

Introduction

1. The Universal Periodic Review (UPR) is an important UN mechanism aimed at addressing human rights issues across the globe. Rudi International and Small Media Foundation welcome the opportunity to contribute to Burundi's fourth review cycle.
2. This submission examines the right to freedom of expression, access to information, freedom of the media and digital rights in general. Specifically, this submission raises concerns regarding the unwarranted internet disruptions, violations of media freedom including media bans, arrests and prosecutions of journalists and other critical voices.
3. Burundi is located in central Africa sharing borders with Rwanda in the north, Tanzania in the east and the D.R. Congo on the west. It has an area of 27,834 sq. Km, and its total population was estimated at 12,309,600 inhabitants in 2020¹. According to the World Bank, the GDP per capita is \$USD 236.8 (2021)². The mobile phone penetration rate is 64.75% (as of March 31, 2022), while the Internet penetration rate is 20.2%³.
4. In recent history, Burundi faced political turmoil around the 2015 general elections. The bid of late President Nkurunziza to stay in office for a third term, running from 2015 to 2020 triggered violent public demonstrations. Some improvements to press freedom have been observed under President Evariste's administration.

Follow up from third cycle review

5. During Burundi's third UPR cycle in January 2018, a total of 222 recommendations were addressed to Burundi. Out of these 225 recommendations, 125 recommendations were supported, and all the recommendations that addressed the rights to free expression and opinion, media, and access to information were noted.⁴
6. On June 7th 2018, Burundi adopted a new Constitution,⁵ which guarantees the freedom of expression under Article 31 and the right to privacy under Art 43.
7. During the late President Pierre Nkurunziza's third term, media outlets and media professionals in Burundi faced harsh times ranging from imprisonment, forced disappearance and violence against journalists, suspensions amongst other violations. Many independent journalists were even obliged to flee the country for their safety. Decision No 004/CNC/KR was issued by the media regulator, National Communication Council (CNC) on May 4th 2018⁶. Through that decision, radio

¹ <https://www.isteebu.bi/burundi-en-bref/>

² <https://data.worldbank.org/country/BI>

³ <https://arct.gov.bi/wp-content/uploads/2022/06/obs1t2022.pdf>

⁴ https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/BI/BURUNDI_Infographic_29th.pdf

⁵ <http://www.presidence.gov.bi/wp-content/uploads/2018/07/constitution-promulgee-le-7-juin-2018.pdf>

⁶ <http://cnc-burundi.bi/wp-content/uploads/2018/05/communiqu%C3%A9-de-presse-N%C2%B04-2018.pdf>

ISANGANIRO (local) and Radio CCIB FM Plus (local) were “warned for not respecting their specifications signed with the CNC” and Radio France Internationale (international) was “warned following the treatment considered biased and misleading about the information disseminated in dates from March 21 to April 25, 2018” while international medias such as BBC and VOA were suspended for a period of six months “reasons for breaches of the law governing the press and professional ethics”.

8. After the general elections of 2020, Evariste Ndayishimiye was elected as the new President of Burundi. Some positive moves with regards to press freedom have been recorded thereafter. The President met with media professionals on January 28th, 2021 and lifted bans on suspensions on some media houses, however, some online platforms like the website of the Iwacu independent press house has been inaccessible from Burundi since in 2017.

International, regional, and domestic human rights obligations

9. Burundi has ratified different international human rights related treaties and conventions. These include the ICCPR - International Covenant on Civil and Political Rights and the CESCR - International Covenant on Economic, Social and Cultural Rights, both ratified in 1990.⁷
10. Moreover, Article 19 of the current Burundian Constitution provides that the rights and duties proclaimed and guaranteed by regularly ratified international human rights texts form an integral part of the Burundian Constitution⁸.

Freedom of Expression and Opinion

11. Article 31 of the 2018 Constitution guarantees freedom of expression, providing that, “The State respects freedom of religion, thought, conscience, and opinion”⁹.
12. After the attempted coup of May 13th 2015, 5 private radio stations were closed,¹⁰ including Radio Public Africaine, Radio Bonesha FM, Radio Isanganiro, Radio TV Renaissance and Radio TV Rema. So far, Radio Isanganiro, Radio TV Rema and Radio Bonesha FM have been reopened. As of October 2022, two radio stations are yet to be reopened.
13. The advent of President Evariste Ndayishimiye has brought hope for positive evolution regarding freedom of the press in Burundi, but substantive reforms are yet

⁷ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BDI&Lang=EN

⁸ <https://www.presidence.gov.bi/2018/07/03/6271/>

⁹ Constitution of Burundi, 2018., Art, 31.

https://www.constituteproject.org/constitution/Burundi_2018.pdf?lang=en

¹⁰ <https://cpj.org/2015/05/amid-violence-in-burundi-radio-stations-attacked/>

to be made in order to improve the state of civic freedoms.

14. On December 24th 2020, the President granted a presidential pardon to four reporters working for the *Iwacu* press house, who had spent 14 months in prison. These journalists were arrested in October 2019 while trying to cover clashes between the Burundian army and a Congo-based rebel group in the western part of Burundi.¹¹
15. On January 28th 2021, President Evariste Ndayishimiye invited all media professionals still working in Burundi for a meeting. During the meeting, the President stated that “all media houses are partners for sustainable development, and urged the National Communication Commission to open a constructive dialogue with all closed media for their reopening”¹². Shortly after, on February 22nd 2021, Radio Bonesha FM, one of the independent radios closed in 2015 was reopened.¹³
16. In the framework of the meeting between President Evariste Ndayishimiye with media professionals, the managing team of *Iwacu* press house was invited in a meeting with the head of the National Communication Commission on February 11th 2021. The goal was to see how the website of *Iwacu* press house could be made available again from Burundi¹⁴. However, that website (<https://www.iwacu-burundi.org>) is still unavailable from Burundi as per September 2022.
17. Despite the positive changes to advance media freedoms in Burundi, the operational environment and legal framework still remain restrictive. It has been stated that independent journalists working in Burundi are often pushed to publish the official version of events rather than conduct independent investigations in fear for their safety.¹⁵
18. In August 2021, the President attacked two journalists in exile, for apparently questioning the surge in covid-19 and inflating figures in Burundi. He accused Esdras Ndikumana, a reporter for French public radio broadcaster *Radio France Internationale (RFI)*, for inflating covid cases and using *RFI* to “promote poverty in the country.”¹⁶
19. The UN Commission of Inquiry on Burundi has noted that the “National Communications Council maintains a tight control on media content and on the work of journalists and does not hesitate to call them to order in cases of “ill-conceived” articles. Ultimately, journalists who work in the country are forced to self-censor because they work under the threat of sanctions by the CNC, and of possible abusive

¹¹ <https://apnews.com/article/burundi-media-journalists-kenya-19d29f8651af88935196e7b0ac4bb9d3>

¹² <https://www.presidence.gov.bi/2021/01/28/jamais-sans-les-medias-s-e-evariste-ndayishimiye-se-prononce-en-faveur-dune-reconsideration-par-le-cnc-de-certaines-mesures-de-restriction/>

¹³ <https://www.ghanaweb.com/GhanaHomePage/africa/Burundi-lifts-sanctions-on-local-radio-station-1186393>

¹⁴ <https://www.iwacu-burundi.org/une-nouvelle-page-souvre-peut-etre-pour-iwacu/>

¹⁵ <https://www.hrw.org/news/2021/05/26/burundi-entrenched-repression-civil-society-media>

¹⁶ Reporters Without Borders, Burundian President attacks RFI reporter covering surge in Covid cases. <https://rsf.org/en/burundian-president-attacks-rfi-reporter-covering-surge-covid-cases>

and arbitrary criminal prosecution. In addition, the Government plans to further tighten its control by revising the 2018 press law in order to prohibit the dissemination on social media of “content contrary to Burundian culture”¹⁷

20. On 23 June 2020, the Burundian Supreme Court convicted, in absentia, 12 exiled journalists, lawyers and civil society actors and sentenced them to life imprisonment for their alleged involvement in the attempted coup d’état of 13 May 2015. In the judgement published on 2 February 2021, all their assets were seized and auctioned to cover the 2.8 million dollars of damage and interests awarded to the State and the ruling party CNDD-FDD (*Conseil national pour la défense de la démocratie-Forces de défense de la démocratie*).¹⁸

Access to Information and Online Censorship

21. Since October 10th 2017, access to the website of a local independent and popular press house “Iwacu” (www.iwacu-burundi.org) became inaccessible to local users without the use of a circumvention tool (VPNS). IWACU contacted the national telecommunication regulatory authority (ARCT) and the media regulatory authority (CNC) regarding the accessibility of their site, but the regulators denied any involvement. It was later determined that the access issues were caused by an intentional censorship implemented on the national Infrastructure¹⁹. In order to allow its users to have access to their online content, IWACU set up another secure mirror website: <http://iwacu.global.ssl.fastly.net/>²⁰.
22. Further, on 10th April, 2018, the media regulator of Burundi (CNC) issued a sanction under decision No. 100/CNC/005, ordering IWACU to close its online forum for three months. The CNC justified the sanction on grounds of “inappropriate and defamatory comments” posted by a reader on April 9, 2018, where they wrote “presidential police” instead of the “national police of Burundi”, which is the official name. On the same day, another reader wrote that the Republic of Burundi was “a banana republic.” The CNC stated that the statement is contrary to the Constitution of Burundi, further stating that IWACU violated Article 17 of the press law that states that any media group should rigorously cross-check sources of information prior to broadcasting.²¹
23. In reaction to this suspension, the Director of IWACU said he was saddened by an unfair decision which was closing “democratic space” where all readers were able to freely share their opinions on Burundi, either supporting or criticizing the

¹⁷ <https://www.ohchr.org/en/statements/2021/09/oral-briefing-commission-inquiry-burundi>

¹⁸ Id.

¹⁹ <https://www.iwacu-burundi.org/probleme-technique/>

²⁰ <https://twitter.com/iwacuinfo/status/1310859212537368576>

²¹ <http://cnc-burundi.bi/wp-content/uploads/2017/11/D%C3%A9cision-IWACU-.pdf>

government. IWACU Press Group complied with the sanction. In order to avoid additional sanctions, the media house decided not to ask for the reopening of the forum. It is important to note that they had previously hired two journalists to block abusive, hateful comments from its users; however, it was impossible to counter all potentially problematic comments.²²

24. On February 11th, 2021, the suspension of the forum was lifted, after Burundian media professionals met with President Evariste Ndayishimiye who tasked the regulator, CNC, to dialogue with all sanctioned media houses in order to lift all ongoing sanctions against media.

Internet shutdowns and disruptions

25. On 20 May 2020, when Burundi held its general elections, it was widely reported that all social media and messaging apps were disrupted and unavailable.²³ In order to use WhatsApp messenger, Facebook, Twitter, Youtube, Burundians had to use circumvention tools such as VPNs as reported by BBC²⁴. Having faced internet disruptions in 2015, citizens anticipated a repeat and many were able to bypass the disruptions through using VPNs.
26. According to Facebook's Transparency report, the service disruptions lasted 18 hours.²⁵ The government made no official communication about the internet disruptions, although the President's spokesperson at that time, Amb. Willy Nyamitwe tweeted that "contrary to fake news, Internet was working fine in Burundi,"²⁶ in response to a tweet by a Belgian journalist, Damien Roulette, working for a Belgian media house, RTBF) stating that the Internet was disrupted in Burundi on election day.
27. Many African states continue to justify internet shutdowns and disruptions especially during elections on grounds of "national security" and "public order", stating that the spread of fake news through social media networks poses a safety concern.
28. Two days before the Internet service disruption that occurred on the 20th May 2020, Access Now's "#KeepItOn Coalition" had sent an open letter to the President of Republic of Burundi and to the telecommunication regulatory authority urging the government not to shutdown the internet on election day²⁷.

²²<https://cipesa.org/2018/07/a-new-interception-law-and-blocked-websites-the-deteriorating-state-of-internet-freedom-in-burundi/>

²³ NETBLOCKS, 20 May 2020, <https://netblocks.org/reports/social-media-disrupted-in-burundi-on-election-day-JBZLPY86>

²⁴ <https://www.bbc.com/news/world-africa-52737081>

²⁵ <https://transparency.fb.com/data/internet-disruptions/country/BI/>

²⁶ <https://twitter.com/willynyamitwe/status/1262990657297108992?s=20>

²⁷ <https://www.accessnow.org/keepiton-letter-elections-in-burundi/>

29. In addition to the Internet service disruptions that occurred around election 'periods in 2015 and 2020, there have been some others that attracted less attention from reporters or the media. For instance, access to Youtube services in Burundi was cut from 13th to 16th December 2019. This disruption was captured by the Google transparency report,²⁸ although there was no official comment on that disruption from the government.
30. However, it can be assumed that the disruption was linked to a communiqué issued by the Ministry in charge of public security on November 26th 2019, against some YouTube channels propagating fake news that could endanger the state safety. Through a video statement on the state television channel of Burundi, the spokesperson of the Burundi Police said that YouTube channels such as "Iyakure TV", "ISHAMI TV, have been spreading false and worrying news endangering the state safety of Burundi²⁹.
31. In this era, more citizens rely on the internet to access services, conduct their businesses, communicate to others and access information especially during elections. As a signatory to the ICCPR, Burundi is reminded of its commitment under Article 19 to ensure that citizens have the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.³⁰
32. Although Article 19 provides for exceptions when restrictions can be applied on the enjoyment of these freedoms (*"respect of the rights or reputations of others, protection of national security or of public order, or of public health or morals"*),ny restriction should be provided by law, serve a legitimate purpose and be necessary in a democratic dispensation.
33. On the issue of Internet shutdowns and human rights, the OHCHR (Office of the United Nations High Commissioner for Human Right) has published a guideline, providing that any Internet shutdown has to follow the principle of proportionality as well. Shutdowns must be implemented in the way to be the "least intrusive" method to accomplish a legitimate aim³¹. However, the internet disruptions have been done arbitrarily, without any legal backing or court orders.
34. In the case of the restriction applied to YouTube in Burundi in December 2019 for example, interviewed students relying on this service for their learning purpose were negatively impacted. Moreover, any Internet disruption has a negative impact on the

²⁸https://transparencyreport.google.com/traffic/overview?disruption_history=product:1;region:BI&lu=fraction_traffic&fraction_traffic=start:1575943200000;end:1576720800000;product:21;region:BI

²⁹<https://rtnb.bi/fr/art.php?idapi=3/4/242>

³⁰<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³¹<https://www.ohchr.org/sites/default/files/Documents/Press/Internet-shutdowns-and-human-rights.pdf>

economy. The global consulting cabinet Deloitte estimated that the economic loss for a low-income revenue country per day of Internet service disruption and per 10 million inhabitants is around \$0.6 million³².

Privacy and Data Protection

35. Article 28 of the 2018 Constitution provides that, "Every human being has the right to respect of their personal and family life, in addition to their home and their personal communications. " Article 19 of that Constitution, further provides that all the "conventions that Burundi has ratified are part of the Constitution of Burundi". In relation to privacy, Burundi has ratified among, others, the International Covenant on Civil and Political Rights on May 09th 1990³³.
36. Article 17 of the ICCPR provides that "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."³⁴
37. *Law No 1/17*, (law on statistics), of September 25, 2007³⁵ one of the more progressive legal instruments enacted to promote data protection. The law covers how personal data is collected and used . Specifically, Article 11 provides that people from whom statistical data are being collected should be clearly informed on the future use of those personal data. Article 12 further provides that personal data collected during the statistical surveys are protected like other human rights. This data must strictly be used for statistical goals, cannot be used for judiciary purposes, and should only be published as aggregated statistical data.
38. In addition, Article 16 provides that the personal data collected during surveys cannot be publicly disclosed without the express permission of their owners. Also, article 17 obliges the data collectors not to disclose directly or indirectly the identity of the surveyed people. and that stipulates under Article 18 reads that the surveyors should strictly follow the secrecy policy related to their job.
39. Burundi also possesses other legal instruments that provide for personal data protection in the telecommunication sector. *The Law No 1/011 of 1997*, covering electronic communications, obliges service providers and their staff to protect the privacy of their subscribers, Article 24 of same law allows service providers to provide confidential information upon demand, only if that demand is proven lawful as per the mandate of the telecommunications regulatory authority, (ARCT). Additionally,

³²<https://www2.deloitte.com/global/en/pages/technology-media-and-telecommunications/articles/the-economic-impact-of-disruptions-to-internet-connectivity-report-for-facebook.html>

³³<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³⁴ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BDI&Lang=EN

³⁵ <http://isteebu.bi/images/isteebu/loi%20statistique%20du%20burundi.pdf>

Article 40 stipulates that any staff member of a service provider or subcontractor who infringes end user's rights to confidentiality of communication shall face legal prosecution in accordance with the penal code of Burundi.³⁶

40. In addition to that Law, the Telecommunications regulatory authority has published guidelines on the rights and duties directed to all the users of electronic communications on its website. Those rights and duties provide for instance that personal data should not be disclosed to any entity except the legally authorised ones.³⁷
41. In this regard, SIM card registration has been mandatory in Burundi since April 2014. In fact, the order number 01 issued by the Director General of the ARCT³⁸ obliges any mobile phone subscriber to provide some personal data such as : the full names; full address and the birth date; passport photograph; copy of identity card of passport, and the serial number of the user phone.
42. About the identity card itself, we have to note that it has some additional personal data: the gender, the name of the father, the names of the mother, the birth date, the birth place, the employment and the marital status. Also, a subscriber must be physically present and a minor must be accompanied by his guardian.
43. In addition to these progressive legal texts however, Burundi has adopted others that have regressive provisions regarding the privacy and personal data protection. Among others, is the *Ministerial law No 540/356* issued by the Ministry in charge of Finance and State on March 17th 2016. The law is entitled "Ministerial law aiming at fighting criminality done by the uses of electronic communications"³⁹. Article 6 of that law provides that the ARCT or its technical partner have the right to order surveillance of communications of any citizen who is suspected of fraudulent behavior by the use of electronic communications.
44. This article doesn't provide precisely which technical partner can be allowed to work with the Telecommunications Regulator- ARCT, which is an official institution. This vagueness can easily lead to arbitrary interpretation of the law and abuse of process.
45. Article 8 of the same law provides that the ARCT and its technical partner have the right to conduct any kind of control into the technical installations of a telecommunication service provider, at any moment without prior notification. This ambiguity can further lead to abuse as well. Moreover, Article 9 provides that the ARCT or its technical partner have the right to request the full identity, the IP address of an Internet subscriber to Internet service provider. Also, that article 9 provides the

³⁶ <http://www.arct.gov.bi/images/decretslois/decret011.pdf>

³⁷ <http://www.arct.gov.bi/index.php/consommateurs/droits-et-devoirs>

³⁸ <http://www.arct.gov.bi/images/circulaires/circulaire2.pdf>

³⁹ <http://www.arct.gov.bi/images/image0008.pdf>

right to install probes into the technical installations of an Internet Service Provider.

46. On the list of regressive laws against online privacy and personal data protection, on May 11th, 2018 Burundi adopted a new code of criminal procedure, (Law No 1/09 of May 11 2018)⁴⁰ replacing the code of 2013. That law introduces for the first time the use of interception of electronic communications and computer data seizures as investigation methods. Chapter III provides for what is called special investigation methods. Article 47 cites special investigation methods such as interception of electronic communications sent or received by a suspected criminal. Article 61 defines the investigation method called 'infiltration'. Here, a police officer called infiltrator is allowed to use a fake identity to relate with individuals or groups of suspects.
47. Articles 69, 70 and 71 provide details about the interception of correspondences emitted by the use of telecommunication tools. In summary, the articles stipulate 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. Also, the public prosecutor has the right to request the installation of any interception tool by any entity either the service provider or any skilled agent.
48. The law also provides for seizure of computer data under: Articles 72, 73, 74, 75, 76, 77, 78, and 79 : Without notifying the suspect, the public prosecutor has the right to order the use of technical tools that can check computer data of the suspect wherever it is located or take the screenshots of what is displayed on the terminal being used by suspects. The duration of this order cannot exceed 6 months. Also, the seized data has to be destroyed after the trial. We think that such interception of electronic communications and seizure of data can lead to abuses due to the absence of any authority in charge of overseeing the process.
49. Specifically, Article 131 allows the seizure of computer data when a device is on site, or remotely by the use of technical tools. If it becomes evident that the wanted computer data are hosted out of Burundian territory, they can also be seized through the use of international agreements in force according to article 133.
50. A Judicial police officer is allowed to resort to any means or person who has the required skills in order to access those data in case they are technically protected (encrypted for example). The identified person has the obligation to help in that matter as provided under article 134 of that code.
51. The main goal of this new code of penal procedures was to adapt the penal procedures to the advancing digital and ICT terrain. The new code has been criticised as a hindrance to privacy rights.⁴¹

⁴⁰ <https://assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf>

⁴¹ <https://www.yaga-burundi.com/2018/burundi-le-nouveau-code-penal-enterre-le-droit-a-la-vie-privee/>

52. Despite having several laws providing for privacy and data protection aspects, Burundi has no specific legal framework comprehensively addressing privacy and data protection., let's note that Burundi has no specific text of law yet. In 2017, a draft law was prepared by the Telecommunications Regulatory Authority, advocating for the setting up of a framework and data protection authority which has not been enacted yet.

Recommendations

As noted above, Burundi has faced several restrictions and inhibitions to freedom of expression, access to information, and digital rights in general both on and offline. We therefore urge that freedom of expression, media, access to information, the right to privacy and online human rights become prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Burundi:

1. The media fraternity appreciates the positive will expressed and steps taken by President Evariste Ndayishimiye to enhance media freedom in Burundi, specifically through the removal of sanctions on media houses. We recommend the government of Burundi to re-open all the remaining media houses closed since 2015 and remove the censorship on the website of *IWACU* press house and others.
2. End intimidation and harassment of journalists and others exercising their right to free expression, amend all press laws that unnecessarily hinder media freedom and hold to account those that violate journalists' rights.
3. A draft law on privacy and personal data protection has been prepared by the telecommunication regulatory authority since 2017 and no steps have been taken towards its adoption. We recommend the enactment of a comprehensive data protection law in accordance with international normative standards, to protect the right to privacy online, and adequate funding and support for its implementation.
4. Ensure that the internet, including social media and other digital communication platforms, remain open, accessible, and secure across Burundi, and that the government refrain from any future internet disruptions, especially during elections.