting and outsourcing. However, statistics on the extent of this subcontracting are difficult to obtain. According to a report by an intern, in 2008 Vodacom Congo, one of the leading telecom companies, alone created 500 jobs (both open-ended and part-time positions) and thousands of indirect jobs through the outsourcing of certain services and work such as cleaning, security, and the construction and maintenance of communications sites. This excludes the potential jobs created and economic impact of its everyday business activities (such as advertising, chartering airplanes, and even the company's use of consumables).[9]

Airtel, part of the Indian Bharti group, also present in the DRC, is known for launching a business model based on reduced costs driven by subcontracting, which allowed it to quickly expand its services and provide its customers more ready access to its mobile products and services.

"The more the market is becoming profitable, the more the telecoms companies are using outsourced labour. In 2010, Vodacom tried to fire 11% of its staff but was not allowed to by the Ministry of Labour at the time. This and many other strategies show that outsourcing could be more profitable for them," says Juvenal Kabedi,[10] a senior employee of one of the outsourcing companies used by Vodacom Congo. Outsourcing is seen as a way to bypass labour regulations, and to avoid the difficulties of managing a permanent staff base, by passing these challenges onto a third party. Kabedi explained that outsourced workers generally receive lower salaries than permanent staff – sometimes as much as half of what a company employee receives for the same work. Very often they receive no payment for overtime, or half of what an ordinary employee receives. They are also the first to lose their jobs when the company downsizes.

In a country where the law governing outsourced labour was mainly created to regulate the mining industry and does not take into account the specificities of other business sectors, especially the telecoms sector, there is a need for a mechanism to control and protect the Congolese labour force against exploitation. Ngoy Freddy, a lawyer from Lubumbashi who was interviewed for this report, deplores the vagueness which persists in the relationship between subcontractors and telecoms companies: "Some companies employ full-time or part-time agents that they do not pay directly, leaving all their contracting issues to subcontracting companies. The subcontractor's staff have no relationship with the parent company. When you take the telecom companies on, you cannot distinguish the permanent employees of the company and those of the subcontractor. That is something that must be condemned."[11]

Ekoli Biko,[12] an employee of a company that provides equipment to a telecom company, was first employed by the said telecom company before he was given the choice of losing his job completely or working for the subcontractor and receiving almost half of his salary for the same job. "There was no choice. I needed a salary to sustain my family. So I continue doing the same job, with the same uniform, but receiving less money overnight," he said in an interview.

In May 2015, a new outsourcing bill to replace the old outsourcing law that primarily focused on mining services was tabled in parliament for discussion. There has been no decision on it yet.[13]

6   Ibid.

7   www.generaff.com/newsite/en/index.php/ct-menu-item-13/ct-menu-item-14/ct-menu-item-32

8   Deloitte. (2015). Op. cit.

9   Samushet, Y. (2008). Rapport de stage effectue a VODACOM Congo. (Unpublished.)

10  Name changed for purposes of confidentiality.

11  Radio Okapi. (2013, 8 March). RDC : la sous-traitance n'est pas appliquée en conformité avec la loi, selon Me Freddy Ngoy. www.radiookapi.net/economie/2013/03/08/rdc-la-sous-traitance-nest-pas-appliquee-en-conformite-avec-la-loi-selon-freddy-ngoy

12  Name changed for purposes of confidentiality.

13  Assemblée Nationale de la RDC. (2015, 27 April). L'Assemblée nationale juge recevable la loi portant activités de la sous-traitance en RDC. www.assemblee-nationale.cd/v2/?p=4962

## Conclusions

There is a need for the DRC to live up to its commitments under the ICESCR, which it signed in 1976. Labour laws need to take into account the rights of outsourced labour, which has become the backbone of one of the biggest contributors to the Congolese economy, the mobile sector. Policy makers need to come up with mechanisms to protect the local labour force in the face of the economic power of multinational companies. It the telecom sector is to be profitable, it needs to benefit all, include the outsourced labour force.

## Action steps

The following action steps are recommended for the DRC:

- The government needs to give the new outsourcing bill serious consideration and pass it so that the mobile sector can be properly regulated.

- Telecoms companies need to be held accountable for the contracts they pass on to their outsourcing partners. They should not be using outsourcing as a way to bypass labour regulations, and in doing so, violate the rights of workers.

- Congolese trade unions need to be made aware about the plight of outsourced labour in the telecoms sector.

# Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an "inventory of things" that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers' rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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