

Democratic Republic of the Congo

Summary

The Democratic Republic of Congo (DRC) has virtually no legal protections for employees and citizens who report crime, corruption or misconduct. The few protections that are on the books are weak, underenforced and subject to government corruption. Consequently, whistleblowing in DRC is almost nonexistent, and indeed, whistleblowers can put themselves in great danger if they make any revelations.

No protections are offered to public- or private-sector employees who blow the whistle on waste, fraud, abuse, or illegality. No official channels exist whereby an employee may file a formal complaint, and retaliation is common.

Freedom of the press technically is guaranteed by the constitution, but is very limited in practice. Journalists routinely face threats, intimidation, violence and arrest¹. Indeed, attacks on journalists are so common that they routinely attract the attention of even the western press.

Civilians are guaranteed the right to free speech and assembly, yet violent crackdowns against protesters² and the detention of political prisoners—even those never formally charged with a crime—are common³. The DRC is frequently criticized by international bodies, including the United Nations, for its lack of respect for basic civil liberties.

In addition to poor legal protections, a climate of fear in the DRC limits the extent to which citizens and the media can speak out against waste, fraud, abuse, and illegality, particularly by the state. Civilians are at the mercy of “undisciplined, brutal, underpaid” government forces,⁴ who impose a reign of fear with impunity. There is virtually no government accountability. And violence by the government against its citizens is commonplace.

Legal and Policy Framework

There is a near complete absence whistleblower protection laws and policies in the DRC. The only codified protection available is enshrined in the Labour Code ([Code du Travail](#)). This Code is applicable to “all workers and all employers”⁵ and says that lodging a complaint or participating in proceedings against the employer for violations of the law cannot be grounds

¹ Freedom House *Freedom of the Press 2016 Report*, Congo, Democratic Republic of (Kinshasa), <https://freedomhouse.org/country/congo-democratic-republic-kinshasa>

² Freedom House *Freedom of the Press 2016 Report*, Congo, Democratic Republic of (Kinshasa), <https://freedomhouse.org/country/congo-democratic-republic-kinshasa>

³ Human Rights Watch, *DR Congo: Political Prisoners in Detention*, <https://www.hrw.org/news/2016/11/16/dr-congo-political-prisoners-detention>

⁴ Gettleman, G. New York Times, *Congo Opens Inquiry Over Video of Massacre It Had Denied as Fake*, https://www.nytimes.com/2017/02/22/world/africa/democratic-republic-congo-massacre-soldiers-video.html?_r=0

⁵ Code du Travail, Article 1er, http://www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

for dismissal⁶. Workers who are unfairly dismissed have, at least technically, the right to reinstatement or damages set by the Labor Court based on the nature of the employee's job and the seniority of the worker, but limited to 36 months of his or her most recent wage.⁷ Again, there is no documentary evidence that this system works or that any employees who have been fired for their whistleblowing have been reinstated or received compensation.

A neutral labor inspector is responsible for investigating complaints of labor law violations. The inspector is required to treat the source of complaints with "absolute confidentiality" and to abstain from revealing that any inspection was the result of a complaint.⁸ The efficacy and independence of these inspectors, however, is limited by poor training and insufficient funding.⁹ Theoretically, the overall system should work. But that poor training and insufficient funding, coupled with systemic government corruption, make whistleblowing in the DRC dangerous and impractical.

The only exception where private citizens can blow the whistle on misconduct is to a "financial intelligence unit" that was set up as part of the government's so-called "zero tolerance for corruption" (La Cellule Nationale des Renseignements Financiers (CENAREF)). The unit's mandate includes "receiving, analyzing and processing financial information to establish the origin of transactions, or the nature of the subject-matter of the taxpayer's statements of suspicion." CENAREF purportedly receives information from government agencies, including the courts and the National Intelligence Agency, as well as from anonymous sources.¹⁰ However, there is a "strong perception" among the public that CENAREF is prohibited from investigating businesses and transactions involving high-level Congolese officials and ruling elites.¹¹ And like in the private sector, there is no evidence that CENAREF has ever been able to investigate well-connected Congolese.

A range of other laws, including the Law Concerning the Fight Against Money Laundering and Financing of Terrorism and the Law on Child Protection, compel citizens to report misconduct¹², with heavy penalties for failing to do so. However, no protections are available for those who make these reports.

Legal, Legislative, and Policy Gaps

⁶ Code du Travail, Article 62, http://www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

⁷ Code du Travail, Article 63, http://www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

⁸ Code du Travail, Article 198, http://www.droitcongolais.info/files/2.54.09.-Loi-du-16-octobre-2002_-Code-du-travail.pdf

⁹ United States Department of Labor, *Child Labor and Forced Labor Reports: Democratic Republic of the Congo*, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/congo-democratic-republic>

¹⁰ U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011*, Ch 2. *Country Reports: Africa Overview*, <https://www.state.gov/j/ct/rls/crt/2011/195541.htm>

¹¹ U.S. Department of State, Office of the Coordinator for Counterterrorism, Bureau of International Narcotics and Law Enforcement Affairs, *2015 International Narcotics Control Strategy Report (INCSR)*, <https://www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239169.htm>

¹² Loi N° 04/016 Du 19 Juillet Portant Lutte Contre Le Blanchiment Des Capitaux et Le Financement du Terrorisme

In reality, DRC suffers from a near-complete lack of whistleblower protections, regardless of what the law says. Employees are theoretically protected from retaliation only in the form of dismissal, while private citizens are not protected from retaliation if they report any kind of misconduct. The law does not recognize private citizens who make such reports as whistleblowers.

In addition, the government agency that is mandated to receive and investigate reports from workplace whistleblowers is underfunded, undertrained, and limited in the scope of its authority. No agency or governmental organization exists to lend support or to provide legal advice to whistleblowers.

Comprehensive whistleblower legislation, along with a competent enforcement agency, should be established in the DRC in accordance with international standards. However, the government has not signalled any intention to move toward developing or enacting whistleblower legislation. There is no relevant legislation pending in the parliament.

Secrecy Laws/National Security Exemptions

The Congolese Penal Code states that anyone entrusted with state or professional secrets is liable for a fine and/or up to six months in prison for revealing this information, except in cases where the law compels them to make the information available.¹³ The Code provides for an espionage charge and up to five years imprisonment for disclosing to the public any military or state secrets related to national security¹⁴ and up to ten years for possessing, reproducing or permitting the disclosure of such information.¹⁵

The DRC Senate approved legislation on “access to information” in 2015. This legislation would make some information held by the all levels of government available to anyone for free,¹⁶ but it has not yet been enacted into law.¹⁷ However, agencies can and do withhold a broad range of information, including that pertaining to executive deliberations, national security, commercial secrets, personal details, natural resources and criminal inquiries.¹⁸ Anyone who discloses such information can be held accountable for any grievance that results.¹⁹ Outside experts are concerned that ambiguities in the law may make agencies reluctant to furnish information, thus negating the law’s purpose.

Laws and Policies Governing Freedom of Speech and Press

¹³ Code Penal Congolais, 2004, Section VII, <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>

¹⁴ Code Penal Congolais, 2004, Article 188, <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>

¹⁴ United States of America State Department, *Democratic Republic*

¹⁵ Code Penal Congolais, 2004, Article 187, <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>

¹⁵ United States of America State Department, *Democratic Republic*

¹⁶ Agence Congolaise de la Press, *Le Sénat vote la proposition de loi relative à l'accès à l'information*, <http://acpcongo.com/acp/le-senat-vote-la-proposition-de-loi-relative-a-lacces-a-linformation/>

¹⁷ freedominfo.org, [DR Congo Approves Legislation on ATI](http://www.freedominfo.org/2015/10/dr-congo-approves-legislation-on-ati/), <http://www.freedominfo.org/2015/10/dr-congo-approves-legislation-on-ati/>

¹⁸ Proposition de Loi Relative a l'Access a l'Information, Article 5

¹⁹ Proposition de Loi Relative a l'Access a l'Information, Article 47

Although the Constitution provides for freedom of the press, this guarantee essentially is nullified by a provision calling for “respect for the law, public order and the rights of others.”²⁰ Unsurprisingly, the government uses this provision to clamp down on dissent and to silence opponents. Similarly, freedom of expression is guaranteed, subject to “respect for the law, public order and morality.”²¹ The 1996 Law on the Modalities of the Freedom of the Press states that freedom of expression requires the right to be informed without hindrance, again subject to the law, public order and morality.²² Publications that violate this condition can—and have been—seized and banned.²³ Reporters and publishers are routinely arrested and prosecuted.

The Congolese Penal Code provides for prison terms and fines for slander and libel.²⁴ The Freedom of the Press Law explicitly forbids the publication of information that undermines an individual’s “honour and dignity”²⁵, and sets out journalistic “offenses” punishable by prison time, including inciting hatred and discrimination; divulging court deliberations; and publishing details of moral crimes without appropriate permissions²⁶. The government is the sole arbiter of what constitutes an offense, and the national and provincial governments routinely use these laws to intimidate and to retaliate against critical journalists.²⁷ Defamation trials and appeals are held in courts with close ties to the government, and verdicts usually reflect political biases.²⁸

In addition, legislation passed in 2006 on “dangerous discourse and messages in the press” forbids the media from covering anything that could “incite hatred, disobedience, discrimination ...[or] any uncivilized or uncivil act or behavior”.²⁹ Once again, the government is the sole arbiter and there is concern that the ambiguity of the law and the extreme penalties for violations results in press self-censorship.

Journalists’ right to protect their sources is set out in the Freedom of the Press Law³⁰, but explicitly subject to exceptions “where required by the law”.

Freedom House’s *Freedom of the Press 2018 Report*³¹ rates press freedom in the DRC as “not free”. The report notes that “already-strong patterns of intimidation, censorship, and violence

²⁰ Constitution of the Democratic Republic of the Congo, Article 24

²¹ Constitution of the Democratic Republic of the Congo, Article 23

²² Law on the Modalities of the Freedom of the Press, Article 8

²³ Law on the Modalities of the Freedom of the Press, Article 44

²⁴ Code Penal Congolais, 2004, Section VIII, <http://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>

²⁵ Law on the Modalities of the Freedom of the Press, Article 10

²⁶ Law on the Modalities of the Freedom of the Press, Article 73-88

²⁷ United States of America State Department, *Democratic Republic of the Congo 2016 Human Rights Report*, <https://www.state.gov/documents/organization/265454.pdf>

²⁸ *Freedom House, Freedom of the Press 2016: Congo, Democratic Republic of (Kinshasa)*, <https://freedomhouse.org/report/freedom-press/2016/congo-democratic-republic-kinshasa>

²⁹ *Loi Portant Interdictions de Discours et Messages Dangereux dans la Presse*, http://www.droitcongolais.info/files/3.16.-Arrete-du-18-aout-2006_Discours-et-messages-dangereux-dans-la-presse.pdf

³⁰ Law on the Modalities of the Freedom of the Press, Article 11

³¹ Freedom House *Freedom of the Press 2016 Report*, Congo, Democratic Republic of (Kinshasa), <https://freedomhouse.org/country/congo-democratic-republic-kinshasa>

toward journalists” have recently been exacerbated. The year 2015 saw the banning of call-in programs, and the expansion of the state-run Radio Télévision Nationale Congolaise (RTNC). Staff of RTNC were directed to avoid criticizing government officials or giving airtime to the opposition in the lead up to the (ultimately thwarted) 2016 elections. Journalists frequently face police intimidation and wrongful arrest, and violence against them is common.

Reporters Without Borders (RWB) for 2018 ranks DRC 154 out of 181 countries³² for press freedom, representing a worsening since 2012, when it ranked 142 out of 180 countries.³³ RWB confirms that journalists are exposed to “threats, physical violence, arrest, prolonged detention and even murder”. The army, police and security services are known to perpetrate these crimes with impunity³⁴.

Whistleblower cases

Whistleblowing in the DRC is so rare that a radio station, Mutaani FM, trained anonymous “citizen journalists” to receive information on irregularities in the 2011 elections. After reporting the information to United Nations stakeholders, international observers, and the Congolese police and army, Mutaani published details on its website. Mutaani’s CEO reported that his team was constantly “under the menace of the local authorities” and faced financial retribution in the form of arbitrary fines and taxes.

The few published cases in which a whistleblower was publicly identified, although dated, have resulted in violent reprisal. For example, Steve Nyembo, the former Human Resource Director of the DRC Department of Taxation, was shot dead inside his home³⁵ after reporting that tax funds were being misappropriated by the office of the president³⁶. His body was mutilated and set on fire. In 2004, 11 people including a former military prosecutor, were condemned to death for this crime.³⁷ Nyembo’s case was cited in an appeal to the Canadian Immigration and Refugee Board in 2012,³⁸ when an asylum seeker claimed he was at risk of retaliation after having reported a suspicious \$23-million transfer of government funds to an account managed by President Kabila.

In addition to the risks faced by citizen whistleblowers, journalists who report on controversial or political issues often face reprisal. Reporters Without Borders (RWB) reported in 2018 that “The DRC is engulfed in a profound political and security crisis that has had a terrible impact on press freedom. Threats, physical attacks, abductions, arrests, and cases of prolonged detention targeting journalists are almost never investigated. Under

³² <https://rsf.org/en/drc>

³³ <https://rsf.org/en/ranking/2012#>

³⁴ <https://rsf.org/en/drc>

³⁵ BBC News, DR Congo official ran death gang, <http://news.bbc.co.uk/2/hi/africa/3720154.stm>

³⁶ National Post, *Canadian judge gives deportation reprieve to man who reported on \$23M D.R. Congo scam after another whistleblower had genitals cut off*, <http://news.nationalpost.com/news/canada/canadian-judge-gives-deportation-reprieve-to-man-who-reported-on-23m-d-r-congo-scam-after-another-whistleblower-had-genitals-cut-off>

³⁷ IRIN, Death sentence for former prosecutor, <http://www.irinnews.org/report/51614/drc-death-sentence-former-prosecutor>

³⁸ National Post, *Canadian judge gives deportation reprieve to man who reported on \$23M D.R. Congo scam after another whistleblower had genitals cut off*, <http://news.nationalpost.com/news/canada/canadian-judge-gives-deportation-reprieve-to-man-who-reported-on-23m-d-r-congo-scam-after-another-whistleblower-had-genitals-cut-off>

President Joseph Kabila, who has clung to power since 2006, at least 11 journalists have been murdered without consequence for the perpetrators.” These include Soleil Balanga, a radio reporter, whose throat was slit on his way home from work after reporting that the supervisor of the Monkoto General Hospital was to be replaced. The supervisor’s son was arrested for the murder.³⁹

Relevant legislation

- Constitution of the Democratic Republic of the Congo (2005)
- The Labour Code - Code du Travail (2002)
- Congolese Penal Code - Code Penal Congolais (2004)
- **Law on the banning of dangerous discourse and messages in the press (2006) - (Loi Portant Interdictions de Discours et Messages Dangereux dans la Presse)**
- Law on the Fight Against Money Laundering and Financing of Terrorism, (Loi Portant Lutte Contre Le Blanchiment Des Capitaux et le Financement du Terrorisme)
- Law on Child Protection (2009) - (Loi Portant Protection de l’Enfant)
- 1996 Law on the Modalities of the Freedom of the Press (Loi no 96-002 du juin 1996 fixant les modalités de l’exercice de la Liberte de Presse)
- Proposed Law on Access to Information, (Proposition de Loi Relative a l’Access a l’Information)

Organizations of Interest

None noted.

Further information

A 2015 Belgian documentary about a gynecologist who treats women who have been raped during the course of conflict in the Congo was banned, as the information minister claimed that the Congolese armed forces were “defamed” in the film.⁴⁰

Keeping Score: Democratic Republic of Congo versus International Standards

The following standards for whistleblower laws are derived from guidelines developed by the OECD, Council of Europe, Government Accountability Project, Blueprint for Free Speech and Transparency International.

Key

1 = National law is recognized as consistent with international standards

2 = National law is partially recognized as consistent with international standards

3 = No national law or national law is not recognized as consistent with international standards

³⁹News24, *DR Congo court sentences journalist's killer to death*, <http://m.news24.com/news24/Africa/News/drc-court-sentences-journalists-killer-to-death-20160223>

⁴⁰ Reporters without Borders, *Information minister assumes role of film censor*, <https://rsf.org/en/news/information-minister-assumes-role-film-censor>

	Standard	Public Sector	Private Sector
1.	A broad range of organisations and workplaces are covered	3	3
2.	A broad range of offenses may be reported as whistleblowing	3	3
3.	The definition of who may qualify as a whistleblower is broad	3	3
4.	A range of disclosure channels to report internally or to regulators is in place	3	3
5.	People who make disclosures to external organizations, the media or the public are protected	3	3
6.	The threshold for protection is a reasonable belief that the information disclosed is true	3	3
7.	There are opportunities and protections for anonymous disclosures	3	3
8.	Whistleblower confidentiality is protected unless expressly waived	3	3
9.	Organizations are required to establish internal disclosure procedures	3	3
10.	Whistleblowers are protected from a broad range of retaliatory acts	3	3
11.	Victimized whistleblowers have access to a full range of remedies and compensation	3	3
12.	Those who retaliate against a whistleblower are subject to sanctions	3	3
13.	A whistleblower oversight or regulatory agency has been designated	3	3

14.	Whistleblower laws are administered and reviewed transparently	3	3
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