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ist of acronyms

ARCT

Agence de Régulation et de Contrôle des Télécommunications

BBC

British Broadcasting Corporation

BBS

Burundi Backbone System

CBINET

Centre Burundais de l'Internet

CCIB

Chambre de Commerce et de l'Industrie du Burundi

CNC

Conseil National de la Communication

GDP

Gross Domestic Product

ISP

Internet Service Provider

ISTEEBU

Institut de Statistiques et d'Etudes Economiques du Burundi

ONATEL

Office National des Télécommunications

OONI

Open Observatory of Network Interference

RFI

Radio France Internationale

SIM

Subscriber Identity Module

UDHR

Universal Declaration of Human Rights

USAN

United States African Network

VOA

Voice of America





1.General context

Located in Eastern Africa, Burundi is a landlocked country. It has an area of 27,830 square kilometers and its population was estimated at 10,114,505 inhabitants in 2016. The economic growth rate has been estimated at 0.9% according to the African Development Bank Group.

In regards to the Burundian economy, Burundi faced an inflation rate of 5.5% in 2015, and the GDP per capita was estimated at \$286 in 2015 °according to the national institute of statistics of Burundi (ISTEEBU).

On September 30, 2018, Burundi had 871,597 Internet subscribers, which gives an Internet penetration rate of 7.4%. The vast majority of subscribers were connected via mobile Internet.⁴ At that time, Burundi had ten Internet Access Providers:

- CBINET
- SPIDERNET
- USAN
- LAMIWIRELESS
- NT GLOBAL
- BBS
- ONATEL
- VIETTEL
- ECONET LEO
- · LACELL SU

¹ http://www.isteebu.bi/index.php/economie-en-bref

² https://www.afdb.org/en/countries/east-africa/burundi/burundi-economic-outlook/

³ http://www.isteebu.bi/index.php/economie-en-bref

⁴ http://arct.gov.bi/images/observatoiremarche/omi32018.pdf



The mobile phone penetration at the end of the third quarter of 2018 was estimated at 51.53%⁵ by the national regulatory authority (ARCT).

Regarding Internet freedoms in Burundi, some previous research reports have noted infringements of: right to access, right to privacy, freedom of expression and assembly, etc. through Internet shutdowns, censorship applied on some websites, and enactment of restrictive laws.

- A partial Internet shutdown occurred in April 2015, when social media services (Facebook, Twitter, WhatsApp) were made unavailable during political protests.⁶
- Since November 2017, news websites belonging to independent media houses have been made unavailable in Burundi (unless one uses circumvention tools). Those websites are: www.isanganiro.org, www.iwacu-burundi.org, and www. ikiriho.org.⁷ Of note, this censorship was still in effect at the end of 2018.
- On March 17, 2016, the Ministerial Law No. 540/356 was adopted with the aim of addressing fraud in electronic communications. In fact, we can consider that Article 9 (issued by the Minister of Finances) allows online surveillance by providing the ARCT with the right to install probes into ISPs' installations.⁸

⁵ http://arct.gov.bi/images/observatoiremarche/obmt3t.pdf

⁶ https://www.opennetafrica.org/?wpfb_dl=60

⁷ https://drive.google.com/file/d/1_PwQaUoH25gOSJUA0vVW1PgelrBp6cja/view

⁸ https://cipesa.org/?wpfb_dl=230



This paper entitled: *Developments in Relation to Internet Freedoms in Burundi from January 2018 to August 2018*, has been written in continuation of the previous research report entitled: *Perspectives on Internet Freedoms in Burundi: 2015 to 2017.*⁹

The paper will attempt to cover all issues related to the Internet freedoms in Burundi during the covered period: from January 2018 to August 2018.

The aims of this paper are:

- To raise awareness on digital rights infringements happening in Burundi and provide recommendations to different stakeholders on what should be done in order to improve the situation.
- To help in the building of a movement consisting of traditional human rights organizations through a synergy with journalists, consumer organizations, and public institutions based in Burundi, and to bring them to conduct actions aimed at protecting digital rights.





This study has used a combination of two research methodologies. First, we used desk research where we conducted an analysis of official documents that had an impact on the way Burundian citizens enjoy their digital rights from the telecommunication regulatory authority of Burundi, the press regulatory authority of Burundi (CNC), etc. These included legal texts, official letters, and oral statements by officials. In addition, we analyzed reports made by press houses and other research institutions regarding digital rights in Burundi. We also analyzed comments made by key people on the issue of digital rights in Burundi. Most of the documents were found online.

Desk research was not sufficient in order to understand the state of Internet freedoms in Burundi, so we complemented the desk research by conducting interviews with officers working for the ARCT, staff hired by telecommunication companies operating in Burundi, and officers working for the CNC. We also interviewed staff working for Internet companies, journalists, and human rights defenders.

Chapter II Research findings As noted by different reports, Burundian citizens faced their first Internet shutdown in 2015 during a road protest against President Nkurunziza's bid to stay in office for a new term, running from 2015 to 2020. 10

In this section, we provide updates on the right to information and the right to privacy

in Burundi from January 2018 to August 2018.



1.Censorship on some local news websites belonging to press groups legally operating in Burundi

Some local news websites have been made unavailable for users located in Burundi since October 2017. According to measurements made daily using a technical measurement tool called the OONI Probe, the following websites belonging to press groups legally operating in Burundi continue to be censored (we noted this censorship in our previous report in 2017). ¹¹

- http://www.iwacu-burundi.org
- http://www.isanganiro.org
- http://www.ikiriho.org

As shown by the results of the OONI Probe run daily in 2018, there is proof of censorship. For example, the tool was run on August 8, 2018 on Iwacu-Burundi.org¹² and Ikiriho.org.¹³

In order to access these websites, people based in Burundi have to use circumvention tools such as proxies (we also experienced this personally).

On March 12, 2018, the Director of IWACU Press Group announced (on his Twitter account) the launch of a new website where readers can still access the publications of his magazine¹⁴ (https://iwacu.collateral-freedom.org).

Notably, no official explanation has been provided for the censorship of these websites.

¹⁰ https://www.bbc.com/news/world-africa-32512668

¹¹ https://drive.google.com/file/d/1_PwQaUoH25gOSJUA0vVW1PgelrBp6cja/view

¹² https://explorer.ooni.torproject.org/measurement/20180802T190323Z_AS37336_U8bvhJngxzJ8OO9EkMWtQjsUWLqpq-CLSc3iX8IVLJbinOT1Hxi?input=http:%2F%2Fwww.iwacu-burundi.org_

¹³ https://explorer.ooni.torproject.org/measurement/20180802T190323Z_AS37336_U8bvhJngxzJ8OO9EkMWtQjsUWLqpq-CLSc3iX8IVLJbinOT1Hxi?input=http:%2F%2Fwww.ikiriho.org

^{14 &}lt;a href="https://twitter.com/AntoineKaburahe/status/973181275011014657">https://twitter.com/AntoineKaburahe/status/973181275011014657



2.The CNC suspends comments made by readers on the online forum of IWACU Press Group for a period of three months (April 10, 2018)

In addition to the unofficial censorship of its website, IWACU Press Group faced an additional official penalty on April 10, 2018. The media regulator of Burundi (CNC) made IWACU close its online forum, where readers were commenting on published news. The duration of the penalty was three months, and it was issued by the CNC through decision No. 100/CNC/005.

The CNC issued the penalty because of comments made by readers on the forum on April 9, 2018. A reader wrote "presidential police" instead of "national police of Burundi," which is the official name (in French, the reader wrote, "Police Présidentielle instead of "Police Nationale du Burundi"). The CNC considered it a defamatory statement, as written in its decision No. 100/CNC/005.

On April 10, another reader wrote that the Republic of Burundi was "a banana republic." The CNC stated that this is contrary to the official denomination of the Constitution of Burundi. The CNC stated that IWACU violated Article 17 of the actual press law that states that any media group should rigorously cross-check sources of information before broadcasting.¹⁵

In reaction to this suspension, the Director of IWACU said he was saddened by an unfair decision which was closing a "democratic space" where all opinions on Burundi were shared, either supporting or criticizing the actual government of Burundi. 16 Note that IWACU Press Group complied with the sanction. It closed the online forum.

Nevertheless, also note that the forum was still closed in August 2018. According to the interview we had with a highly ranked official of IWACU Press Group, IWACU has decided not to ask for the reopening of the forum because they feel that the CNC would be ready to place abusive, severe sanctions for any small slip in a user's comment.

In fact, the ongoing sanction from the CNC was given while IWACU was taking steps to block abusive, hateful comments from its users. IWACU had even hired two journalists for this task. However, it was impossible for the two journalists to counter all potentially problematic comments from users.

As we can see, these sanctions brought IWACU Press Group to a kind of self-censorship in order to avoid more severe sanctions.

¹⁵ http://cnc-burundi.bi/wp-content/uploads/2017/11/D%C3%A9cision-IWACU-.pdf

¹⁶ https://cipesa.org/2018/07/a-new-interception-law-and-blocked-websites-the-deteriorating-state-of-internet-freedom-in-burundi/



3. Sanctions against international media groups broadcasting in Burundi and warnings against some local media

In its press release No. 100/CNC/kr/2018 issued on May 4, 2018, the CNC announced penalties against some of the international media groups broadcasting in Burundi.¹⁷

The first component of that press release has warnings to Burundian media houses such as Radio Isanganiro, Radio CCIB FM+ (a radio station operated by the chamber of commerce and industry of Burundi), and RFI, which is an international media source. These media houses have been accused of not cross-checking their sources of information and broadcasting unbalanced news.

Secondly, press release No. 100/CNC/kr/2018 imposed a suspension penalty for six months against the BBC and the Voice of America (VOA). The BBC is accused of not cross-checking sources of news and of producing unbalanced news. Specifically, the BBC interviewed a Burundian who produced defamatory statements against the Head of State as well as hate speech on March 12, 2018 and April 24, 2018.

The VOA suspension was due to different causes: First, VOA broadcasted through an online application used by Radio Bonesha FM, a radio station whose frequency license was withdrawn by the media regulator in September 2017.

In fact, Radio Bonesha FM was private media that was destroyed during the coup attempt on May 13, 2015. However, this radio station is actually broadcasting via an application called Online Radio Box.

Additionally, VOA was accused of broadcasting unbalanced and unverified news on April 4, April 5 and April 26, 2018.

However, the press release from the media regulator states that the decisions are susceptible to appeal before the Administrative Court.

4. The 2018 new code of penal procedures and its potential impact on online personal data protection and privacy in Burundi

II.4.1.

General presentation of the issue of privacy and personal data protection in Burundi

While conducting our investigations, we checked the legal and institutional framework around the issue of privacy in Burundi and then how different stakeholders are handling personal data they collect in their daily services.

Article 28 of the new Constitution of the Republic of Burundi (adopted June 7, 2018) supports privacy in general. It states that every Burundian has a right to privacy of familial life, home, and correspondences.¹⁸ There is no clear mention of electronic communications, but "correspondences" can be interpreted to also include those made via electronic technologies.

Furthermore, Article 19 of the Constitution of Burundi provides that all of the international human rights instruments "legally" ratified by Burundi are part of that Constitution.¹⁹ This includes (among others): the International Covenant on Civil and Political Rights ratified on May 9, 1990 and the International Covenant on Economic, Social, and Cultural Rights ratified on May 9, 1990.

Let us note that Article 12 of the Universal Declaration of Human Rights (UDHR) has a component on privacy. It reads that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." It should be noted that this statement is very similar to Article 28 of the Constitution of Burundi (previously cited).

The law regulating statistics in Burundi is also progressive as far as protection of personal data is concerned (see Law No. 1/17, September 25, 2007).²⁰ Article 11 of the law provides that people from whom statistical data are collected should be clearly informed on the future use of such personal data. Article 12

¹⁸ http://www.burundi.gov.bi/IMG/pdf/-24.pdf

¹⁹ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=BDl&Lang=EN

²⁰ http://isteebu.bi/images/isteebu/loi%20statistique%20du%20burundi.pdf



provides that personal data collected during the statistical surveys are protected like other human rights. Further, such data must strictly be used for statistical goals, cannot be used for judiciary purposes, and should only be published as aggregated statistical data.

Article 16 of the law provides that personal data collected during surveys cannot be publicly disclosed without the express permission of its owners. Article 17 further states that data collectors must make sure they do not disclose directly or indirectly the identity of the those surveyed. Article 18 provides that survey officers should follow the secrecy policy related to their job.

In the telecommunication sector, we have Law No. 1/011 of 1997. The law on electronic communications obliges service providers and their staff to protect the privacy of their subscribers. Article 24 of the same law allows service providers to share confidential information upon demand but only if that demand is proven to be lawful as per the mandate of the telecommunications regulatory authority, the ARCT. Additionally, Article 40 provides that any staff member of a service provider or subcontractor who infringes end users' rights to confidentiality of communication shall face legal prosecution in accordance with the penal code of Burundi.²¹

In addition, the telecommunication regulatory authority has published guidelines on the rights and duties of end users of electronic communications on its website.²² The guidelines are in conformity with the right to privacy of the end users, as they require that personal data is not disclosed to any entity except legally authorized ones.

Despite this, the legal framework of personal data protection in Burundi is deprived of a specific text that could cover the domain of privacy and personal data protection. From an interview we conducted with a highly ranked officer of the national telecommunication regulatory authority (ARCT), a draft law was prepared in 2017, but there has been no progress since then.

Reading through the text of that draft law (it has not been made public yet), we found that it has some progressive provisions. For instance, it is written that personal data should be collected only for clear and legitimate goals and should not be stored beyond the period for which it was initially collected. Moreover, a provision says that the entity in charge of personal data processing and any of its subcontractors should ensure that the data is kept confidential and secure against any accidental destruction, unauthorized access, or interception when transmitted via a network. There are also provisions reading that the owner of the personal data has the right to freely access this data when he or she requests it, without any fees. The data owner also has the right to update the data or have it deleted.

As a consequence of the non-enactment of this law, there is a lack of national authority on data protection; in other words, an independent authority that is provided within the draft law on privacy and personal data protection from the ARCT.

²¹ http://www.arct.gov.bi/images/decretslois/decret011.pdf

²² http://www.arct.gov.bi/index.php/consommateurs/droits-et-devoirs



In addition to the legal and policy framework, we made some observations on daily practices of some stakeholders on the issue of personal data protection. For instance, we observed that SIM cards were sold by some subcontractors and installed under umbrellas on the streets of Bujumbura on behalf of telecommunication operators. It is important to note that Order 01²³ from the Director General of the ARCT on April 8, 2014, obliges end users to disclose some personal data before owning a SIM card. This personal data includes: full name, full address, birthdate, passport photograph, copy of identity card or passport, and the serial number of the user's phone.

It is also worth noting that the identity card includes additional personal data such as: gender, father's name, mother's name, birthdate, birthplace, employment status, and marital status.

We noticed that completed SIM card forms were visually accessible to people passing by. When we interviewed the SIM card vendors about this, we were told that they had not been given awareness raising information or training on the issue. We think that there is a need for SIM card vendors and subcontractors to be trained on the issue of protection of personal data.

II.4.2.

The new code of penal procedures of Burundi: Law No. 1/09 of May 11, 2018

On April 18, 2018, a draft law changing the Code of Criminal Procedure of 2013 was presented by the Minister of Justice to the Burundian Parliament. The provisions of that proposed Code of Criminal Procedure include (among others): allowing security forces to conduct night raids without a search warrant and conducting seizures of digital data in computers, e-mail, social media accounts, etc.²⁴

As presented by the Minister of Justice in front of the Parliament, this draft of the new Code of Criminal Procedure was prepared to address new forms of criminality observed over the last few years. ²⁵

According to Members of Parliament belonging to an opposition group named Amizero y'Abarundi (Hope for Burundians), they have decided to vote against this bill because it violates the Constitution of Burundi and is a serious threat to democracy. According to Justine Duby, a human rights activist, this bill is "clearly a wish to legalize the illegal and arbitrary practices that the forces of law and order have already resorted to for the last three years in this country." Observers say that this tough criminal code was set up in order to make it easier to crack down on any dissention against the controversial referendum vote aimed at having a new Burundian Constitution scheduled on May 17, 2018.

²³ http://www.arct.gov.bi/images/circulaires/circulaire2.pdf

²⁴ https://ivomo-news.com/2018/04/28/burundi-the-new-criminal-procedure-code-violates-the-constitution-and-human-rights/

²⁵ https://www.assemblee.bi/Analyse-et-adoption-du-Projet-de,1756

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

²⁷ http://www.rfi.fr/afrique/20180419-burundi-vote-assemblee-durcissement-code-procedure-penale



Also, a blogger belonging to a Burundian blogger group called Yaga Burundi (Let's Talk) clearly expressed his position against that law. He wrote that this law was made in order to legalize illegal practices that may have already been conducted by security forces against citizens since 2015.

The fact is that security forces may abuse not only the powers provided to them in the physical sphere but also in the digital life of Burundian citizens. We believe that this would seriously infringe digital rights in general and online privacy especially.

We have to note that this bill was successfully voted on by Parliament with 90 voices for and 22 against. After being reviewed by the Senate of Burundi, the bill was passed into law by the President of the Republic of Burundi on May 11, 2018 (Law No. 1/09, May 11, 2018).²⁸

Chapter III of this code has provisions covering the seizure of digital data, which include interception of correspondences sent or received via electronic means (Article 47).

Article 61 defines the investigation method called "infiltration": The infiltrating police officer can use a fake identity and develop a relationship with an individual or a group of suspected people.

Articles 69, 70, and 71 provide details about the interception of correspondences emitted by the use of telecommunication tools. In summary, the articles read that the public prosecutor has the right to order the interception of electronic communications of suspected persons. The order should be written and must not exceed two months' duration.

The public prosecutor has the right to request the installation of any interception tool by any entity (the service provider or any skilled agent).

Articles 72, 73, 74, 75, 76, 77, 78, and 79 consider the seizure of computer data. These articles provide that, without notifying the suspect, the public prosecutor has the right to order the use of technical tools that can check the computer data of the suspect wherever it is located or take screenshots of what is displayed on the terminal being used by the suspect. The duration of this order cannot exceed six months, and the seized data has to be destroyed after the trial.

Also, correspondences and telegraphs or any other service provided by the post office can be seized if necessary, as stated in Article 130.

More specifically, Article 131 allows the seizure of computer data when the device is onsite or conducted remotely from a police station using technically appropriate tools.

According to Article 133, if it becomes evident that the wanted computer data is hosted outside of the Burundian territory, it can also be seized through the use of international agreements in force.

The judiciary police officer can resort to any means or use any technically skilled person in order to access technically protected data. The identified person has the obligation to help in the matter (Article 134).





1.Main conclusions

As seen in the previous research report entitled: *Perspectives on Internet Freedoms in Burundi: 2015 to 2017*, websites belonging to some independent press houses legally operating in Burundi have been kept blocked from users located in Burundi. No official explanation has been provided. These websites are: www.ikiriho.org, www.isanganiro.org, and www.iwacu-Burundi.org.

On April 10, 2018, the CNC ordered IWACU Press Group to close its website's online forum for a period of three months. This sanction was imposed in response to comments posted by users that were considered as "defamatory" or "unverified" according to the CNC. We noted that IWACU Press Group had put in effort to withdraw inappropriate posts made by users on the forum; however, the two journalists assigned to this work haven not been able to remove all inappropriate users' comments from the hundreds of posts made daily on the forum. In order to avoid facing more severe sanctions from the CNC, IWACU Press Group opted to not ask for the reopening of the forum.

Also, a six-month suspension sanction has been imposed against online and offline press houses by the media regulator of Burundi in its press release No. 100/CNC/kr/2018 issued on May 4, 2018. Those suspended were BBC radio and VOA radio. RFI, Radio CCIB FM+, and radio Isanganiro were given warnings. The main cause given for these sanctions was the broadcasting of unbalanced news. However, observers think that the sanctions may have been imposed to avoid any dissenting voice for the constitutional referendum that took place on May 17, 2018.

One of the main concerns about online rights in Burundi in 2018 has been the obstacles to the enjoyment of the right to privacy.

Regarding the legal framework, we found that the new Constitution of the Republic of Burundi (adopted June 7, 2018) is supportive in general. The Constitution even states that all international treaties related to privacy and other human rights ratified by Burundi are considered as a part of it.



However, there is a lack of a specific law that could practically support the enjoyment of privacy and personal data protection, offline and online. In fact, a draft law on privacy and personal data protection prepared by the telecommunication regulatory authority of Burundi in 2017 still has not been translated into law. As a consequence, the national authority in charge of privacy and personal data protection that is provided by the draft law has not yet been put into place. We consider this a serious restriction in the enjoyment of the right of privacy for Burundian citizens.

Regarding the new Code of Criminal Procedures that was adopted on May 11, 2018, we noted that it has provisions for conducting seizures of digital data on computers and in e-mail and social media accounts. This constitutes a new component compared to previous Burundi legislation governing this space. The most concerning issue is that the code does not provide for enough judiciary supervision of the seizures. We think this constitutes serious harm to the online privacy rights of Burundian citizens.

As we see it, some service providers that handle personal data in their daily work are not taking enough care with this data. This is the case of SIM card vendors on the streets of different towns. The national bureau of statistics (ISTEEBU), however, is doing well in the domain of personal data protection.



2. Recommendations

To governmental institutions:

- We recommend that taking hard sanctions not be the rule. Instead, the CNC and press houses should
 work collaboratively with IWACU Press Group to remove inappropriate comments and to produce balanced and accurate news instead of taking sanctions directly.
- Sanctions should not be the first step for a faulty media house. We recommend that the CNC issue warnings first, as it did for RFI and CCIB FM+.
- Take into consideration the constitutional right to information and right to privacy of citizens while setting up new laws.
- Use a participatory approach while preparing the texts of laws covering digital rights by associating other stakeholders.
- Take the needed steps forward so that the draft law on privacy and personal data protection prepared in 2017 can be translated into a law, and set up an independent authority in charge of privacy and personal data protection.

To human rights activists, the media, and citizens:

- · Work together to have a common voice against infringement of digital rights in general.
- · When necessary, exchange circumvention tools.
- Share digital security tools that can protect the privacy of end users.



To telecommunication service providers:

- Ensure that the data of end users is kept private and stored securely.
- Train staff and subcontractors on the issue of privacy and follow the example of the ISTEEBU (national institute of statistics).

