

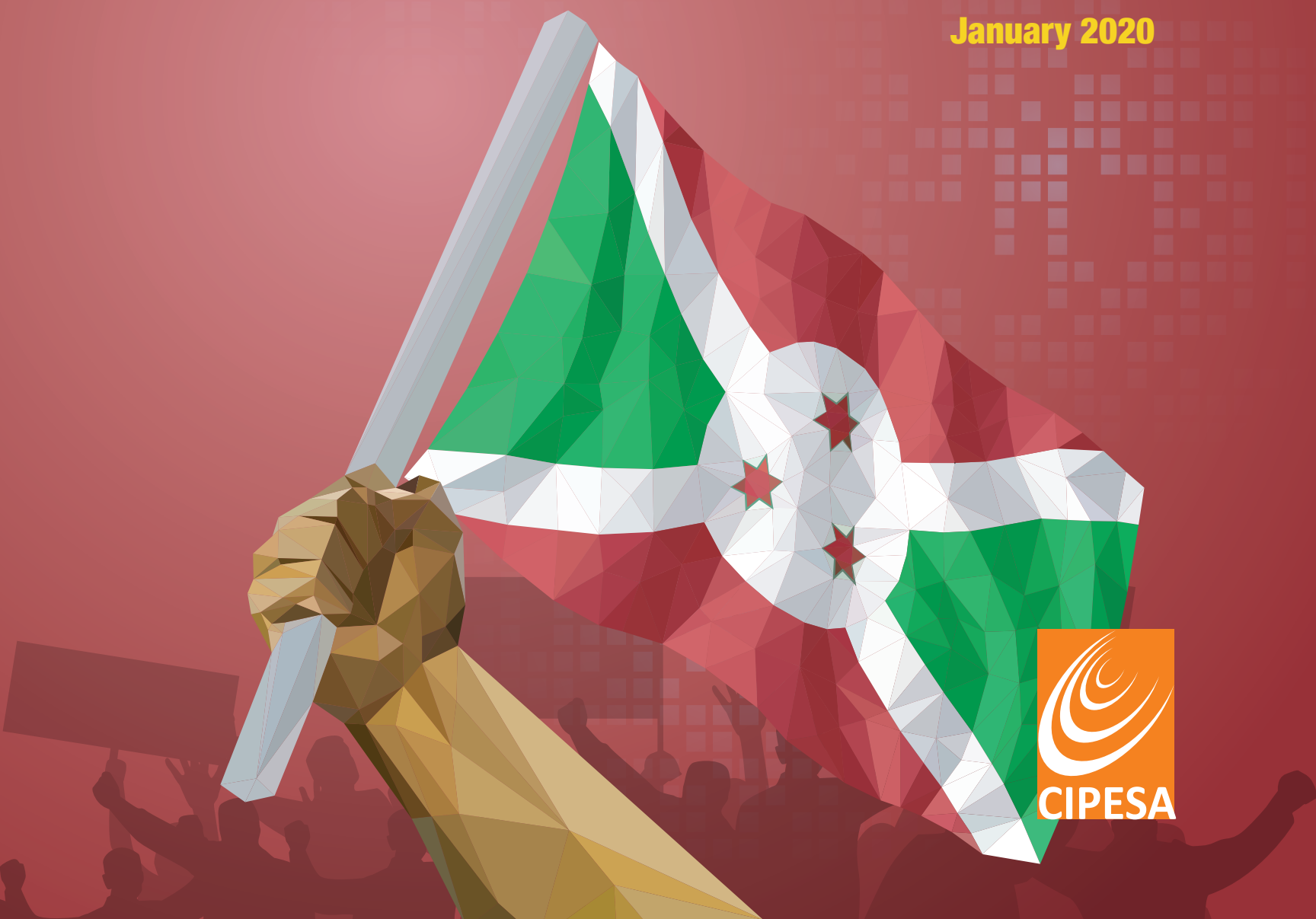
# State of Internet Freedom in **Burundi** 2019

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Mapping Trends in Government Internet Controls, 1999-2019

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**January 2020**



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# Credits

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This research documents the trends in government internet controls, 1999-2019 in Burundi tracking key trends in recent years, analysing the key risk factors, and mapping notable developments on data protection and privacy legislation and violations, and users' understanding of protecting their privacy online. Other country reports for Botswana, Cameroon, Chad, the DRC, Ethiopia, Kenya, Malawi, Nigeria, Rwanda, Senegal, Tanzania, Uganda, and Zimbabwe. The research was conducted as part of CIPESA's OpenNet Africa initiative ([www.opennetafrica.org](http://www.opennetafrica.org)), which monitors and promotes internet freedom in Africa.

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## *State of Internet Freedom in Burundi 2019*

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# 1

# Introduction

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## 1.1 Introduction

The state of internet freedom in Burundi has been on the decline in the last few years, despite growth registered in access and use of Information and Communications Technology (ICT). By December 2018 the country had a mobile phone penetration of 54 per cent and an internet penetration rate of 10 per cent<sup>1</sup> in 2019.

The growth of the telecommunication sector in Burundi was greatly aided by the enactment of the Law No 1/011 of 4th September 1997, which allowed the licensing of private telecommunication companies to compete with the state-owned corporation.<sup>2</sup> This resulted in improved quality of services, as well as lowering of the costs of services.<sup>3</sup> In addition, Law No 100/182 of 30 September 1997 led to the establishment of Agence de Régulation et de Contrôle des Télécommunications (ARCT), to regulate the sector.

In 2010, the government adopted a new 15-year National ICT Development Plan II (2010-2025) to guide the country towards achieving universal access to information and ICT, after the expiry of the 2007-2011 Plan.<sup>4</sup> In 2018, the country also adopted the Burundi Broadband Strategy 2018-2025 (Stratégie Burundi Large Bande 2018-2025) with the objective of covering the entire Burundian territory with broadband connectivity by 2025.<sup>5</sup>

But like several other African countries, the leadership in Burundi has continually adopted regressive measures that curtail internet freedoms, including internet shutdowns as a tool of political hegemony and control freedom of expression.<sup>6</sup> In April 2015, the telecommunications regulator, ARCT, instructed all telecom operators providing mobile internet to block access to social media platforms such as Facebook, Twitter, WhatsApp and Telegram for around 10 days.<sup>7</sup>

<sup>1</sup> <https://www.iwacu-burundi.org/englishnews/number-of-internet-users-in-burundi-is-low-says-arct/>

<sup>2</sup> Décret–Loi N° 1/011 Du 4 Septembre 1997 Portant Dispositions Organiques sur les Télécommunications, <http://www.arct.gov.bi/images/decretslois/decret011.pdf>

<sup>3</sup> Analyse du Secteur des TIC au Burundi, <http://www.arct.gov.bi/images/statistique/anasetic1.pdf>

<sup>4</sup> State of Internet Freedoms in Burundi 2014, [http://www.opennetfrica.org/?wpfb\\_dl=13](http://www.opennetfrica.org/?wpfb_dl=13)

<sup>5</sup> Rapport de l'atelier de validation des textes législatif et réglementaires relatifs aux TICs et sensibilisation sur la stratégie: Burundi Large Bande 2025, <http://arct.gov.bi/images/db.pdf>

<sup>6</sup> Digital Authoritarianism: Human Rights, Geopolitics and Commerce, <https://tinyurl.com/wouztpw>

<sup>7</sup> Update on the State of Internet Freedom in Burundi, <https://tinyurl.com/snmgsx9>

In April 2014, the government passed Decree N° 100/97 of April 18, 2014, which requires telecommunication service providers to ensure end-users' geo-localisation and identification in order to preserve public security, fight against fraud, and aid in conducting judicial investigations.<sup>8</sup> Moreover, in May 2018, the government adopted the New Code of Penal Procedures of Burundi that allows for the interception of electronic communications of citizens and computer seizures if someone is suspected of committing a crime.<sup>9</sup>

Although it is a state duty to provide security to ensure the enjoyment of human rights, the implementation of security measures in the absence of key safeguards is in itself a threat to the very rights sought to be protected. It is therefore important to situate the on-going discussions around internet rights by providing an in-depth analysis of the trends of how the government policies and practices over the last 20 years have shaped and are restricting digital rights in Burundi.

## 1.2 Aim and objectives of the Study

This study seeks to document the extent to which government controls of the digital space have affected internet freedom in Burundi over the last two decades. It focuses on a select set of issues including the proliferation of retrogressive policies and laws; government surveillance; digitisation programmes; and censorship. The study identifies measures that can inform decision-makers, the media, academia, civil society and other stakeholders on the political, legal, institutional and practical landscape that should drive a more progressive and vibrant internet rights landscape.

<sup>8</sup> Décret No. 100/97 du 18 Avril 2014 portant Fixation des Conditions d'exploitation du secteur des Communications Electroniques, <http://www.arct.gov.bi/images/decretslois/decret1.pdf>

<sup>9</sup> Loi No 1/09 Du 11 Mai 2018 portant modification du code de Procédure Pénale <http://www.assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf>

# 2

## Methodology

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The study employed qualitative methods including literature review, legal analysis and key informant interviews to gather detailed explanations on the state of internet freedom in the last two decades. The context of the key developments that affected internet freedom in Burundi over the years was also analysed. This provided an understanding of factors that influenced online freedom of expression negatively or positively.

Documents reviewed included research reports and media reports on digital rights in Burundi, as well as laws and policies governing the ICT sector in the country. Among the documents reviewed were transparency reports produced by companies involved in content hosting or social media platforms, such as Google, Facebook and Twitter. One of the components of those transparency reports is the requests of users' information by governments, as well as requests for content removal also made by government agencies.

Key informant interviews were conducted with purposely-selected respondents, including senior officials of working for the Ministry in charge of ICT and Youth in Burundi, staff of Internet Service Providers (ISPs), journalists working for independent press houses, staff at the telecoms regulatory agency ARCT, and human rights defenders.

# 3

## Country Context

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### 3.1 ICT Status

The internet is reported to have been introduced in Burundi in 1996.<sup>10</sup> Mobile telephony was introduced in Burundi in 1999 following the liberalisation of the telecommunication sector in 1997. By the end of 2018, the country had 10 Internet Service Providers with an internet penetration rate estimated at 7.4%, with 99% of the internet users being mobile internet subscribers.<sup>11</sup> Mobile phone subscriptions stood at 54 per 100 persons at the end of the year 2018, up from 0.24 per 100 inhabitants in 2000.<sup>12</sup>

In early 2018, the government began the Burundi Broadband project, which plans to deliver nationwide connectivity by 2025. Mobile operators have launched 3G and LTE mobile services to capitalise on the expanding demand for internet access.<sup>13</sup> In 2007, the government passed the National ICT policy to spur economic development by leveraging the benefits of new ICT.<sup>14</sup>

### 3.2 Political Environment

Burundi's political environment suffered a major setback despite the political stability ushered in by the 2002 Peace Accord signed after a decade of civil war.<sup>15</sup> Having manipulated the 2005 and 2010 presidential elections,<sup>16</sup> President Pierre Nkurunziza once again announced his bid for a third term in April 2015, a move which was widely opposed and declared unconstitutional by Burundian opposition and civil society organisations. Following the announcement, there were demonstrations and unrest in the capital Bujumbura lasting a week.

<sup>10</sup> ARCT, *Analyse du secteur des TICs au Burundi*, <http://www.arct.gov.bi/images/statistique/anasetic1.pdf>

<sup>11</sup> *Observatoire du Marché des services Internet 4ème Trimestre 2018*, <http://www.arct.gov.bi/images/observatoiremarche/observatoirei4.pdf>

<sup>12</sup> *Rapport sur L'Observatoire des Marchés des Services de la Telephonie Fixe et Mobile le Quatrieme trimestre 2018*, <http://www.arct.gov.bi/images/observatoiremarche/observatoiretmf4.pdf>

<sup>13</sup> *Ibid*

<sup>14</sup> *Préparation du groupe consultatif le secteur des Technologies de l'information et de la Communication (TIC)*, <https://tinyurl.com/r834a73>

<sup>15</sup> *Complete Peace In Burundi Requires Full Support Of International Community*, Deputy President Of South Africa Tells Security Council, <https://www.un.org/press/en/2002/sc7586.doc.htm>

<sup>16</sup> *Burundi: Missteps at a crucial moment*, <https://www.hrw.org/legacy/background/africa/burundi1105/2.htm>

In addition, a coup attempt on May 13, 2015 worsened the crisis. The government response led to the commission of serious human rights abuses as reported by different human rights organisations such as Human Rights Watch<sup>17</sup> and the United Nations.<sup>18</sup> In May 2018, Burundi adopted a new constitution following a referendum which allowed Nkurunziza to run for at least two more terms.<sup>19</sup> While elections are scheduled for 2020, there are doubts by the UN Commission on Burundi, on whether the polls will be free and fair, in a country where past elections were marred by irregularities, violence and serious human rights violations.<sup>20</sup> Moreover, many opposition leaders, journalists, and human rights defenders have been forced into exile, which gives little hope of a competitive, free and fair poll in 2020.

### 3.3 Economic Status

The population of Burundi has almost doubled since 2000 from around six million to 12 million in 2019. The inflation rate in 2017 was 15.4% while the economic growth rate was estimated at 2.8% in 2016, according to the National Institute of Statistics (ISTEEBU).<sup>21</sup>

The country's economic growth is projected to continue at a slower pace – 0.4% in 2019, and 1.2% in 2020 as Burundi is subject to international sanctions that reduce foreign aid that could be used to finance development. The modest growth in the economy is being driven by increased production and export of coffee and tea, improved terms of trade (from -11.7% in 2018 to 1% in 2019), and higher investments.<sup>22</sup> Agricultural production - a key driver of the economy - remains vulnerable to climate shocks, as in 2015 when flooding caused by El Niño was followed by drought.

<sup>17</sup> World Report 2018: Burundi <https://www.hrw.org/fr/world-report/2018/country-chapters/312965>

<sup>18</sup> Burundi: Human rights violations continue, says UN Commission of Inquiry, <https://tinyurl.com/v6z7rgl>

<sup>19</sup> Burundi referendum: First a third term, <https://www.bbc.com/news/world-africa-44110338>

<sup>20</sup> UN Commission Warns of New Burundi Political Crisis in 2020, <https://tinyurl.com/u4hmbnj>

<sup>21</sup> ISTEEBU, Burundi en bref, <http://isteebu.bi/index.php/economie-en-bref>

<sup>22</sup> African Development Bank, Burundi Economic Outlook, <https://tinyurl.com/rt2h7xc>



# 4

## Results

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### 4.1 Key Trends of Internet Controls Over the Last Two Decades

This section traces the history and evolution of internet control measures adopted by the Government of Burundi, from 1999 to 2019. It also examines some of the social, political and socio-economic considerations behind these control measures.

#### 4.1.1. Weaponising the Law to Legitimise Actions

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In Burundi, some ICT-related laws that contain provisions which infringe on digital rights were introduced between 1999 and 2019. Below, we explore how they affect internet freedom.

##### Legalising Surveillance and Interception of Communication

During the study period, successive governments in Burundi adopted various legislation to legitimise surveillance practices by state agencies supported by communication intermediaries.

Lawful interception of communications was provided for under Article 92 of the Law No. 1/10 of 3 April 2013 on the reform of the Code of Criminal Procedure. Under this provision, an authorised officer had the right to surveil a person's communications, including telegrams, letters and any other objects, but only if it is essential to establishing the truth during a criminal investigation. However, this law makes no explicit mention of digital or online communications.<sup>23</sup> Whereas the Law No 1/011 (1997) obliges communications service providers and their staff to protect the privacy of their subscribers, Article 24 of the 2013 law requires service providers to provide confidential information upon demand, if that demand is proven to be lawful as per the mandate of ARCT.<sup>24</sup>

<sup>23</sup> CIPESA, *State of Internet Freedom in Burundi*, 2016, [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>24</sup> See the 2013 Code of Criminal Procedure here: [http://www.assemblee.bi/IMG/pdf/n%C2%B01\\_10\\_2013.pdf](http://www.assemblee.bi/IMG/pdf/n%C2%B01_10_2013.pdf)

On May 11, 2018, government enacted amendments to the Code of Criminal Procedure, under law Law 1/09 of 11th May 2018.<sup>25</sup> The law allows for the interception of electronic communications of citizens, and computer seizures if someone is suspected of committing a crime. Specifically, Article 61 of the law provides for infiltration as one of the investigative methods, which allows the use of electronic spying on a suspect. The law allows security forces to carry out multiple searches targeting entire districts and to seize computer systems to investigate data.<sup>26</sup> Additionally, the public prosecutor has the right to request the installation of any interception tool by any entity either the service provider or any skilled agent as provided in Articles 69, 70 and 71. When presenting the law before the Burundian Parliament, the Minister of Justice, Aime-Laurentine Kanyana, is reported to have stated that the intent of that law was to adapt to new forms of criminality that had emerged in recent times, including cases where criminals were using electronic means.<sup>27</sup>

In 2014, the Burundi Internet Exchange Point (BurundiXP) was set up, with 10 affiliates including Burundian ISPs.<sup>28</sup> The Law 100/122 of 13th May 2014<sup>29</sup> defines the legal and operational status of this internet infrastructure. Article 9 of this law provides for the control and follow up of the use of that infrastructure by ARCT, which is allowed to freely access the premises where BurundiXP is hosted and harvest any data it needs. Since the BurundiXP is a hub where different ISPs are peering together in order to freely exchange traffic, it is possible that it can also constitute a one-point shop where end users' data can easily be accessed if needed.

### Rise of National Security as Justification for Repressive Laws

The protection of national security and the preservation of public order have been among the main reasons advanced by the state in enacting laws and policies that contain repressive provisions against digital rights. In May 2012, Burundi amended the Law Number 1/025 of November 2003, through Press Law No 1/11 of 4 June 2013, which introduced provisions (Articles 26-35 and 44-45) that unduly regulate publications whether in print or on the internet. It also imposes restrictions on media reporting on matters that would undermine public order, national security, national unity, national sovereignty, and good morals.<sup>30</sup>

Further, in April 2014, the government passed Decree N° 100/97 of 18 April 2014, which determines the conditions for operating in the electronic communications sector. The law requires telecommunication service providers to ensure end-users' geo-localisation and identification in order to preserve public security, fight against fraud, and aid in conducting judicial investigations.<sup>31</sup>

<sup>25</sup> <http://www.assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf>

<sup>26</sup> <https://www.nation.co.ke/news/africa/Burundi-MPs-approve-night-raids-without-warrants/1066-4489174-vpyb9nz/index.html>

<sup>27</sup> Ibid

<sup>28</sup> Burundi Internet Exchange Point, <http://www.bdxp.bi/?fr/rb1>

<sup>29</sup> Décret No. 100/122 du 13 Mai 2014 Portant Cadre Réglementaire du Point D'échange Internet National du Burundi, <http://www.arct.gov.bi/images/decretslois/image0013.pdf>

<sup>30</sup> Text of the law, [https://www.assemblee.bi/IMG/pdf/N%C2%B01\\_11\\_4%20juin\\_2013.pdf](https://www.assemblee.bi/IMG/pdf/N%C2%B01_11_4%20juin_2013.pdf)

<sup>31</sup> Décret No. 100/97 du 18 Avril 2014 Portant Fixation des Conditions d'exploitation du Secteur des Communications Electroniques, <http://www.arct.gov.bi/images/decretslois/decret1.pdf>

In March 2016, the government adopted the Ministerial Law N° 540/356 with the objective of addressing fraud in electronic communications. Article 1 of the law prohibits the possession of two SIM cards from one telecom operator. Any user requiring two SIM cards from one telecom operator has to be authorised by the ARCT. Under Article 5, the regulator and its technical partner are authorised to request information from operators where it is necessary to fight fraud. The providers are also required to provide a secure web application to the regulator, allowing the ARCT to have access to the end users' register.<sup>32</sup> Article 6 provides that the ARCT and its technical partner have the right to install IP probes within the ISP's technical equipment.<sup>33</sup>

### **Silencing Criticism through Criminalisation of Free Speech and Punitive Responses**

On June 4, 2013, Burundi enacted Media Law No 1/11 that clearly covers internet publications. It imposes restrictions on media professionals when reporting on issues related to national defence and the national economy. Moreover, the law, under Article 20, requires media professionals to disclose the sources of their information if the news is related to national defence or to public order. The law also imposes high fines for any mistake media professionals commit. Article 63 provides for fines ranging from USD 2,400 to USD 4,000 against any journalist found to have contravened the law.<sup>34</sup>

However, in September 2018 a new law, Media Law No 1/19 of 14 September 2018,<sup>35</sup> was enacted. The law has some unclear provisions which could lead to abuse. Article 62 of the law obliges media houses to avoid publication of any content that is contrary to morality, or that could threaten public order. There is a risk that the ambiguity of the provisions could lead the media to self-censorship or abuse from the media regulator.

Law No 100/97 of 18th April 2014 raised the cost of acquiring a telecommunication licence, by more than 500% from USD 200,000 to USD 10,000,000, as per article 33. The increase has made it extremely hard for operators to reduce the cost of their services, and this impacts on affordability, and thus limits access to the internet in Burundi.

<sup>32</sup> CIPESA, *State of Internet Freedom in Burundi*, 2016, [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>33</sup> <http://www.arct.gov.bi/index.php/9-siteconstruct/7-ordonnances>

<sup>34</sup> Loi No. 1/11 du 4 Juin 2013 Portant Modification de la Loi No. 1/025 du Novembre 2003 Régissant la Presse au Burundi [https://www.assemblee.bi/IMG/pdf/N%C2%B01\\_11\\_4%20juin\\_2013.pdf](https://www.assemblee.bi/IMG/pdf/N%C2%B01_11_4%20juin_2013.pdf)

<sup>35</sup> Loi No. 1/19 du 14 Septembre 2018 Portant Modification de la Loi No. 1/15 du Mai 2015 Régissant la Presse au Burundi <http://cnc-burundi.bi/wp-content/uploads/2018/10/loi-2018.pdf>

### 4.1.2. Disrupting Networks: Social Media Shutdowns and Blockage of Websites

In 2010, president Nkurunziza sought to enhance his control of the telecommunications regulator ARCT. His government enacted Law 100/47 of 15 November 2010, which removed the supervision of the ARCT from the telecoms ministry and transferred it to the Presidency.<sup>36</sup> In April 2015, the ARCT instructed all telecom operators providing mobile internet to block access to social media platforms such as Facebook, Twitter, WhatsApp and Telegram for 10 days.<sup>37</sup> The move was intended to hinder protests against the bid by Nkurunziza for a new term in office in the July 2015 elections. The public had been using the social media platforms for mobilisation of protests against the president's plan to stay in power beyond his constitutional mandate.

The order was made orally, during a meeting called by the ARCT with representatives of the different operators.<sup>38</sup> The telecom operators had to immediately comply with that order or risk losing their licenses. The ARCT justified the blockages, stating that it was a matter of national security.

#### **Repetitive Sanctions Against Online Media**

The government has also been persistent in restricting online expression both online and offline. In June 2013, the comments section of the online publisher Iwacu was suspended for 30 days by Burundi's National Communication Council (CNC), which claimed that readers' comments on Iwacu had violated legal provisions articles 10 and 50 of the media law that prohibit "endangering national unity, public order and security, incitement to ethnic hatred, justification of crimes, and insults to the head of state."<sup>39</sup>

On October 20 2017, the Iwacu press group reported that their website (<http://www.iwacu-Burundi.org>), as well as that of Ihikiro press group,<sup>40</sup> and Isanganiro Radio could not be accessed from Burundi.<sup>41</sup> According to the article, Iwacu journalists tried to investigate the origin of the problem but got no response from ISPs and the CNC. However, most of the technologists consulted by Iwacu stated that the problem may have come from the Burundi Backbone System (BBS), from which most Burundian ISPs get their bandwidth.<sup>42</sup> According to the article, an official from BBS claimed that that the issue was on the level of partner ISPs, and not at the BBS.

On April 11, 2018, the CNC issued another sanction against the Iwacu online comments forum. This time, the regulator ordered Iwacu to shut down its online forum for three months purportedly because some defamatory statements were being published on that forum by its readers.<sup>43</sup> In order to avoid repetitive sanctions and even harsher sanction from the communication commission, Iwacu opted to disable the comments section on the online platform.<sup>44</sup>

<sup>36</sup> Decree N ° 100/47 OF 15 November 2010 Establishing the "ARCT" Telecommunication Regulation and Control Agency Under the Tutelage of the Presidency of the Republic, <http://www.presidence.bi/spip.php?article884#>

<sup>37</sup> Update on the State of Internet Freedom in Burundi <https://cipesa.org/2015/06/update-on-the-state-of-internet-freedom-in-burundi/>

<sup>38</sup> Update on the State of Internet Freedom in Burundi 2015 [https://cipesa.org/?wpfb\\_dl=187](https://cipesa.org/?wpfb_dl=187)

<sup>39</sup> Burundi newspaper forum shut down, *The Guardian*, 4 June 2013. <https://www.theguardian.com/media/greenslade/2013/jun/04/press-freedom-burundi>

<sup>40</sup> Ikiriho Press Group <http://www.ikiriho.org>

<sup>41</sup> Isanganiro Radio <http://www.isanganiro.org>

<sup>42</sup> The sanction against Iwacu online forum <http://www.iwacu-burundi.org/probleme-technique/>

<sup>43</sup> A New Interception Law and Blocked Websites: The Deteriorating State of Internet Freedom in Burundi <https://cipesa.org/2018/07/a-new-interception-law-and-blocked-websites-the-deteriorating-state-of-internet-freedom-in-burundi/>

<sup>44</sup> Interview with Iwacu journalist

In 2015, there were reports of physical destruction of independent radio and television stations following the coup attempt in May 2015, and many local journalists were forced to flee to exile. Stations such as Radio Inzamba ([www.inzamba.org](http://www.inzamba.org)) and Radio Humura ([www.rpa.bi](http://www.rpa.bi)) now operate online from abroad, while others Twitter and Facebook to broadcast news.<sup>45</sup>

Meanwhile, on October 12, 2018, the general prosecutor of Burundi ordered the suspension of Ikiriho, an information and news source website after the Kenya Commercial Bank lodged a defamation case against the publisher.<sup>46</sup> The information site had accused the bank of money laundering.<sup>47</sup> The suspension was still in force by the end of 2019.<sup>48</sup>

### 4.1.3. Online Surveillance

On May 31, 2016, the Ministry of Public Security issued a press release accusing social media activists of promoting violence in Burundi by spreading hate speech. The ministry stated that security forces of Burundi were able to track and arrest them, so they should not feel safe hiding behind social media.<sup>49</sup>

In August 2016, 54 members of a WhatsApp group called "RPA Amakuru" (News from African Public Radio) were arrested in Bujumbura, when they had gathered for a face-to-face meeting. Those arrested were activists who had been trying to share political news on Burundi at a time when most independent radio and press houses had been shut down or forced into exile. They were accused of threatening state safety by spreading defamatory statements about public authorities of Burundi via WhatsApp.<sup>50</sup> Later, 46 of those arrested were released but 8 were jailed. At the time of writing this report, it was difficult to establish if the 8 were also later released as there were no communication from government nor any other member of the group. It is clear from the actions of the state that they were monitoring the online activities of this group of activists, although it is unclear how the monitoring was done.

<sup>45</sup> CIPESA, *State of Internet Freedom in Africa 2017*

<sup>46</sup> *Un site d'information proche du pouvoir suspendu par la justice au Burund*, <https://tinyurl.com/r2dus9h>

<sup>47</sup> *Ibid*

<sup>48</sup> <https://twitter.com/ikiriho/status/1050744487960608770/photo/1>

<sup>49</sup> *Ministry of Public Security*, <http://www.burundi.gov.bi/spip.php?article1071>

<sup>50</sup> *WhatsApp soon censored in Burundi?* <https://tinyurl.com/vno6hpw>

#### 4.1.4. The Push Towards Determining Identity Amidst Poor Oversight

Burundi has taken measures for purposes of identifying any telecommunication services user with precision. These have included SIM card registration, and moves towards introducing electronic identification.

##### **SIM-Card Registration**

In April 2014, the Burundian government introduced Law No 100/97 of 18 April 2014, on the conditions of operating in the electronic communication sector, an amendment to the Ministerial Law No 520/730/540/231 of 9 April 1999<sup>51</sup> which required telecommunication service providers under Article 29, to collect accurate and up-to-date information on the identity of subscribers and submit the same to the ARCT. This law was complemented by Order No 1 of 8 April 2014 issued by the ARCT, which required the provision of personal information such as names, address, places and dates of birth, a copy of national identity cards and passport photographs, as part of the mandatory SIM card registration.<sup>52</sup>

##### **Adoption of Electronic Identification**

In August 2013, Burundi's Ministry of Interior announced the introduction of a pilot project to issue electronic ID cards with a machine readable zone to replace the traditional paper-based identity cards in order to provide more accurate information about individuals of 16 years and above. Citizens were required to register and provide personal details, including bank account numbers, proof of possession of land as well as a house, names of children and parents, as well as marital status, blood group and criminal record.<sup>53</sup> As of 2017, the Burundi government was planning the nationwide rollout of the smartcards with a machine-readable zone.<sup>54</sup> However, by December 2019, the country was still using paper-based IDs.

Like many other African countries, Burundi does not have a privacy and data protection legislation. The absence of such a law coupled with mandatory SIM card registration makes users' information vulnerable to abuse by both service providers and state actors.<sup>55</sup>

#### 4.1.5. Toying With the Idea of Social Media Taxation

Across the continent, one of the notable and concerning phenomena in recent years has been the use of taxation to undermine citizens' use of the internet. In some instances, such measures have been designed partly to limit the number of citizens who can access digital technologies and use them to hold governments accountable. On October 8, 2018, the President of the Senate of Burundi announced that the Burundian government would consider introducing a tax on Whatsapp usage. This was during a public meeting on security held in Mutimbuzi community, near the capital Bujumbura.<sup>56</sup> The reason for the move was that public servants were spending too much time on their phones during office hours instead of attending to their duties. At the time of writing this report, no known step had been taken towards adopting legislation on the use of WhatsApp or other social media. However, given what it is happening in other countries like Uganda, Tanzania and Kenya, such a measure, if implemented, would pose a threat to digital rights.

<sup>51</sup> Text of the law: <http://www.arct.gov.bi/images/decretslois/decret1.pdf>

<sup>52</sup> Order No 1 of 8 April 2014, <http://www.arct.gov.bi/images/circulaires/circulaire2.pdf>

<sup>53</sup> The New National Biometric Identity Card: soon in place, <https://tinyurl.com/rpf5k9p>

<sup>54</sup> <http://documents.albankaldawli.org/curated/or/337501535031584335/pdf/129621-ACS.pdf>

<sup>55</sup> CIPESA, State of Internet Freedom in Burundi, 2016, [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>56</sup> <http://abpinfos.com/le-president-du-senat-tient-une-reunion-de-securite-en-communes-mutimbuzi-et-kabezi>

## 4.2 Key Positive Developments

### 4.2.1. Advocacy and Push-back by Non-State Actors

Civil society, critical voices, and opposition leaders have continued to play a key role in resisting unconstitutional laws and state practices. For instance, leaders of opposition parties in Burundi opposed the introduction of electronic ID cards prior to general elections, arguing that it would lead to rigged election.<sup>57</sup> Further, political actors together with the Burundian Press Union successfully challenged a Press law before the constitutional court of Burundi and East African Court of Justice in January 2014, leading to the adoption of a new law in May 2015.<sup>58</sup>

In May 2013, when the CNC issued its first sanction against Iwacu, the management of the media house pushed back by writing a letter of protest, stating that the CNC had failed to provide any clarity on the text which they found to be defamatory. After the shutdown of the forum, an anonymous group put up another shadow website: [www.ganira.com](http://www.ganira.com). The website featured all Iwacu's articles, and readers were able to comment on them.<sup>59</sup>

On April 8, 2014, the Director General of ARCT issued Order No 1, requiring all end users of telecommunication services to provide personal data before acquiring a SIM card.<sup>60</sup> In response, Iwacu published an article denouncing the procedures and the requirement for personal data being provided before acquiring a SIM card.

In May 2015, when social media was shut down, there was a lot of sharing by the public of different ways of circumventing the shutdown through the use of Virtual Private Networks (VPN).<sup>61</sup> Moreover, in the wake of the press release issued by the Ministry of Public Security against social media activists on May 31, 2016, the Agence France Press (AFP) specifically condemned the intimidation against its Burundian journalist, Esdras Ndikumana.<sup>62</sup>

<sup>56</sup> <http://abpinfos.com/le-president-du-senat-tient-une-reunion-de-securite-en-communes-mutimbuzi-et-kabezi>

<sup>57</sup> La carte d'identité biométrique viole-t-elle notre vie privée? <https://www.iwacu-burundi.org/inquietudes-suscitees-par-nouvelle-carte-identite-biometrique/>

<sup>58</sup> State of Internet Freedom in Burundi 2016, [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>59</sup> State of Internet Freedoms in East Africa 2014, [https://www.cipesa.org/?wpfb\\_dl=76](https://www.cipesa.org/?wpfb_dl=76)

<sup>60</sup> Circulaire No. 2/ARCT/DG du 08/04/2014 relative a'enregistrement des abonnes de la telephonie mobile, <http://www.arct.gov.bi/images/circulaires/circulaire2.pdf>

<sup>61</sup> State of Internet Freedom in Burundi 2016, [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>62</sup> RFI reporter threatened on social media over Burundi coverage, <https://tinyurl.com/wjh63yg>

## 4.2.2. Adoption of Progressive Legislation

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Between 1999 and 2019, successive governments in Burundi have developed some laws and policies that have advanced ICT use and internet freedom. These include the Law No100/182 of 30 September 1997 that set up the ARCT as an autonomous organ in charge of regulating the telecommunication sector.

In 2011, the Cabinet in a meeting on July 13, 2011 adopted the 2010-2025 National ICT Development Plan, to accelerate economic growth through increased ICT and promoting universal ICT access in Burundi.<sup>63</sup> More recently on October 16, 2017, Burundi adopted Law No 100/186, which establishes the Universal Service Fund for Burundi.<sup>64</sup> The main goal of the fund is to provide basic connectivity services to rural and disadvantaged areas where commercial telecommunication entities do not provide coverage. In October 2018, Burundi launched the 2018-2025 Burundi Broadband strategy with the main goal of ensuring internet connectivity throughout the country with at least 256 Kbps by 2025.<sup>65</sup>

## 4.2.3. Repeal of Repressive Legislation

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In 2015, following a successful court case against draconian media Law No 1/11 of 4 June 2013, the Press Law No 1/15 of 9 May 2015 of Burundi was passed,<sup>66</sup> amending the law of June 2013. It removed heavy fines against journalists and allowed journalists to challenge the decisions of the CNC. The repeal followed a successful litigation by the Burundi Journalists Union (BJU) before the East African Court of Justice, which asked judges to order an immediate repeal of 42 provisions in the law, which they said were inimical to democracy and freedom of expression.<sup>67</sup>

<sup>63</sup> *Politique Nationale de Développement des Technologies de l'information et de la Communication Du Burundi (2010-2025)*, <https://tinyurl.com/v5vmnrj>

<sup>64</sup> *Decree 100/186 of October 16, 2017 establishing and managing the FSU*, <https://tinyurl.com/s7z7flu>

<sup>65</sup> *A Broadband Burundi Strategy Awareness Workshop And Validation Of The Evaluation Report On Ict Laws And Regulation In Burundi*, <https://tinyurl.com/qonq8d6>

<sup>66</sup> *State of internet Freedom in Burundi 2016* [https://cipesa.org/?wpfb\\_dl=230](https://cipesa.org/?wpfb_dl=230)

<sup>67</sup> *CIPEsa, East African Court declares sections of Burundi media law "undemocratic"* <https://cipesa.org/2015/05/east-african-court-declares-sections-of-burundis-media-law-undemocratic/>



# 5

## Conclusion and Recommendations

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### 5.1 Conclusions

The study has found that Burundi has over the years broadened the range of measures and controls used to regulate digital rights. These have included laws that permit interception of communication, government surveillance, as well as massive personal data collection without appropriate safeguards.

The study has also identified legal oversteps like Law 100/47 of November 2010, which placed the telecommunication regulator, ARCT, under the direct control of the State House, and Law 100/112 of 05 April 2012, which removed a representative of telecommunication operators from the board of the ARCT.

The study found that Burundi has also implemented some positive measures such as the progressive press laws of 2003 (Law N° 1/025 of 27 November 2003) and 2015 (Law No 1/15 of 9 May 2015); the 2010-2025 National ICT Development Plan in July 2011; the law creating the Burundi Internet Exchange Point in May 2014; the establishment of the Universal Service Fund in October 2017, and the enactment of the 2018-2025 Burundi Broadband Strategy in October 2018.

The study notes that implementation of the 2010-2025 National ICT Development Plan is well underway and on the aspect of ICT infrastructure, the BBS has improved the quality of internet connectivity with 1,250 kilometres of fibre optic cables already laid.<sup>68</sup>

These developments show reasonable commitment to grow the ICT sector but the government must move further and implement these legal and policy commitments. Moreover, these positive moves must not be undermined by retrogressive policies and practices that undermine ICT use and internet freedom.

<sup>68</sup> Utilisation des TICs dans la mise en œuvre des programmes des Ecoles Doctorales  
<http://www.ub.edu.bi/wp-content/uploads/2017/07/profNDAMAMAUTILISATIONDESTICDANSLAMISEENUVRESECOLESDOCTORALES.pdf>

## 5.2 Recommendations

### Government:

- Adopt and promote the multistakeholder approach to ensure transparent, inclusive and open stakeholder engagement in the development of internet-related policies and legislation.
- Invite ISPs and telecommunication companies to discuss ways to improve the independence and the performance of the ARCT.
- Invite media professionals to discuss how to improve the current press law and the operating environment for the media. This would be most impactful if done before the 2020 elections.
- Ensure there are enough safeguards and principles, including ‘privacy by design’ in laws and policies, for the robust protection of the right to privacy and personal data protection.

### Civil Society

- Work in coalitions and conduct advocacy and sensitisation campaigns aimed at improving digital rights in Burundi.
- Mobilise relevant stakeholders to discuss how to strengthen the multi-stakeholder approach towards advancing internet freedom in Burundi and strengthen the Burundi National Internet Governance Forum.
- Create awareness, build capacity and sensitise the public and key stakeholders through innovative initiatives to create greater understanding of internet freedom issues and best practices.

### Media

- Offline media and online media should work together with civil society organisations on sensitisation campaigns to promote digital rights in Burundi.
- Media organisations should proactively expose state and non-state actors who infringe on internet freedoms.
- Be part of the Global Network Initiative and get in touch with other GNI members. This would help Burundian companies to learn best practices on how to contribute to respect for end users’ freedoms of expression and privacy.

### Private sector and technical community

- Develop and promote local platforms to promote public engagement and internet freedom.
- Develop and promote innovative technologies to circumvent internet control restrictions and surveillance.
- Design technologies that are rights-respecting.

<sup>69</sup> Global Network Initiative <https://globalnetworkinitiative.org/>



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