



SENEGAL: UPR Session 31 Digital Rights Advocacy Briefing Document

Prepared by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA), Small Media, Jonction Senegal and the Senegal ICT Users Association (ASUTIC)

At a Glance

| | Households with a computer % | Households with internet access at home % | Mobile broadband subscription per 100 inhabitants | Mobile phone subscriptions/penetration rate | Individuals using the internet % |
|-----------------------------|------------------------------|---|---|---|----------------------------------|
| At time of 1st cycle review | 11.5 % ¹ | 4% ² | | 4,720,835 / 44.62% ³ | 6.4% ⁴ |
| At time of 2nd cycle review | | 11.3 % | | 9,352,868 / 76.84% ⁵ | 15.7% ⁶ |
| Current statistics | 15.1% ⁷ | 19.9% ⁸ | 26.1% ⁹ | 15,797,807 / 104.78% ¹⁰ | 25.7% ¹¹ |

¹ ARTP, How to Guarantee Access to Information Services, <http://www.fratel.org/wp-content/uploads/2011/12/201012-Ndiaye-ARTP-Senegal.pdf>

² ibid

³ Osiris, <http://www.osiris.sn/Evolution-du-fixe-du-mobile-et-de.html>

⁴ ibid

⁵ Osiris, <http://www.osiris.sn/Forte-progression-de-l-Internet.html>

⁶ ibid

⁷ Measuring the Information Society 2017, Senegal, https://www.itu.int/en/ITU-D/LDCs/Documents/2017/Country%20Profiles/Country%20Profile_Senegal.pdf

⁸ ibid

⁹ ibid

¹⁰ ARTP, Mobile Observatory March 2018, https://www.artpsenegal.net/sites/default/files/docs_observatoire/tb_mobile_31_mars_18.pdf

¹¹ Measuring the Information Society 2017, Senegal, https://www.itu.int/en/ITU-D/LDCs/Documents/2017/Country%20Profiles/Country%20Profile_Senegal.pdf

Freedom of Expression

Overview

Articles 8 and 10 of the [Constitution of Senegal, 2001](#) guarantee freedom of expression. Specifically, Article 10 states: “Everyone shall have the right to freely express and disseminate his opinions by word, written word or image or peaceful march, provided that the exercise of these rights shall not undermine the honour of and respect due to other persons, nor threaten public order.” However, various laws restrict freedom of expression, including Articles 248 and 254 of the [Penal Code, 1965](#), which proscribe “offending” the Head of State They provide that any person who, through public broadcasting (radio, television, cinema, press, display or exhibition) or any other means such as writing, images, songs of “any technical process of reaching the public), offends the president, commits an offence punishable by a fine of 100,000-1,500,000 Francs (USD 180-2,700) or imprisonment for six months to two years, or both.

[Law No. 14/2017 on the Press Code](#) governing print, broadcast and online media also restricts freedom of expression. Article 192 of the Code provides that in “exceptional circumstances”, authorities including political appointees at local government level, may seize equipment, suspend or stop broadcasting or provisionally close a media house “in order to prevent or put an end to an infringement of security of the State, to territorial integrity, or in cases of incitement to hatred or an appeal to murder.” Without provisions for judicial oversight, this provision leaves room for abuse of freedom of the press/expression. Article 107 of [Law No. 2011-01](#) which governs the telecommunications sector gives the regulator power to take “any appropriate precautionary measures and to provide sanctions” against operators who breach “national defense, public security, morality or in the event of a serious breach of its obligations which has effects of creating an irreversible situation or clearly infringes a competitor's financial interests.”

In addition, Article 28 of the Electronic Communications Bill gives Regulatory Authority for Telecommunications and Posts (ARTP) sweeping powers over the sector. According to Article 28 of the draft law, “the regulatory authority may authorize or impose any traffic management measure that it thinks useful to preserve the economic balance and competition in the electronic communications sector and to ensure the fair treatment of similar services.” Whereas this provision likely relates to fair competition, the powers granted to the regulatory authority (without judicial oversight) could potentially undermine free speech as the authority would have powers to direct service providers to block or impose limitations on online content on economic grounds.

Many journalists, politicians and artists have faced charges under the provisions of the Press and Penal codes in the past which has promoted a culture of self-censorship

Examples

The religious and cultural environment in Senegal is a challenge to freedom of expression. In mid 2016, a female local artist was arrested and detained for three days on [allegations of indecency](#) in a video shared on social media. Her arrest followed a complaint filed by the Committee for the Defense of Moral Values (CDVM) - an association of religious organisations. Whereas the case was later dismissed, freedom of expression activists strongly [criticized](#) the arrest.

In 2015, a private television station talk show host was [arrested](#) on allegations of insulting the president “in the formulation of his questions” during a debate on President Macky Sall’s alleged involvement in a corruption scandal.

In 2015, [several journalists](#) were arrested following press reports about a plan to send Senegalese soldiers to Saudi Arabia. These summons and police detention of journalists are perceived within media fraternity as intimidation attempts.

Another female Senegalese singer was arrested in 2017 on charges of [offending the president and spreading false news](#) in a video broadcast over the internet after the parliamentary elections.

See other relevant developments at <http://jonction.e-monsite.com/pages/actualites.html>

Recommendations

| Session | Recommending State | Recommendation | Response | Implemented? |
|---------------------------|------------------------------|---|----------|---|
| Twenty-fifth session 2013 | Democratic Republic of Congo | Continue and finalize the procedure for the decriminalization of press offences | Noted | In response to these recommendations, the government of Senegal worked to decriminalise press offenses through the drafting of a new press law. Law No. 14/2017 on the Press Code was passed in June 2017. Whereas the new law was applauded for having progressive provisions, it was also criticized for its regressive clauses. Among them is Article 192 which provides for the banning, suspension or seizure of equipment of a media house on national security grounds. The law also prescribes harsh penalties for media offences under Articles 215 and 216, of up to five years imprisonment or a fine of 30 million francs (USD 54,000). |
| | France | Decriminalize press offences | Noted | |

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| | Greece | Repeal section 80 of the Penal Code and, generally, ensure the independence and freedom of the press | Noted | This recommendation was first made by France during the first review in 2009. Nonetheless, Article 80 of the Penal Code which deals with publication of information that threatens national security, or is against the state remains in force despite the adoption by the National Assembly of the reforms of the Penal Code and Code of Criminal Procedure. |
| Eleventh session 2009 | Sweden and Switzerland | Take specific and effective measures including legislative action required in order to ensure respect for freedom of expression, association and the press in accordance with international standards | Noted | As highlighted in the examples above, the arrest and prosecution of critical journalists and artists (including for content published online) remains a restriction to freedom of expression in the country. |
| | France | Repeal Article 80 of Criminal Code pertaining to the infringement to the safety of State, which restricts the right to freedom of expression | Noted | Article 80 of the Penal Code which deals with publication of information that threatens national security, or is against the state, remains in force despite the adoption by the National Assembly of reforms to the Penal Code and the Code of Criminal Procedure. |
| | Canada | Respect Senegal's commitments concerning freedom of expression which it undertook by ratifying the International Covenant on Civil and Political Rights (ICCPR) | Noted | Senegal ratified the ICCPR in 1978 and under Articles 8 and 10 of its constitution recognizes and guarantees freedom of expression. However, as highlighted in the overview section and examples, in reality there are several measures restricting freedom of expression. Indeed, peaceful demonstrations by political opponents are often forbidden and some internet users are arrested for expressing their opinion on social networks. |
| | Ireland, United Kingdom, the Netherlands, | <ul style="list-style-type: none"> ● Act on the promise made by the President in 2004 to reform the press law ● Eliminate prison terms for press offences | Noted | As indicated above, contrary to expressed willingness, Senegal has not decriminalized press offences despite the |

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| | Belgium, the Vatican | <ul style="list-style-type: none"> • Take forward plans to decriminalize press offences as agreed by the President of the Republic in 2004 and as reported to the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression • Revise legislation on freedom of the press in order to bring it into line with international standards • Provide training on human rights and freedom of the press to the police and armed forces in order to prevent any deterioration in this field | | <p>adoption of the new Press Code by the National Assembly on June 20, 2017.</p> <p>On the other hand, while efforts are in place to train security forces in human rights, in practice many of them do not respect human rights. The latest illustration is the May 2018 shooting, by police, of a student during a protest at a university.</p> |
| | Slovenia and France | <ul style="list-style-type: none"> • Ensure effective freedom of demonstration and freedom of association • Protect the rights of assembly and freedom of expression | Noted | <p>Pursuant to Article 12 of the Constitution, there is no requirement for authorities to be informed of demonstrations or assemblies. And although the constitution also guarantees free speech and dissemination of opinions, restrictions remain enforced by the state, as highlighted above. In some instances, demonstrations are banned and opposition political leaders arrested.</p> |

Freedom of information and censorship of content

Overview

Article 10 of Senegal’s constitution, under states that “Everyone has the right to express and freely disseminate his opinions by word, written word and image...” However, the Press Code adopted in June 2017 contains several provisions that undermine freedom of information and promote censorship and self-censorship. Article 5 of the Press Code provides that journalists and the media have “free access” to information except where the information is a “defense secret”, relates to “secret investigations” and regulations for access to undisclosed sites or structures. Without defining what constitutes “defense secret”, this provision may be used by authorities to censor content or limit citizens’ access to information. Of more concern to freedom of information and

editorial censorship, is the power to seize equipment, suspend broadcasting or close a media organisation, without prior authorisation by a judge under Article 192. In addition, press offences with harsh penalties remain in force and this has promoted a culture of self-censorship among journalists.

Meanwhile, disclosure of military information is an offence under Article 64 of the Penal Code, punishable by imprisonment of between one and five years.

Senegal [does not](#) have an access to information law and there are widespread [calls](#) for a law to be passed in order to promote transparency and accountability.

Examples

In 2015, the government of Senegal [banned](#) the distribution and dissemination “by any means” of an edition of the Charlie Hebdo magazine due to its depiction of a caricature of Prophet Muhammad.

A book on Senegalese gas and oil was [banned](#) from dissemination in 2017.

Also on religious ground, the government of Senegal [banned the sale](#) of a book titled [Héla Ouardi, The Last Days of Muhammad](#), following an outcry from some NGOs and politicians, including former Prime Minister Abdoul Mbaye.

Recommendations

| Session | Recommending State | Recommendation | Implemented? |
|---|----------------------------|---|---|
| <i>As in freedom of expression above. Specifically on freedom of information, a number of civil society organisations also made recommendations as detailed below</i> | | | |
| Seventeenth session 2013 | UNESCO | Encouraged the Government to introduce a freedom of information law that was in accordance with international standards | Senegal remains without an access to information law. |
| | Article 19 | Recommended the adoption of a law on access to | |

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| | | information in line with international norms and standards to ensure greater transparency and equal access to public services. | |
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Equality and barriers to access

Overview

There are three leading telecommunications service providers in Senegal. Orange has the lion's share with 68.5% of the [internet market](#) and 53.3% of [mobile subscriptions](#). Other service providers include Tigo and Expresso who have 24.1% and 7.4% of the internet market, and 24.3% and 22.4% of the mobile market respectively. Senegal is ranked 47 out of 58 countries in [internet affordability](#).

According to the Senegalese Association of ICT Users (ASUTIC), whereas mobile telephony is widely accessible across Senegal, fixed and mobile broadband internet remains largely out of reach for many due to limited telecommunications infrastructure deployment, especially in rural areas. To address the challenge of rural connectivity, in December 2016, the government [passed](#) two decrees on licensing of infrastructure operators and infrastructure sharing. Earlier in 2007, a [Universal Service Fund](#) was established to support infrastructure development. The fund is financed through a 3% levy on sales (excluding taxes) from all energy and telecom players plus 0.15% on turnover from licenses telecommunications operators.

Several other obstacles hinder internet access in Senegal. The [cost of access is high](#) with 1GB of data costing an average 2,500 West African Francs (CFA) – USD 4.40 per month. The quality of services offered is also below the minimum global standard with widespread reports of [poor quality of service](#) provision which prompted the Regulatory Authority for Telecommunications and Posts (ARTP) to [issue ultimatums](#) to telecommunications operators to improve their service standards.

Examples

Commitments by service providers to [improve](#) quality of services following formal notice from the regulator - Telecommunications and Post Office Regulatory Authority (ARTP).

Poor regulation and uncompetitive practices among the obstacles to internet development in Senegal - <https://www.ouestaf.com/les-obstacles-au-developpement-de-l%E2%80%99internet-senegalais-selon-google/> and <https://drive.google.com/file/d/0By9szPVM9SzdNkS1IKZVFCb3M/view>

Legal and institutional obstacles to Senegal's information society - <https://www.memoireonline.com/12/07/735/obstacles-juridiques-institutionnels-edification-societe-de-l-information-senegal.html>

Right to data protection and privacy on the Internet

Overview

The right to privacy, including for electronic communications, is provided for under [Article 13 of Senegal's Constitution](#).

In January 2008, Senegal adopted [Law No. 2008-12 of 25](#) which provides a legal and institutional framework for the protection of personal data. Article 1 of this law makes it clear that: "The purpose of this law is to set up a mechanism to combat the infringements of privacy that may be caused by the collection, processing, transmission, the storage and use of personal data. It guarantees that any processing of data, in any form whatsoever, respects the fundamental rights and freedoms of natural persons; it also takes into account the prerogatives of the state, the rights of local authorities, the interests of businesses and civil society. It ensures that Information and Communication Technologies (ICT) do not infringe on individual or public liberties, especially on privacy. "

The 2008 law establishes an independent authority known as the [Commission of Personal Data](#) (CDP) whose mandate is to ensure that the processing of personal data is implemented in accordance with the provisions of this law, and upholds the rights and obligations of data subjects and processors, respectively.

However, due to resource limitations, the CDP is not sufficiently fulfilling its mandate. In February 2018, its president made [a plea](#) for government assistance to support efforts for sensitization and compliance monitoring. Indeed, several private and public actors continue to collect personal data in Senegal without any regulatory enforcement by the CDP. This is the case for [mandatory](#) SIM card registration implemented by the ARTP through mobile telecom operators and linked to the national identity database.

[Law No. 2008-11 on cybercrime](#) prohibits unlawful access, processing and use of personal data. Specifically under Article 431-23 of the Act, "Anyone who has made or caused to be processed personal data concerning a natural person despite the opposition of that person in accordance with the provisions of Article 68 of the Personal Data Act, where such processing is for the purposes of prospecting, including commercial, or where such opposition is based on legitimate grounds, shall be punished with imprisonment of one year to seven years and/or a fine of 500,000 francs (USD 885) to 10,000,000 (USD 17,700) francs."

Collection and processing of sensitive personal data including on racial or ethnic origin, political, philosophical or religious opinions, or trade union membership is an offense punishable by up to seven years imprisonment, a fine of between 500,000 francs (USD 885) to 10,000,000 (USD 17,700) francs, or both.

Examples

Senegal fights against cyber crime, interview with the Senegalese Crime Squad - <http://www.afrik.com/article8361.html>

Growing trend of cyber crime in Senegal - <http://www.socialnetlink.org/2017/04/cybercriminalite-170-personnes-ont-ete-deferees-au-senegal-en-2016/>

[Reflections](#) of the former President of the Commission for the Protection of Personal Data of Senegal on online publications, privacy and social media.

In the period Jan 2013 to December 2017, the government of Senegal made 10 [user information requests to Facebook](#). Facebook reports a zero compliance rate for all requests. Senegal also made one [user information request to Google](#) during 2016. The request was rejected. In telecommunications, Senegal has made the second highest number of [subscriber information requests to Orange](#) - 18,653 in 2016, up from 13,557 in 2015.

Recommendations

| Session | Recommending State | Recommendation | Implemented? |
|--------------------------|--|--|--|
| Seventeenth session 2013 | Only civil society organisations have made submissions and recommendations on data protection and privacy in Senegal as detailed below: | | |
| | Privacy International (PI) | Government should ensure that the rights of mobile telephony subscribers in relation to their personal data are guaranteed | SIM card registration remains in place in Senegal and despite protections afforded in the data protection law, telecommunications companies remain unaccountable in measures taken to secure collected data. Subscribers continued to receive unsolicited messages |
| | | Government ensure that Law No. 2008-12 is applied and respected in relation to the use of landing cards | Yes. In late 2013, use of landing cards was discontinued at Dakar International Airport. |

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| | | and biometric registration of passengers at Dakar airport and that it replaces the current system of collecting landing cards with a more effective and transparent collection mechanism | |
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Freedom of creation and innovation

Overview

The internet has played a crucial role in innovation, creativity and local content creation in Senegal. Mobile telephony, for example, now offers solutions for virtual financial services ranging from banking services to payment services. Further, leading money transfer application, [WARI](#), which was founded in Senegal and remains hugely popular, has been adopted in many countries in West Africa. In the agriculture sector, [MLouma](#), which connects sellers and buyers of agricultural products, has grown from 1,000 to 75,000 users [since developing](#) a USSD version which allows users without smartphones or the internet to access the service, as well as integrating a payment service.

Today payment of several bills such as water, electricity, telephone, gasoline etc. is made via mobile phone. Even taxi payment services are available despite the fact that many taxi drivers are illiterate.

Towards promoting Senegal's innovation sector for social economic development, the government initiated the [Digital Senegal 2016-2025](#) strategic plan. The strategy objectives include upgrading of the legal and institutional framework of the ICT and Telecommunications sector; strengthening of professional training; digital security; open and affordable access to digital networks and services; an administration connected to the service of citizens and businesses; the promotion of an innovative and creative digital value industry and the spread of digital technologies in priority economic sectors. The strategy's targets are to increase the sector's contribution to GDP to 10% and creation of up to 35,000 jobs in the sector by 2025. The total cost of reforms and projects for the period 2016/2025 is CFA 1.3 billion (USD 2.3 million) of which 73% will be financed by the private sector, 17% by the public and 10% through public-private partnerships. To-date, it remains unclear what projects have so far been implemented under the strategy.

Examples

State Computer Agency Launches "eGovLAB" challenge for innovation in public service delivery - http://www.seneweb.com/news/Societe/innovation-numerique-l-rsquo-adie-lance- n_230412.html

Advocacy for adopting of ICT in education - <http://www.osiris.sn/Stimuler-la-creativite-des-enfants.html>

Senegal Hosts first Digital Forum - https://www.pressafrik.com/Premier-Forum-numerique-du-Senegal-Macky-annonce-300-bourses-et-1000-personnes-formees-par-an_a179835.html

SUGGESTED RECOMMENDATIONS

| KEY ISSUE/S | RECOMMENDATIONS |
|--|--|
| Freedom of Expression | <ul style="list-style-type: none"> ● Amend Article 28 of the draft Electronic Communications Code to ensure judicial oversight over the regulator’s powers to impose any traffic management measures. ● Reform press legislation, eliminating tough penalties for press offenses ● Uphold citizens’ rights to freedom of expression by discontinuing the practice of arrest and intimidation of critical journalists and artists |
| Freedom of information and censorship of content | <ul style="list-style-type: none"> ● Provisions of the press code infringing the freedom of information, notably Article 5 should be amended to provide clear definitions of information exempt from access by journalists. Meanwhile, Article 192 should be repealed. ● Draft an access to information law in compliance with international human rights standards. The law should be drafted through participatory/consultative processes. ● Reform the entire legal framework that restricts journalists’ freedom to inform or promotes censorship, in particular articles 254 (Offense to the Head of State), 255 (False News), and 258 (Defamation) of the Penal Code. |
| Equality and barriers to access | <ul style="list-style-type: none"> ● Take concrete and effective measures to lower barriers to access including extending rural infrastructure and promote a competitive industry to ensure easy and affordable internet access for underserved communities. ● Enforce licensing obligations on telecommunications operators in order to improve the quality of service offered. |
| Right to data protection and privacy on the Internet | <ul style="list-style-type: none"> ● Take concrete measures for the effective implementation of Law No. 2008-12 of 25 January 2008 to ensure the protection of personal data. ● Allocate sufficient resources (financial, logistical, and personnel) to the Personal Data Commission (CDP) to support fulfilment of its mandate |
| Freedom of creation and innovation | <ul style="list-style-type: none"> ● Prioritise funding and subsidies for digital literacy and innovation programmes |