State of Internet Freedoms in Burundi 2014

An Investigation Into The Policies And Practices Defining Internet Freedom in Burundi



OpenNet Africa

CIPESA

Credits

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Introduction

Burundi is a landlocked country located in East Africa, neighbouring Rwanda in the south, the Democratic Republic of Congo in the east and Tanzania to the west. With a population of 9.4 million,[1] mobile teledensity was estimated at 26 mobile phones per 100 inhabitants in 2012 while landlines were 0.3 per 100 inhabitants in 2010.[2] The telecommunications sector was liberalised in 1997 [3] and the internet penetration rate was projected at 1.2 per 100 inhabitants in 2013.[4] Due to high growth of mobile phone penetration and since new internet users are mainly accessing via their mobile phones, internet penetration may be higher than estimated.

There are eight licensed Internet Service Providers (ISPs), namely CBINET, OSA NET, Spider Net, USAN, Onatel, Africell Tempo, Econet, and Leo (UCOM). Onatel is a state-owned company. Its subsidiary Onamob together with Africell Tempo, Econet and Ucom are also mobile phone operators. In addition to those ISPs, a domain name registrar, Afri register SA, is based in Burundi. It is an accredited organ under the Internet Corporation for Assigned Names and Numbers (ICANN).[5]

The first phase of the national backbone infrastructure, Burundi Backbone System (BBS), which covers eight districts across the country, was launched in January 2014.[6] It is a joint venture between the Government of Burundi with initial financial support from the World Bank and four telecom operators (Ucom Burundi, Africell Tempo, Onatel and CBINET).[7] It is connected to the landing stations of sub-marine fibre optic cables at the Eastern Africa coast and will connect all 17 districts of Burundi when finalised. With its successful implementation, internet speeds are expected to increase and access costs to lower.

Whereas ICT use and penetration in the country remains low, the National Information and Communication Technology development strategy 2010–2025[8] (PNDTIC 2010 – 2025) aims to ensure universal access in rural areas. Among the policy's strategic objectives are developing infrastructure for improved rural connectivity. A number of projects are underway as part of this policy, including the computerisation and interconnection of the national postal network. The project aims to have a post office equipped with a cybercafé in each district by 2023.[9]

1 *Institut des Statistiques et d'Etudes Economiques du Burundi, http://www.isteebu.bi/index.php/economie-en-bref*
2 *World Statistics, http://www.statistiques-mondiales.com/burundi.htm*
3 *Agence de Régulation et du Contrôle des Télécommunications, http://www.arct.bi/spip.php?article1*
4 *The World Bank, http://data.worldbank.org/indicator/IT.NET.USER.P2?order=wbapi_data_value_2012+wbapi_data_value+wbapi_data_value-last&sort=asc*
5 *ICANN, http://www.icann.org/registrar-reports/accredited-list.html*
6 *Burundi Launches ICT Backbone, http://www.busiweek.com/index1.php?Ctp=2&pI=443&pLv=3&srI=69&spI=221&cI=11*
7 *Burundi to get broadband connectivity in a month, HumanIPO, June 2013, http://www.humanipo.com/news/6903/burundi-to-get-broadband-connectivity-in-a-month/*
8 *Politique Mationale de Developpement des Technologies de l'information et de la Communication du Burundi (2010-2025), http://burundiconference.gov.bi/IMG/pdf/Politique_Sectorielle_TIC-3.pdf*
9 *Secrétariat Exécutif des Technologies de l'Information et de la Communication (SETIC) (2012), Etude pour le développement d'une politique d'accès universel , definition des mécanismes pour les délivrer et etude pour l'élaboration de mise en oeuvre de la politique d'accès universel et de vulgarisation des services TIC en milieu rural*

Relevant Agencies

L'Agence de Régulation et de Contrôle des Télécommunications (ARCT)[10] is the national telecommunications regulatory authority. According to Decree Law No. 1/011 of 1997,[11] which covers telecommunications in Burundi, and the Ministerial Law No 520/730/540/231 of April 9, 1999 and its updated annexes of 2008, ARCT issues operator licences and levies an annual fee equivalent to 1.2% of operators' turnover.[12]

BurundiX, the local Internet Exchange Point (IXP), was officially launched by the Minister in charge of Information Communication Technologies on March 21, 2014.[13] The project is being implemented under the framework of the African Internet Exchange System project (AXIS), led by the African Union with support from the Internet Society.[14] [15] It brings together all the ISPs operating in Burundi and the Government of Burundi through SETIC (Secrétariat Exécutif des Technologies de l'Information et de la Communication). BurundiX, whose technical infrastructure is hosted at the University of Burundi, allows all Burundian internet traffic to be kept within national boundaries. The expected result is faster and cheaper local internet speeds.

The National Communications Council (CNC) has the role of regulating online and offline media in Burundi. The CNC's mission of ensuring the freedom of audio-visual and written media in accordance with the law, public order and morality is stated in Article 284 of the 2005 Constitution of Burundi. The CNC was established by Law No. 1/03 of January 24, 2013, which amended an earlier law from 2007.[16] According to the law, CNC is an independent and neutral organ that has decisional power in the promotion and the protection of freedom of the press, and all media types (offline and online). It is mandated with enabling citizens' access to balanced information and diversity of opinions (political, social, cultural, economic) in public media.

Article 7 of the law establishing the CNC covers online press organs. It states that the council is in charge of authorising, in strict compliance with the principle of equity between operators, as provided by law, the establishment and operation of broadcasting or television facilities, cinema exhibition, written press, and internet writings both private and public. This implies that internet posts, which could include social media posts, are regulated by the council.

Additionally, CNC's involvement in online media matters is stated in Article 10 of its 2013 establishing law, which states that the council in collaboration with the Ministry in charge of Communication has to monitor compliance to professional ethics by all online news agencies.

10 *L'Agence de Régulation et de Contrôle des Télécommunications, http://www.arct.gov.bi/*
11 *Agence de Régulation et du Contrôle des Télécommunications, http://www.arct.gov.bi/download/decret_dispositions_organiques.pdf*
12 *Ibid, Annexes: Licensing conditions*
13 *Internet Exchange Point Launched on 21 March, 2014 in Bujumbura, Burundi, http://www.internetsociety.org/news/internet-exchange-point-launched-21-march-2014-bujumbura-burundi*
14 *African Union, AXIS, http://pages.au.int/axis/about*
15 *The Internet Society, African Union (AU) Selects the Internet Society to Support Establishment of Internet Exchange Points across Africa, August 2012, http://www.internetsociety.org/news/african-unionau-selects-internet-society-support-establishment-internet-exchange-points-across*
16 *Law No. 1/03 of January 24, 2013 on the Composition, Organisations and Functioning of the CNC, http://www.assemblee.bi/IMG/pdf/n%C2%B01_3_2013.pdf*

Policy and Regulatory Environment

Privacy and Data Protection

The 2005 Constitution of Burundi lists general principles of democracy and respect of fundamental human rights as stated in the United Nations' Universal Declaration of Human Rights of 1948. Without explicitly mentioning privacy of online communications, Article 28 of the constitution guarantees the general right to privacy of communications. Meanwhile, Article 43 of the Constitution provides for lawful limits to individuals' privacy in accordance with conditions and formalities laid down by the law.

The Law No. 1/10 of April 3, 2013 on the reform of the Code of Criminal Procedure elaborates on the conditions under which lawful intrusion into personal communication can be done.[17] It states that the Public Prosecutor has the right to seize telegrams, letters and objects of any kind, if they appear to be essential to establishing the truth during a criminal investigation. The prosecutor has the right to ask for the necessary objects from the chief of the post office or the telegraph officer. Whereas this text does not include internet-based communications, phone calls or SMS, there is scope for these to also be seized under the vague statement "objects of any kind if they appear to be essential to the manifestation of truth."

According to Article 23 of Law No. 1/011 of 1997 which governs telecommunications, communications service providers and their staff members have an obligation to protect the privacy of their subscribed users (confidentiality of communications exchanges through their networks). Additionally, Article 40 provides for punishment of any staff member of a public operator or licensed network operator in telecommunications or telecommunications service provider that violates the confidentiality of communication. Penalties are as per the provisions of the penal code. In the penal code of Burundi[18], sanctions for violating privacy are described in Article 248. However, the article only covers postal communications and makes no mention of electronic communications. It states that any post officer who unlawfully opens or destroys a letter should be fined between BIF 50 000 and BIF 200 000 (US$ 30 to US$ 120), and a maximum of six months imprisonment.

However, Article 24 of the 1997 law states that a service provider may be required to provide confidential information on demand if that demand is proven to be lawful according to the constitution of the regulatory authority (ARCT).

The obligation to protect users is also found in the 2012 law that reorganised the functioning of the regulatory authority. Article 6 of Law No 100/112 of April 5, 2012 states that service providers have the obligation to protect end users. It remains unclear whether this obligation is about confidentiality or not. This law further states that the ARCT has the obligation to protect and promote users' rights within the communication environment.

Since September 2011, a registration exercise of subscribers of all the mobile phone operators and ISPs has been underway. As part of the exercise, personal user information including name and address have been collected. According to an article on the website of the Presidency of the Republic, this process was motivated by a need to enhance national security. The spokesperson of the First Vice President reported that operators are now able to contribute to national security by collecting and storing the identities of their subscribers.[19]

[17] *Burundi Code of Criminal Procedure, http://www.assemblee.bi/IMG/pdf/n%C2%B01_10_2013.pdf*
[18] *The Penal Code of Burundi, http://www.oag.bi/IMG/rtf/code_penal_burundais-2.rtf*
[19] *Le Premier Vice-Président de la République rencontre les opérateurs de la téléphonie mobile, http://www.presidence.bi/spip.php?article1928*

Freedom of Expression and Media Freedoms

Articles 31 and 32 of the Country's 2005 Constitution guarantee freedom of expression, opinion and assembly.[20] There is no mention of online freedom of expression. The country does not have a freedom of information law. Burundi's 2013 Media law[21] which governs all types of communication media including the internet indicates broad circumstances under which the rights to freedom of expression and media freedom do not apply. Article 19 bans the publication of "information or documents" relating to national defense, currency or public credit secrets, and information which could threaten the national economy or serve as enemy propaganda in both peace time and war time. This article can be subject to various interpretations, which may call into question the neutrality of CNC when applying sanctions.[22]

Article 29 of the new Media law makes it a requirement for online publications and news agencies to disclose certain information to CNC or the public prosecutor's office. Among the necessary information are the first edition of the publication, the name, nationality and full address and criminal record of the Director of the publication, the full address of the web host, the languages of publication and the constitution of the web publisher.

The same press law provides for various sanctions against any press organ or any author of articles infringing the law (Articles 56, 57, 58, 59 and 60). The National Communication Council (CNC) has the powers to issue warnings to offenders. Failure to comply with three CNC warnings may lead to the suspension of the media or withdrawal of accreditation. In addition, the director of the publication, the editor and responsible journalist are liable for prosecution. The CNC's decisions are enforceable before any appeal to the Administrative Court. Article 63 provides for a fine against offenders ranging from BIF 4,000,000 to BIF 8,000,000 (US$ 2,400 to US$ 4,800).

In January 2014, four articles of the Media law (Articles 61, 62, 67 and 69) were invalidated by the national constitutional court following a petition by the Burundi Union of Journalists. The Union argued that the articles which provided for, among others, fines for an initial offence before any warning, and vague definitions of internet publications were unconstitutional.[23] Before Burundi's president assented to this law, an online petition against it received 12,000 signatures, according to Radio Netherlands.[24]

Intermediary Liability

There are no explicit provisions for intermediary liability in Burundi legislation. However, under Article 56 of the 2013 media law, intermediaries are liable for the broadcast and dissemination of anonymous material. In addition, contributors to infringing material can also be prosecuted. Article 49 of the media law provides for the right of reply for any person cited in an offline or online publication.

[20] *The Constitution of Burundi, http://www.assemblee.bi/Constitution-de-la-Republique-du*
[21] *Burundi Press Law, http://www.presidence.bi/spip.php?article3779*
[22] *IREX, Media Sustainability Index Burundi, 2010, http://www.irex.org/system/files/MSI_Africa_2010_Burundi.pdf*
[23] *Constitutional Court quashes several repressive provisions of Burundian media law, http://www.ifex.org/burundi/2014/01/08/articles_quashed/*
[24] *12 000 signataires contre la loi sur la presse au Burundi, http://www.rnw.nl/afrique/article/12-000-signataires-contre-la-loi-sur-la-presse-au-burundi*

Internet Freedoms Violations

Content Restrictions

The Internet service provider CBINET provides child online safety protection services against adult content, including pornography. The "parental control" service is available upon request. As written on its official web site, the aim of the protection is to avoid exposing children to adult content. This is done by blocking adult content for subscribers who request it.[25] In most internet cafés, there are notices that prohibit surfing web sites with adult content. These restrictions are not necessarily done to respect any explicit law but respond to cultural customs.

On January 7, 2014, ARCT issued a notice warning the public against the transmission of SMS and anonymous calls that could fuel tensions.[26] The notice came at a time opposition leaders were mobilising, including via SMS, for mass protests against proposed constitutional amendments that, among others, would scrap presidential term limits to allow President Pierre Nkurunziza run for another term. The communications regulator stated that it would work with service providers "on cooperation mechanisms in the traceability" of communications and reminded all operators to fulfil their subscriber registration obligations. The opposition called off the protests for unclear reasons.[27] There were no reported incidents in relation to the regulator's notice and the Constitutional amendments were rejected by parliament in March 2014.[28]

At the time of writing, there are no reports of legal sanctions against any Burundian bloggers or individual internet users. Also, there are no reports of state ordered blocking of websites, SMS services cut or phone tapping.

There are three reported cases of online freedom of expression obstructions that have occurred in Burundi since 2010.

The sanction against Iwacu online forum

Iwacu, a printed newspaper with an online version,[29] allows readers to comment on online stories. As part of the website's user conditions, insults, defamation, racism and anti-Semitism speech are prohibited. Any posts infringing intellectual property rights are also not allowed. The website administrators reserve the right to delete infringing posts. Commentators are also required to disclose their names and email addresses.[30]

On May 31, 2013, the CNC shut down the comments forum for a period of 30 days, arguing that comments posted on May 28 and May 29, 2013 were defamatory against official institutions. The regulator stated that the comments violated Articles 10 and 50 of the Press Law of 2003 regarding "attacks on national unity, public order and security, inciting ethnic hatred, defending criminal activity and insulting the head of state." In justifying its actions, the CNC's chairperson Pierre Bambasi was quoted as saying, "We cannot have individuals or groups screaming abuse on the internet, stirring up ethnic hatred, talking of taking up arms and urging the people to rise up".[31]

[25] *CBINET, Service de contrôle parental, http://cbinet.net/index.php/fr/service-de-controle-parental*
[26] *ARCT, Communiqué de presse, January 7, 2014*
[27] *IRIN News, Alarm Over Burundi's Planned Constitution Changes, http://www.irinnews.org/report/99355/alarm-over-burundi-s-planned-constitution-changes*
[28] *Burundi Government's Contentious Bid to Ammend the Constitution Flops, http://www.africareview.com/News/Burundi-govt-contentious-bid-to-amend-the-constitution-flops/-/979180/2252984/-/nuo7tl/-/index.html*
[29] *Iwacu, http://www.Iwacu-burundi.org/*
[30] *These user's conditions can be found for example on the news article available on this link: http://www.IwaculwaculwacuIwacu-burundi.org/ngagara-ils-assurent-eux-memes-leur-securite/*
[31] *Burundi - Media regulator suspends comments on press group's website, http://www.trust.org/item/20130531164503-qium7/?source%20=%20hppartner*

The press law was amended in June 2013. Articles 10 of the 2003 law, under which Iwacu was sanctioned, prohibited journalists from publishing any information prejudicial to national unity, public security, morality, and national sovereignty. Meanwhile, offenses under Article 50 were punishable by six months to five years imprisonment and a fine of BIF 100 000 to BIF 300 0000 (US$ 65 to US$195).

In a memorandum written on the June 28, 2013[32], the management of Iwacu contended that the shut down decision did not specify the alleged defamatory comments. Upon receiving an initial warming from the CNC on May 28, 2013, the Iwacu management responded in writing, stating that their team was working on removing the inappropriate readers' comments and intended to improve their filtering mechanisms within three weeks. Iwacu received 400 comments on the dates indicated by the regulator's letter, of which one in eight were banned.[33]

In protest of the forum shutdown, the managing team of Iwacu suspended the production of articles on the whole website for the 30-day period. As a consequence of the shutdown, another website, www.ganira.com, was anonymously created where all of Iwacu publications were copied and readers were allowed to continue commenting. This website has since been shut down by its owners. In an interview with the researcher in December 2013, Antoine Kaburahe, the Director of Iwacu press group, denied knowledge or association with the owners of Ganira.com. Mr. Kaburahe also stated his ignorance of the ganira.com promoters in a news article published on another online newspaper where he said he was surprised by the discussions on the new forum in continuation of the ones of Iwacu forum.[34] The Iwacu forum was re-instated on June 30, 2013 and remained fully accessible in Burundi as of April 2014.

Online editor for Net Press arrested and jailed

Jean Claude Kavumbagu, the editor of online newspaper Net Press, was detained for 10 months from July 2010 to May 2011 as a result of an article which criticised Burundi's security forces and their ability and readiness to defend the country against possible terrorist attacks. He was charged with treason and defamation under the 2003 press law. Throughout his detention, trial and as of April 2014, his Net Press website (www.netpress.bi) remained accessible. The article in question, published online on July 12, 2010 was also still available online.[35] At his sentencing on charges of "undermining the state's credibility and national security", Mr. Kavumbagu was also fined BIF 100,000 (USD 65).

Media Black Out following a Massacre

On September 18, 2011, a group of gunmen attacked the village of Gatumba, near the country's capital Bujumbura where they killed 30 people. The following day, the CNC imposed a 30 day total media blackout on any information about the incident. Communication Minister Concilie Nibigira justified the one-month ban on the grounds of "guaranteeing peace and security" and ensuring "the successful conclusion of the investigations."[36] Those who defied the ban would be in breach of the 2003 press law, she said.

32 *Iwacu, Memorandum d'information sur la Decison du Conseil National de la Communication (CNC), http://www.Iwacu-burundi.org/wp-content/uploads/Memorandum.pdf*
33 *ibid*
34 *Nous sommes de nouveau là Communiqué du Groupe de Presse Iwacu, http://www.arib.info/index.php?option=com_content&task=view&id=7350*
35 *Une intervention militaire controversée qui en rappelle une autre, http://burundi.news.free.fr/actualites/netpressprison.html*
36 *RSF, Authorities urged to lift news blackout imposed after Gatumba massacre, http://en.rsf.org/burundi-authorities-urged-to-lift-news-23-09-2011,41045.html*

On September 21, however, five private radio and television stations defied the ban. They worked together and conducted round table debates and analyses about the Gatumba massacre.[37] After this breach, the communication minister declared that the one month governmental ban should be respected. She promised that investigations into the breach would be undertaken and a decision would be issued in due course. To date, no sanctions have been reported against the five media houses.

Recommendations

Open public discussions and consultations on the provisions of the 2013 Press Law, including Article 19 and Article 20 (which obliges journalists to reveal their sources of information to courts in some cases). Media professionals and critics have raised numerous concerns, from Burundi and from all over the world, against this law.

The national regulatory authority has, among its mandate, the protection of users of telecommunication services. The government is currently in the process of drafting a cyber security law. The first sensitisation workshop was organised in Bujumbura in November 2013 by the ARCT, the national telecoms regulator.[38] This law, together with the forthcoming law on electronic communications, has the potential to improve the online safety in Burundi. It is recommended that these laws should be drafted through a multistake holder's process that involves wide consultations with civil society.

Whereas the privacy of communications is guaranteed within the Constitution of Burundi, amendments to the provisions with precision to electronic communications are recommended.

37 *IFEX, Journalists Defy Media Blackout on Gatumba Massacre, http://www.ifex.org/burundi/2011/10/05/media_blackout/*
38 *Atelier de formation sur la Cybersécurité, http://www.arct.gov.bi/index.php/actualites/27-atelier-de-formation-sur-la-cybersecurite*

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