



Shadow Report on the State of Freedom of Expression Online in Rwanda

Submitted by: Collaboration on International ICT Policy for East and Southern Africa (CIPESA)

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About CIPESA

1. The Collaboration on International ICT Policy for East and Southern Africa (CIPESA) is a non-governmental organization based in Kampala, Uganda, that facilitates and supports state and non-State actors within east and southern Africa to enhance development and poverty reduction through the use of ICT and digital solutions.
2. As a leading ICT research hub, CIPESA strives to provide timely and quality information regarding ICT-related issues and processes through policy briefs, commentaries, and newsletters, all aimed at generating debate and dialogue that would lead to ICT policy change in accordance to international standards and best practices.

Executive Summary

3. In conformity with Article 62 of the African Charter on Human and Peoples' Rights (the African Charter), which requires all States Parties to the African Charter to submit after every two years, reports on legislative or other measures taken to effect human rights guaranteed under the Charter, Rwanda submitted its periodic reports for the period 2009 to 2016 on March 22, 2017.
4. CIPESA is pleased to submit a shadow report to the 61st session of the African Commission focusing on Rwanda's compliance with Article 9 of the African Charter which provides every individual with the right to receive information, and to express and disseminate opinions within the law.
5. In line with Article 60 of the African Charter, where the Commission draws inspiration from international instruments on human and peoples' rights including provisions of various instruments adopted within the specialised Agencies of the United Nations, CIPESA reiterates the

standards of the UN Human Rights Council, emphasizing that freedom of expression online should equally be protected as expression offline.¹

6. In this regard, this report objectively outlines Rwanda's legislative and other measures taken to promote and protect freedom of expression online for the stated reporting period, as guaranteed under Article 9 of the African Charter, with the aim of assisting the African Commission with impartial information regarding Rwanda's state of internet freedom and recommendations for improvement.

Rwanda's Periodic Report (2009-2016).

7. In its report to the Commission, the government of Rwanda reported that freedom of the media and freedom to receive information are recognized and provided by law, stating that every journalist has the right to freedom of opinion and expression, including the right to seek, receive, give and broadcast information and ideas through any media. It further highlighted that the access to information law is an entry point to improving journalists' participation in political affairs.² Notably, the government recognises the importance of an independent, professional media and ease of access to information as essential components of good governance and a sustainable social, economic and political development.³
8. The government also specified national laws and statutory institutions that safeguard the right to expression and freedom of information, citing Article 38 of its Constitution which lays the foundation for freedom of expression and access to information, law No 02/2013 of 08/02/2013 regulating media, law No 04/2013 of 08/02/2013 relating to access to information which provides for the right to freedom of opinion and expression and law N° 09/2013 of 01/03/2013 establishing Rwanda Utilities Regulatory Authority (RURA) which regulates the licensing of media houses, audio, audio-visual media and internet. Law No 02/2013 of 08/02/2013 also established a media Self-Regulatory Body for journalists to ensure compliance with media principles.⁴
9. In this regard, Rwanda grew its print media houses to to 51 in 2015, and 34 currently operational radio stations. Most importantly, the report stated that the number of electronic and online media outlets increased with over 80 local news websites,⁵ with social media networks such as Facebook and Twitter attaining prominence.⁶ In order to foster access to information online under the 2013 law, the government stated that besides appointing 540 information officers to respond to information requests, almost all public institutions and private organs concerned with the law have created websites that provide useful information to citizens.⁷

¹ United Nations Human Rights Council. 16 July 2012. The promotion, protection and enjoyment of human rights on the Internet. United Nations Human Rights Council (A/HRC/RES/20/8), Para 1. See; <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement>

² The 11th, 12th and 13th Periodic State Report of Rwanda to the African Commission, Para 45, page 19.

³ Ibid, Para 96, Page 35

⁴ Ibid, Para 98

⁵ Ibid, Para 96

⁶ Ibid, Para 97

⁷ Ibid, Para 99.

10. CIPESA applauds the government of Rwanda for the commendable progress in advancing freedom of expression and access of information online in accordance with article 9 of the African Charter. Despite these improvements, we note a number of restrictive legal provisions inhibiting the enjoyment of digital freedom of expression rights and a prohibitive operational regime which includes arbitrary interception of communication, blocking of websites, and arrests of citizens and media practitioners for expressing themselves online and filtering of content.

The State of Internet Freedom in Rwanda

11. As of June 2017, Rwanda's internet penetration was estimated at 36.6 % (3,724,678 connections) with Facebook users estimated at 490,000, within a total population of 12,159,586.⁸ This shows an improvement from statistics recorded by the Rwanda Utilities Regulatory Agency (RURA) indicating mobile phone penetration rate of 79% and internet penetration at 33%, as of June 2016.⁹
12. Despite its steady progress to improve the economy through ICT innovations, there is an obstructive regime for the enjoyment of freedom of expression online, with restrictive laws governing media, arbitrary surveillance and interception of private communication and control of online platforms. Various laws and state practices contravene the constitutional guarantees of freedom of expression, access to information and privacy under article 38 of the constitution.¹⁰

Surveillance of Communication

13. Besides article 38, the Constitution of Rwanda provides under article 23 that the privacy of a person, his or her family, home or correspondence shall not be subjected to interference in a manner inconsistent with the law. It further states that the confidentiality of correspondence and communication shall not be waived except in circumstances and in accordance with procedures determined by the law.¹¹ Sections 13 and 124 of the ICT law N° 24/2016 of 18/06/2016, further mandate the Regulatory Authority to respect the confidentiality of all information received.¹²
14. Notwithstanding constitutional safeguards on privacy, ICT law n° 24/2016 of 18/06/2016 provides for arbitrary state interference with personal communication, contravening basic tenets of freedom of expression. Section 123 of the ICT law requires all electronic communications network or service providers to install technical instruments and features that allow and facilitate "the

⁸ Internet Users in Africa, June 2017, Internet World Stats. <http://www.internetworldstats.com/stats1.htm> (Accessed on 10/29/2017)

⁹ RURA, Statistics and tariff information in telecom, media and postal service as of the second quarter 2016, *August 2016*, http://www.rura.rw/fileadmin/docs/Monthly_telecom_subscribers_of_August_2016.pdf

¹⁰ Article 38 the Constitution of the Republic of Rwanda, 2003 as amended in 2015; *"Freedom of press, of expression and of access to information are recognised and guaranteed by the State. Freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy Conditions for exercising and respect for these freedoms are determined by law."* see https://www.constituteproject.org/constitution/Rwanda_2015.pdf?lang=en

¹¹ Ibid, Article 23

¹² Rwanda Utilities Regulatory Authority, http://www.rura.rw/uploads/media/Law_governing_Information_and_Communication_Technologies_Levy_on_pe_tron_27_06_2016.pdf

lawful interception of electronic communications and monitoring,” and to notify any authorized entity that carries out lawful interception of any electronic network upgrades.

15. The same law also empowers the ICT minister under article 126 to interrupt any private communication that appears detrimental to national sovereignty, contrary to any existing law, public order or good morals; and to suspend wholly or in part any electronic communications service or network operations for a specified or undetermined period. In addition, article 127 obligates all electronic communications service providers “irrespective of professional secrecy,” to urgently and without monetary charges, collect and provide to the Minister and the Regulatory Authority any information sought for the guidance and supervision of activity relating to the ICT sector.
16. Unfortunately, the 2016 ICT law still imports restrictive provisions allowing the State to intercept communication, from the repealed law N°44/2001 of 30/11/2001 governing telecommunications and law N° 18/2010 of 12/05/2010 on electronic messages, electronic signature and electronic transactions. These provisions offer unfettered powers to the minister, creating room for abuse of process, especially due to the vagueness of definition of terms like “national sovereignty.” Further, such provisions do not serve a legitimate purpose and are unnecessary in a democratic society.
17. Akin to the 2016 ICT law is the Code of Criminal Procedure, under law N° 30/2013¹³ which empowers security organs in section 72 to seek written authority from any prosecutor appointed by the Justice Minister during investigations to intercept private audio and video recordings, email or online communications on grounds of national security, which is vaguely defined as ‘measures taken by the country to ensure its security.’ The written permission may, however, be waived on grounds of urgency for ‘national security purposes’, although the law requires a written order within 24 hours, absence of which invalidates the order, under section 72. This provision also states that interception orders are valid for three months renewable once, and allows aggrieved parties to petition the High Court or Military Court for unlawful interception, although such petition does not automatically invalidate the interception order. This provision fundamentally undermines the independence of the courts and bars them from using their discretionary powers to halt any such impugned interceptions pending the hearing of the petition.
18. Similarly, Law N° 60/2013,¹⁴ which specifically regulates interception of communication provides under articles 5 and 9 that any unauthorised interception is unlawful, stating that permission ought to be sought from a designated prosecutor. The law also requires communication service providers under section 7 to support interceptions by ensuring that their systems are capable of interception. Security organs requiring interception may also under article 10 request for direct interception without resorting to service providers, creating a high risk of abuse of personal data. The President, whose communication is exempt from interception under article 10, is charged

¹³ Law N° 30/2013 of 24/05/2013, Criminal Procedure Code, <http://itegeko.com/en/codes-lois/code-of-criminal-procedure-2/>

¹⁴ Law No.60/2013 Regulating the Interception of Communications, http://rema.gov.rw/rema_doc/Laws/Itegeko%20risha%20rya%20REMA.pdf

with appointing interception inspectors for purposes of monitoring surveillance under article 12, raising issues of impartiality and independence of the inspectors.

19. The regulation of SIM card registration of 2013¹⁵ permits the Rwanda Utilities Regulatory Agency (RURA) unrestricted access to the SIM card databases under section 13. Authorised persons and institutions may also be facilitated by the Authority to access databases under section 15. These unchecked powers may lead to abuse of process, notably in the absence of a data protection and privacy law.
20. During the treason trial of singer Kizito Mihigo and journalist Cassien Ntamuhanga in April 2014, prosecutors allegedly adduced intercepted phone and skype messages from the accused expressing their dissatisfaction with the government and conspiring to overthrow it.¹⁶ The latter was later sentenced to 25 years in jail for the offence.¹⁷ On March 31, 2016, the Military High Court sentenced Col Tom Byabagamba to 21 years in jail, while Brigadier General (retired) Frank Rusagara was handed a 20-year jail sentence, after they were both found guilty of various charges. Among the evidence prosecutors presented were their email records.¹⁸ The country's interception laws have caused a chilling effect on exchange of information due to fear of persecution. They have also caused widespread self-censorship among journalists and social media users, undermining the internet's potential to advance free expression and the free flow of information.
21. In March 2016, the UN's Human Rights Committee urged Rwanda to ensure that interception of communications and use of data takes place on the basis of specific and legitimate objectives and that circumstances where such interference may be authorized and categories of persons likely to be intercepted are set out in detail.¹⁹

Recommendations:

- Comprehensively review all interception and privacy laws and policies to bring them to conformity with constitutional, international human rights standards and best practices on surveillance of communications including the African Declaration on Internet Rights and Freedoms, through setting our clear legal parameters that ensure protection of freedom of expression and privacy rights.
- Adopt comprehensive legislation on data protection and on surveillance, repealing retrogressive as well as repetitive and similar provisions in other laws. Specifically, provisions under ICT law

¹⁵ 001/ICT/RURA /2013, 16th January

2013, http://www.rura.rw/uploads/media/FINAL_SIM_CARD_REGISTRATION_REGULATIONS_03.pdf

¹⁶ The East African, Phone evidence used in terror, treason case, 26 April 2014,

<http://www.theeastafrican.co.ke/news/Phone-evidence-used-in-terror/-/2558/2294196/-/klwpvi/-/index.html>

¹⁷ RSF, Radio journalist gets 25 years on conspiracy charges, March 2, 2015 - Updated on January 20, 2016,

<https://rsf.org/en/news/radio-journalist-gets-25-years-conspiracy-charges>

¹⁸ Byabagamba, Rusagara get lengthy jail terms, The New Times,

<http://www.newtimes.co.rw/section/article/2016-04-01/198556/>

¹⁹ UN Human Rights Committee, Concluding observations on the fourth periodic report of Rwanda,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/089/78/PDF/G1608978.pdf?OpenElement>

N°24/2016 of 18/06/2016, Criminal Procedure Code, Law N° 30/2013_of 24/05/2013, and Law N°.60/2013 regulating the Interception of Communications, should be re-aligned.

- Section 72 of the Code of Criminal Procedure, under Law N° 30/2013 should be amended to grant judges of the High Court and the Military High Court powers to set aside interception warrants pending hearing of complaints filed challenging such orders.
- Establish an independent Data Protection Authority to ensure surveillance and collection of personal data are done in accordance with international human rights standards.

Restrictions on use of online platforms and social media

22. It has repeatedly been reported that access to websites including blogs and independent online news outlets faced restriction during electioneering seasons, especially if operated by opposition parties.²⁰ In 2011, a website belonging to the independent Umuvugizi newspaper was banned on grounds of publishing “divisive language.”²¹ In December 2015, the Ireme news website was blocked, and online news editors asked to withhold or delete content on sensitive topics like the presidential term limit debate. Between 2015 and 2016, RURA blocked BBC’s websites for broadcasting a controversial documentary on genocide titled “Rwanda, The Untold Story,” while in January 2016, an Ireme editor and investigative reporter was allegedly prosecuted over trumped up charges for his critical online presence.²² Other websites including Inyenyeri News, Veritas Info, The Rwandan, and Leprophete were also reportedly blocked for years.²³

23. The processes surrounding the blocking of these online platforms remains unclear in terms of who the complainants are, and is rather hinged on orders from government authorities, who provide no clear recourse to justice for those affected. For fear of censorship for reporting incidents, it is also unclear how many journalists and media practitioners are harassed for expression online.

24. Most recently, the government published regulations in May 2017, to govern the manner in which campaign messages leading up to the August 2017 presidential elections on social media platforms should be posted, stating that any such content should first be submitted to the National Election Commission for approval or disapproval 2 days before dissemination.²⁴ This created public outrage, causing the elections body to backtrack after the Rwanda Utilities Regulatory Authority (RURA) re-assured citizens of their online expression rights, clarifying in a statement that the elections body had no mandate to regulate social media use.²⁵

²⁰ Freedom on Net 2016, https://freedomhouse.org/sites/default/files/FOTN_2016_Rwanda.pdf

²¹ Persecution of Independent Newspapers Extended to Online Versions, <http://en.rsf.org/rwanda-persecution-of-independent-11-06-2010,37718.html>

²² Supra, note 20.

²³ Ibid

²⁴ Law No. 01/2017 of 04/04/2017, (Regulations for 2017 Presidential Elections), Official Gazette n°18 bis of 01/05/2017, Articles 38-44, http://nec.gov.rw/uploads/media/instructions_on_2017_elections.pdf

²⁵ RURA, ‘statement dismissing NEC Responsibilities Regarding Handling of Social Media During Elections in Rwanda’, http://www.rura.rw/index.php?id=104&tx_ttnews%5Btt_news%5D=156&cHash=d2f215ca024a96d0db5016ae8f8c4fa

25. The Committee to Protect Journalists interviewed about 25 media stakeholders in 2014 over claims of censorship, including Fred Muvunyi, the then chairman of the self-regulatory Rwanda Media Commission (RMC) who said that self-censorship flows like blood in the arteries and veins of media practitioners, adding that there may not be direct censorship but there are things that journalists do not do because they fear for what could happen.²⁶ This applies to online communicators too, and it is no wonder that the RMC chairman later fled the country in 2015 for fear of state persecution.²⁷
26. Criminal defamation, insult and genocide ideology offences provided for under articles 288 and 289 of the Penal Code 2012, N° 01/2012/ of 02/05/2012 and the Genocide Ideology law of 2008 as amended in 2013 respectively prescribe excessive penalties for speech ranging from fines to prison sentences of up to nine years for the latter offence and two years for the former. These offences though not expressly stated extend to online content.

Recommendations

- Desist from arbitrary and excessive control of social media and online communication.
- Decriminalize defamation and insult laws since they present unjustifiable restrictions to freedom of expression. Specifically, Rwanda should adopt the standards set by the African Court in the case of *Konate v Burkina Faso*.²⁸
- Ensure independence of all media regulatory authorities which will help to prevent unnecessary state influence. Also, other state bodies like the National Elections Commission should refrain from regulating speech online or offline as this mandate is vested in media regulatory bodies.

²⁶ DW, Rwanda: Censorship or self-censorship, <http://www.dw.com/en/rwanda-censorship-or-self-censorship/a-18118956>

²⁷ CPJ, Hopes of independent press in Rwanda fade as head of media body flees,' <https://cpj.org/blog/2015/07/hopes-of-independent-press-in-rwanda-fade-as-head-.php>

²⁸ African Court on Human and Peoples' Rights, Lohe Issa Konate v. Burkina Faso, Application No. 004/2013, 5 December 2014, <http://en.african-court.org/index.php/55-finalised-cases-details/857-app-no-004-2013-lohe-issa-konate-v-burkina-faso-details>