State of Internet Freedom in Senegal 2019

Mapping Trends in Government Internet Controls, 1999-2019

January 2020

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Credits

This research was carried out by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) with support of various partners.

This research documents the trends in government internet controls, 1999-2019 in Senegal, 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 Bostwana, Burundi, Cameroon, the DRC, Ethiopia, Kenya, Malawi, Nigeria, Rwanda, Tanzania, Uganda, and Zimbabwe. The research was conducted as part of CIPESA's OpenNet Africa initiative (www.opennetafrica.org), which monitors and promotes internet freedom in Africa.

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1 Introduction

1.1 Introduction

Internet freedom in Senegal has been on the decline over the past years as respective governments have since 1999 continually adopted various measures that curtail internet freedoms. The country has seen the introduction of digitalisation, e-government and digital identity programmes that require citizens to provide detailed personal information, including biometric information for voters' cards and identity cards. This has been in addition to the requirements for SIM card registration for all mobile phone subscribers.

Several laws have been adopted to govern the Information and Communication Technologies (ICT) sector. These include Law No. 2008-10 of 25 January 2008 on the Information Society Orientation, Law No. 2008-11 of 25 January 2008 on cybercrime, Law No. 2008-12 of 25 January 2008 on the protection of personal data, Law No. 2008-08 of 25 January 2008 on electronic transactions,[1] Law No. 2011-01 of 27 January 2011 on the Telecommunications Code,[2] and the Law of 2018 on the new Electronic Communications Code.[3]

In 2016, Senegal developed its "Digital Senegal 2025" strategy that aspires for a digital society for all in 2025, driven by a dynamic and innovative private sector.[4] In 2018, the National Cyber Security Strategy 2022, abbreviated as SNC2022, was adopted, and it articulates Senegal's cybersecurity vision and strategic objectives.[5]

While governments should guarantee the freedom to access and use the internet, the Senegalese government has instituted controls on the ICT sector, including through limiting the space for the enjoyment of internet freedoms. Indeed, many of the provisions in the ICT-related legislation curtail the right of access to information and freedoms of opinion, speech, and expression. Additionally, the right to privacy is threatened by provisions in the law related to interception of communications.

1 *Decree No. 2008-719 of 30 June 2008 on electronic communications adopted for the application of Law No. 2008-08 of 25 January 2008 on electronic transactions; Decree no. 2008-720 of 30 June 2008 on electronic certification adopted for the application of Law no. 2008-08 of 25 January 2008 on electronic transactions; Decree no. 2008-718 of 30 June 2008 on electronic commerce adopted for the application of Law no. 2008-08 of 25 January 2008 on electronic transactions.*

2 *JORS (Official Journal of the Republic of Senegal), no. 6576 of 14 March 2011, p. 273 et seq.*

3 *Vote by the National Assembly of Senegal on Wednesday, November 28, 2018.*

4 *See the strategy here: https://tinyurl.com/tvclq3k*

5 *http://www.numerique.gouv.sn/sites/default/files/SNC2022-vf.pdf.*

While ensuring safety and security online and fighting cybercrime are critical to the enjoyment of human rights, the implementation of security measures in the absence of key safeguards is 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 over the last 20 years of how government policies and practices have shaped and are restricting digital rights in Senegal.

1.2 Aim of the Study

The purpose of this study was therefore to examine the extent to which the Senegalese government has, through ICT legislation, policies, and practical actions, affected internet freedom in the country since the year 2000. The study focused on a wide range of issues including proliferation of regressive or repressive laws and policies, communications monitoring, 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 inform a more progressive and vibrant internet rights landscape.

2 Methodology

The study employed a qualitative approach including literature review, policy and legal analysis, and key informant interviews with purposively selected respondents. The literature review included various policy documents, academic works, government documents, and media reports.

Further, the study involved a review of existing and proposed legislation, regulations, directives, case law and procedures that gave an understanding of the trend of government internet controls over the last two decades. Key Informant Interviews (KIIs) were conducted with purposively selected respondents. These included staff of private companies (such as banks, telecoms firms, Internet Service Providers), government ministries (such as those responsible for ICT, security), semi-autonomous bodies such as electoral commissions, telecoms regulators, media houses, social media users, human rights defenders and activists, consumers' associations, academics and lawyers.

3 Country Context

3.1 Economic Status

Senegal is located in West Africa and covers an area of 196,712 km². It is bordered to the east by Mali, to the west by the Atlantic Ocean, to the north by Mauritania and to the south by Guinea Bissau and Guinea Conakry. Senegal has a population of about 16 million, of which more than 90% are Muslims, 5% are Christians, and the rest are animists.

The unemployment rate in Senegal stands at 10.2% nationally, and at 7.7% for men and 13.3% for women. Young people aged 15 to 35 years make up most of the labour force (12.2%) while the 35-65 years age group accounts for 7.8%.[6]

The gross domestic product (GDP) per capita (PPP) stands at USD 1,547, having steadily grown between 2000 and 2019.

3.2 ICT Status

The digital sector is one of the pillars of the Plan Sénégal Emergent (PSE),[7] the blueprint for Senegal's medium and long-term economic and social development. The country has three telephone operators that offer voice, mobile and wired internet, among other services. The year 2010 saw the launch of 3G internet services, which offered users improved speed. However, there are still complaints about poor quality services and high data prices. Similarly, the number of mobile phone users and the internet penetration rate have been growing steadily over the last two decades. The internet penetration rate stood at 0.4% in 2000 but rose to 58.2% in 2019.

In order to promote privacy and data protection, Law No. 2008-12 of 25 January 2008 on the protection of personal data was enacted. Also an independent administrative authority, the Commission for the Protection of Personal Data (CDP), was established to ensure that the processing of personal data is carried out in accordance with legal provisions; to inform data subjects and data controllers of their rights and obligations; and to ensure that ICT do not pose a threat to Senegalese civil liberties and privacy.

6 *https://www.sec.gouv.sn/sites/default/files/Plan%20Senegal%20Emergent_0.pdf.*

7 *https://www.sec.gouv.sn/sites/default/files/Plan%20Senegal%20Emergent_0.pdf.*

Senegal has plurality in print and broadcast media. While before 2,000 the number of private radio stations was three, today there are more than 50 stations. This has over time allowed for pluralism in voices and promoted freedoms of expression and opinion.

3.3. Political Environment

Senegal has been a politically stable democracy during the period under review and is among the West African countries that have never experienced a coup d'état. Former president Abdoulaye Wade came to power in 2000, after serving as an opposition leader for 25 years, ending the domination of the Socialist Party. Despite initiating positive constitutional reforms, including multiparty democracy and an independent media, his legacy was tarnished towards the end of his second term, when he made a controversial bid for a third term in 2012, which he lost. The current president, Macky Sall, is serving his second term, having won the last election in February 2019.

However, challenges still exist. Political opposition demonstrations are often disallowed, and freedom of expression and opinion remains under threat. In July 2019, an activist, Guy Marius Sagna, who is the leader of a movement called France Releases, was detained for reportedly raising a false terrorism alert on Facebook.[8]

[8] *Senegal: Activist Guy Marius Sagna placed under arrest warrant for "false alert to terrorism" https://www.jeuneafrique.com/806191/politique/senegal-lactiviste-guy-marius-sagna-place-sous-mandat-de-depot-pour-fausse-alerte-au-terrorisme/.*

4 Results

4.1 Key Trends of Internet Control Over the Last Two Decades

This section traces the history, evolution and shifts of internet control measures in Senegal since 1999. The reason is to provide a deeper appreciation of the intervening political and socio-economic considerations behind the different control measures as introduced and applied at different periods.

4.1.1 Weaponising the Law to Legitimise Actions

Legalising Surveillance and Interception of Communication

Surveillance in Senegal has been legally enabled through the introduction of provisions in various laws that regulate the telecommunications sector. Consequentially, these provisions have had a bearing on the enjoyment of digital freedoms in Senegal. For instance, Article 90-10 of the Law No. 22/2016 amending Law No. 65-60 of 21 July 1965 on the Criminal Code authorizes a judicial police officer, on the authorization of and under the control of the Public Prosecutor, to "use remote software and install it in the information technology (IT) system in question in order to gather relevant evidence useful to the investigation or instruction."[9]

In addition, Articles 90.4 and 90.17 of the Law No. 22/2016 amended Criminal Code permit an investigating judge to order "persons with a particular knowledge" of an IT system or data communication, encryption or transmission service to provide information on the functioning of that system and how to comprehensively access its data.[10]

Further, Decree 2007-937 of 7 August 2007 requires that a family name, first name and the National Identity Card (CNI) number be registered for each SIM card subscriber, which potentially affects the personal data protection and privacy.

9 *Analysis Of The Laws Amending The Criminal Code And The Code Of Criminal Procedure; https://www.amnesty.org/download/Documents/AFR4960062017ENGLISH.PDF*

10 *Ibid*

Rise of National Security as Justification for Repressive Laws

The protection of national security, the preservation of public order, and the fight against terrorism have been widely used in a number of countries including Senegal as an excuse to enact repressive legislation. Moreover, terms such as "national security" and "public order" have not been clearly defined and are therefore ambiguous and abused to extend to virtually all aspects of society with a common trait of promoting impunity by state security agencies.

In Senegal, Section 192 of the Press Code, Law 2017-27 of July 13, 2017 allows a "competent authority", without authorisation of a judge, in exceptional circumstances to seize publications, stop broadcasts or temporarily shut down a media outlet, so as to prevent or stop a breach of national security or territorial integrity, or to stop incitement of hatred or a call for murder".[11] Additionally, Article 90-10 of Law No. 2016-30 of 08 November 2016 of Senegal grants an investigating judge power to use software to search a computer system remotely and to collect evidence relevant to a trial or investigation.[12]

Additionally, the Telecommunications Code, Law No. 2001-15 of 27 December 2001 in article 34 empowers the General Director of the Telecommunications Regulatory Agency (ART) to make recommendations to the regulatory council for the immediate suspension of licences or delay the authorisation or approval of any telecommunications operator on ground of national security and public morals, and where necessary, notify the public prosecutor of any criminal sanctions being preferred.[13]

The Law No 22/2016 amending Law No 65-60 of 21 July 1965 on the Criminal Code, also introduced several restrictive for provisions for the fight against terrorism and cybercrime. For example, article 431.60 of the amended Code criminalises the online production and dissemination of documents or images contrary to 'good morals', with punishments comprising a prison sentence of between 5 and 10 years and a fine of between 500,000 and 10,000,000 CFA francs (approximately US$940 to US$18,800).[14]

11 Loi n° 2017-27 du 13 juillet 2017 portant Code de la Presse http://www.jo.gouv.sn/spip.php?article11233.

12 Loi n° 2016-30 du 08 novembre 2016 http://www.jo.gouv.sn/spip.php?article11002

13 http://www.droit-afrique.com/upload/doc/senegal/Senegal-Code-2011-des-telecommunications.pdf.

14 CIVICU (2018) Joint Submission to the UN Universal Periodic Review, Republic of Senegal - 31st Session of the UPR Working Group

Silencing Dissent and Criticism through Criminalising Free Speech

Enforcing Insult Laws

Article 254 of the Penal Code creates the “offence against the President of the Republic”. The law does not define the “offence” against the Head of State yet several activists have been arrested for speech on social networks for the “offence to the Head of State” and “attack on the security of the State”. For example, on August 8, 2017, musician Ami Colle Dieng was arrested for "offence of the Head of State" and "spreading false news." The arrest followed the release of a video in which she criticised the president, stating that "the head of state is a cold bandit, a manipulator who imprisons innocent people and is ready to do anything to stay in power."[15] On 31 May 2017, journalist Ouleye Mané and three other members of a Whatsapp group were arrested on charges of "criminal conspiracy and dissemination of images contrary to good morals”. The charges referred to Ouleye Mané sharing a caricature of President Sall on WhatsApp. In July 2019, Adama Gaye, a journalist and activist, was arrested for making remarks on Facebook deemed insulting to president Macky Sall and undermining the security of the state. His posts related largely to governance, corruption in government, and the management of the country’s oil resources.

Senegal’s 2008 Cyber Crimes Law, under Article 431-59, criminalises the public dissemination of immoral objects or images through print, broadcast, or digital communication.

Censorship has also been manifested in use of restrictive laws to control the media and the digital space. In 2004, journalist Madiambal Diagne was arrested for dissemination of false news, publication of strictly confidential reports and correspondence of the Ministry of Economy and Finance, and acts and operations likely to compromise public safety or cause serious political unrest.[16] Similarly, article 80 of the Penal Code, in as far as it prohibits publication of certain information deemed to threaten national security or against the state, has over time limited information flow online.

Moreover, article 254 of Act No. 77-87 of 10 August 1977 extends the definition of an offence against the president to mean an offence committed through the press or any other means of electronic communication.

15 Ibid

16 https://fr.allafrica.com/stories/200407270046.html.

Excessive and Punitive Responses

Across the continent, early demand for respect and enjoyment of human rights was focused largely on civil and political rights as political actors demanded space to exercise their freedoms. In the post-2000 era, there appears to be a shift to focus not just on civil and political rights, but also on economic, social and cultural rights. This shift has led to increased demands for government accountability on key issues such as corruption, fiscal transparency and accountability in areas such as education, health and social security. Some of the journalists and bloggers who have been targeted are those that have been outspoken on such issues.

Article 178 the Press Code, Law 2017-27 of July 13, 2017[17] stipulates very tough conditions for the registration of an online media publication. The conditions are that the intending publication must employ at least three journalists and its Publication Director must have at least 10 years of press experience and the Editor-in-Chief must have at least seven years of experience. This condition is not only prohibitive as it infringes on the rights to freedom of expression online but also suffocates the emergence of online news sites which are often established by young bloggers who may not have the prescribed experience.

Additionally, while section 5 provides that journalists have the right of free access to all sources of information and to investigate unfettered facts of public interest, they are required to respect the "secrecy" of on-going inquiries and investigations. Unfortunately, the law does not specifically define the meaning of this secrecy as provided for and when it can be applied.

4.1.2 The Push Towards Determining Identity Amidst Poor Oversight

SIM Card Registration

The 2006-2010 period marked the introduction of massive personal data collection programmes across several African countries. In August 2007, Senegal introduced laws and requirements for communication service providers to register the SIM cards of all their subscribers. Decree 2007-937 of 7 August 2007 requires operators of public telecommunications networks to register all SIM card buyers and users.[18]

In 2013, in an "explanatory note on the Subscriber Identification Project",[19] the Senegalese Telecommunications and Postal Regulatory Authority (ARTP) relaunched the SIM card registration project. The Authority did so under the pretext of fighting crime linked to the use of mobile telephones. The information required for registration includes a family name, first name and CNI (ID) number.

17 *http://www.numerique.gouv.sn/sites/default/files/CODE%20PRESSE.pdf.*

18 *Decree No 2007 - 937 http://www.osiris.sn///IMG/pdf/document_Decret_relatif_a_lidentification_des_abonnes_153.pdf.*

19 *Note explicative sur le projet de l'identification des abonnés, https://tinyurl.com/vn476zl*

Adoption of Biometric Data Collection

In 2005, the Senegalese government announced that it would issue digital national ID cards for all citizens.[20] Some 174 registration centres were set up for issuing digital identity card throughout the country. In December 2014, the Senegalese government announced that it would roll out smart IDs and voter cards for all citizens. This project was initiated to mitigate identity theft and electoral fraud.[21] The e-IDs are being used for civil, social security and voting purposes and 67% of the population has either a national ID or voter ID. Senegalese citizens who are between five and fifteen years old may apply to obtain a national ID card and those who are 15 years and above must obtain a national ID card.

4.2 Key Positive Developments

Despite the negative trends witnessed in Senegal, there were notable positive developments that supported the enjoyment of internet freedom. The major developments included the robust advocacy and push-back by non-state actors, the adoption of progressive legislation, and the repeal of repressive legislation.

4.2.1 Advocacy and Push-back by Non-State Actors

Sustained civic action appears to be a formidable driver to help counter the internet control measures introduced by governments. Civil society continued to play a key role in resisting unconstitutional laws and practices by governments.

In Senegal, more than 300 civil society organisations conducted advocacy and awareness campaigns against the controversial Article 27 of Law no. 2018-28 of 12 December 2018 on the Electronic Communications Code. Despite their best efforts to oppose the proposed law, the state passed it.[22] The Minister for Communication, Abdoulaye Balde Bibi, argued that the law posed no threat to freedom of expression, as the problem was interpretation.

20 The World Bank (2017) The State of Identification Systems in Africa, https://tinyurl.com/wfvhjfd

21 Ibid

22 Telecommunication Code: Civil society vetoes, https://www.leral.net/Code-des-telecommunications-la-societe-civile-pose-son-veto_a238003.html.

23 Law No. 2008-12 of 25 January 2008, on the protection of personal data (JORS, no. 6406, of 3 May 2008, p.434).

4.2.2 Adoption of Progressive Legislation

Like several other African countries, Senegal has taken measures to develop and implement some progressive legislation. Senegal passed the Law on the Protection of Personal Data in May 2008 establishing the Commission for the Protection of Personal Data (CDP) as an Independent Administrative Authority (AAI) to ensure oversight over personal data collection and processing.[23]

Also, Article 3, paragraph 1 of the Electronic Transactions Act requires Internet Service Providers (ISPs) to inform their users of the existence of any technical means permitting the users to restrict access to or select certain services. Additionally, under Article 3 paragraph 5, ISPs and web hosting providers are not subject to a general obligation to monitor the information they transmit or to search for illegal activities unless ordered to do so by a court.

24 http://www.droit-afrique.com/upload/doc/senegal/Senegal-Code-1965-penal.pdf.

5 Conclusion and Recommendations

5.1 Conclusions

The study established that several laws with overbearing negative impact on the enjoyment of internet freedoms continue to exist on Senegal's Statute books. For instance, section 80 of Law 99-05 of January 29, 1999 continues to be used to stifle free expression. It provides that an "Offence to the President of the Republic by any of the means set out in Article 248 shall be punishable by imprisonment for six months to two years and a fine of FCFA 100,000 to 1,500,000 or only one of these two penalties". This clause does not define what constitutes an "offence". This provision is open to misinterpretation that it might be used to restrict freedom of expression. Additionally, the protection of "state security" is variously given as a reason for state actions that interfere with the enjoyment of internet freedoms including freedom of expression and opinion online, as well the right to privacy. While the various laws that could be used to undermine internet freedom have not been used extensively in Senegal, the fact that they remain in place means that they can be invoked by state actors once it suits their interests.

5.2 Recommendations

State

- Work together with other stakeholders in the process of developing and adopting policies and laws to ensure that multiple stakeholders' views are taken into consideration before adoption and enactment respectively.
- Respect digital rights and freedoms in accordance with the provisions of regional and international human rights standards.
- Desist from enacting and implementing legislation that unreasonably restricts internet freedoms including freedom of opinion and expression.

Civil Society

- Set up a monitoring and alert platform that flags internet freedom violations and advocates for the promotion of internet freedoms.
- Strengthen and continually conduct advocacy programs to raise awareness of the dangers of violating internet rights and freedoms by governments and non-state actors.
- Collaborate with other stakeholders, including the media, academia, and civil society organisations to promote internet freedom through active monitoring, advocacy, research and public interest litigation.

Private sector and technical community

- Telecommunications operators and internet service providers should undertake measures that aim to promote the enjoyment of internet freedoms other than illegitimately controlling the digital space due to government pressures.
- Work with commendable level of independence to ensure that they promote citizens' rights as opposed to curtailing freedom of expression on orders of security operatives and agencies.
- Provide quality and cost-effective telephone and internet services through development of strong strategies and programmes in all frontiers whether in rural or urban communities.

Academia

- Conduct wide and comprehensive studies on internet rights, specifically pointing out their importance and the dangers of internet control measures to freedom of expression and the rule of law.
- Advise government on any proposed digital rights control measures and their impact on the enjoyment of associated rights.

Media

- Work hand in hand with civil society in advocacy programmes and initiatives aimed at promoting digital rights and freedoms.
- Continually document and disseminate accurate information on the importance of digital rights and freedoms.
- Report, in a balanced manner, all activities that aim to promote a favourable environment for the enjoyment of digital rights and freedoms in Senegal.
- Expose all wrong measures and actions that aim to restrict the enjoyment of digital rights and freedoms.

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