

## **Introduction**

1. The Republic of Senegal, located on the Atlantic coast, is considered one of the most stable electoral democracies in Africa. French is the official language but the majority of the population speaks Wolof. Senegal is an interconnected country with 94 per 100 persons having active mobile broadband subscriptions, according to the latest ITU figures.<sup>1</sup>
2. As per Freedom House, the country is known for its relatively independent media and free expression, though defamation laws and attacks on journalists continue to constrain press freedom.<sup>2</sup> State-sanctioned internet disruptions occurred in 2021 and 2023 in response to protests against the arrest of opposition politician, Ousmane Sonko. During these protests, security forces used violence against the protestors.

## **Update from previous review**

3. During Senegal's third cycle review in November 2018, 257 recommendations were made, where 229 were accepted and 28 were noted.<sup>3</sup> Senegal received recommendations on media rights from France, Chile, Peru, Greece and Sweden<sup>4</sup>.
4. In its third cycle national report, Senegal committed to "priority initiatives and commitments implemented to overcome the difficulties and constraints for the improvement of the human rights situation on the ground".<sup>5</sup>
5. In contrast, throughout the period under review, restrictive measures have been taken by the authorities undermining freedom of expression and opinion, freedom of information and online privacy. Extremist activities and conflict in the Sahel had spillover effects on Senegal.<sup>6</sup>
6. Two elections (local and legislative) took place in 2022, preceded by violent demonstrations that took place in March 2021 following the arrest of Ousmane Sonko, a leading opposition figure, which led to government- implemented internet shutdowns.

<sup>1</sup> <https://datahub.itu.int/data/?e=SEN&i=11632&u=per+100+people>

<sup>2</sup> <https://freedomhouse.org/country/senegal>

<sup>3</sup> Recommendations P144.4 and P144.19 relating to human rights UPR cycle 3 of 2018.

<sup>4</sup> KALEMARA (AH), "Senegal fails to prioritize human rights Online", see: <https://www.opennetafrica.org/senegal-fails-to-prioritise-human-rights-online/>

<sup>5</sup> Universal Periodic Review Working Group 31st session, national report of Senegal submitted in accordance with paragraph 5 of the review of Human Rights Council resolution 16/21 12, see: A/HRC/WG.6 / 31/SEN/1 ([upr-info.org](http://upr-info.org))

<sup>6</sup> <https://odi.org/en/publications/the-sahel-conflict-economic-security-spillovers-on-west-africa/>

7. Two years later, a court in Senegal on, June 1 2023, sentenced Sonko to two years in jail for "corrupting youth," triggering a further round of restrictions to internet access <sup>7</sup>
8. During the Covid- 19 pandemic, authorities processed, collected and located people suspected of contracting Covid 19 making it possible to conduct surveillance and trace. <sup>8</sup>
9. The National Assembly revised several laws, under the justification of combating terrorism: These include provisions of Law No. 2021-33 amending Law No. 65-60 of July 21, 1965 on the Penal Code, and Law No. 2021-34 amending Law No. 65-61 of July 21, 1965 on the Code of Criminal Procedure <sup>9</sup>. Rights groups condemned the legislation, saying that the amendments are overly broad, and could be used to silence dissent and expand police surveillance powers.

### **Freedom of expression and opinion online**

10. Senegal is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights.<sup>10</sup>
11. Freedom of expression is guaranteed by the 2001 Constitution of Senegal under articles 8 and 10 respectively<sup>11</sup>. Article 10 stipulates that *"everyone has the right to express and freely disseminate their opinions by word, by pen, by image or by peaceful march, provided that the exercise of these rights does not undermine the honour and respect due to other people, nor threaten public order"* Under article 8, civil and political freedoms are guaranteed including: freedom of opinion, freedom of expression, freedom of the press, freedom of association, freedom of assembly.
12. Freedom of expression online has deteriorated in Senegal during the period of review. In 2023, Senegal was ranked 104th out of a total of 180 countries in Reporters without Borders World Press Freedom Ranking. In 2022 Senegal was ranked 73 out of 180 <sup>12</sup>Therefore, in two years, the country drastically declined by 55 positions.<sup>13</sup> This retrogression has been attributed in part to the detention of journalists combined with a "sharp deterioration in the security conditions of journalists" <sup>14</sup>.

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<sup>7</sup>[https://www.lemonde.fr/en/le-monde-africa/article/2023/06/01/senegalese-opponent-sonko-sentenced-to-2-years-for-corrupting-youth\\_6028733\\_124.html](https://www.lemonde.fr/en/le-monde-africa/article/2023/06/01/senegalese-opponent-sonko-sentenced-to-2-years-for-corrupting-youth_6028733_124.html)

<sup>8</sup>GUEYE (ND), "Digital surveillance to combat covid-19: the right to privacy and the right to information at risk in Senegal", available at: <https://africaninternetrights.org/sites/default/files/Ndiaga%20Gueye.pdf>, accessed April 27, 2023.

<sup>9</sup>JORS special issue N°7444 of Friday July 31, 2021.

<sup>10</sup> [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en)

<sup>11</sup>Constitution of January 7, 2001 (JORS, n°5963 of January 22, 2001).

<sup>12</sup>"Senegal: freedoms put to the test of the presidential election of 2024? » , last updated on March 09, 2023 on: <https://fr.africanews.com/2023/03/09/senegal-les-libertes-a-lepreuve-de-la-presidentielle-de-2024//>, accessed April 24, 2023.

<sup>13</sup> <https://lequotidien.sn/liberte-de-la-presse-le-senegal-senlise/>, consulted on May 07, 2023

<sup>14</sup>Ibid.

13. Legal provisions also hinder freedom of expression. In particular, certain provisions of Articles 248 relating to offences committed by any means of public dissemination and 254 of Law No. 77-87 of August 10, 1977 amending Law No. 65-61 of July 21, 1965 on the Penal Code, penalise the offence of insulting the Head of State <sup>15</sup>.
14. Law n° 2017-27 of 13 July 2017<sup>16</sup> on the press code was adopted and passed by the National Assembly in early 2021,<sup>17</sup> despite criticism from journalists and civil society specifically on the removal of articles decriminalisation press offences. Loopholes in this law have led to the arrest of journalists.<sup>18</sup> Serigne Saliou Gueye was arrested under article 22 for not having a professional press card. He was prosecuted for contempt of court, usurpation of the profession of journalist and complicity.<sup>19</sup>
15. .During the period under review, journalists and media workers have been physically assaulted and threatened. During the violent demonstrations that took place in March 2021 following the arrest of Ousmane Sonko, the TV channels Walf and Sen which had live broadcasts of the protests saw their signal cut off by the audiovisual regulatory authority, the CNRA <sup>20</sup>.The headquarters of the Gfm group were also attacked during the events of 2021 and journalists also reported receiving death threats<sup>2122</sup>.
16. Walfadjri Group TV signal was disabled for a month by the Minister of Communication, Telecommunications and the Digital Economy on grounds of "broadcasting images of violence exposing minors, accompanied by subversive and hateful comments undermining the stability of the State. Such acts have further muzzled media professionals, according to the coordination of press associations. <sup>23</sup>

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<sup>15</sup>" The offense to the President of the Republic committed by one of the means of public dissemination (radio broadcasting, television, cinema, press, display, exhibition, distribution of writings or images of all kinds, speeches, songs, cries or threats made in public places or meetings, and generally any technical process intended to reach the public) is punishable by imprisonment from 6 months to 2 years and a fine of 100,000 to 1,500,000 francs or only one of these two penalties".

<sup>16</sup>Law n° 2017-27 of July 13, 2017 on the Press Code JO n°7036 of Saturday August 19, 2017.

<sup>17</sup>Press Code: Macky Sall finally signs the application decrees, by the Daily, published on January 07, 2021 on: <https://lequotidien.sn/code-de-la-presse-macky-signe-enfin-les-decrets-dapplication/>

<sup>18</sup> The draft decree relating to the advantages and obligations attached to press company statutes, and the draft decree setting the terms of organization and operation of the Press Support and Development Fund were adopted yesterday by the Council of ministers, see: <https://lequotidien.sn/code-de-la-presse-macky-signe-enfin-les-decrets-dapplication/>, consulted on April 27, 2023.

<sup>19</sup> <https://aps.sn/le-journaliste-serigne-saliou-gueye-defere-au-parquet-avocat/>

<sup>20</sup>Decision suspending the broadcasting of Walf tv programs, available on the official CNRA website, see: <http://www.cnra.sn/do/decision-portant-suspension-de-la-diffusion-des-programmes-de-walf-tv/>, accessed May 2, 2023.

<sup>21</sup>Report on the state of freedom of expression in Senegal ( MFWA/SYNPICS) in 2021, p 7.

<sup>22</sup>NDIAYE (A), "Death threat to a Walf tv journalist: SYNPICS condemns", published on March 07, 2022 on: <https://liiquotidien.com/menaces-de-mort-sur-un-journalist-de-walf-tv-le-synpics-condamne/>, consulted on March 08, 2023.

<sup>23</sup>Walf signal cut ", published on June 13, 2023 on [www.actu221.net](http://www.actu221.net), consulted on June 20, 2023.

17. Famous columnist Papa Alé Niang, who presents a live broadcast on his YouTube channel *Dakar Matin*, was arrested in November 2022 and charged with "receiving and publishing military documents without authorization and likely to harm the national defence", and "dissemination of false news likely to discredit public institutions"<sup>24</sup>.
18. On 26 April 2023, journalist Babacar Touré was taken into custody for alleged defamation<sup>25</sup>. After continuously reporting to the prosecution, he was charged with defamation, endangering the lives of others and spreading false news<sup>26</sup>.
19. Article 2 paragraph 18 of Law 2017-27 of 13 July 2017 on the Press Code of 19 August 2017<sup>27</sup> and article 192<sup>28</sup> relating to the Press Code contains restrictive provisions which are likely to hinder the freedom of the press on the grounds of "secret-defence". They grant exceptional police powers to the administrative authorities in certain circumstances which may restrict the exercise of the freedom to inform<sup>29</sup>.
20. Provision in the Penal Code combating "false and misleading", hate speech and cybercrime information have given discretionary powers to authorities to prosecute individuals<sup>30</sup>. Article 255 of the Penal Code stipulates that "the publication, dissemination, disclosure or reproduction, by any means whatsoever, of false, fabricated, falsified or falsely attributed news to third parties" which causes civil disobedience, endangers the population or discredits public institutions is an offence punishable by 'imprisonment of one to three years and a fine of 100,000 to 1,500,000 francs'.
21. Article 258 of the Penal Code relating to the offence of defamation provides that "Any allegation or imputation of a fact which undermines the honour or the consideration of the person or the body to which the fact is imputed is defamatory". These provisions contribute to restricting the freedom of information and the exercise of journalists<sup>31</sup>.

<sup>24</sup>Report on the state of freedom of expression in Senegal ( MFWA/SYNPICS) in 2021, ibid.

<sup>25</sup> <https://www.seneplus.com/media/le-journalist-babacar-toure-place-en-gade-vue>

<sup>26</sup> [https://www.pressafrik.com/Le-journalist-Babacar-Toure-inculpe-puis-place-sous-controle-judiciaire\\_a256823.html](https://www.pressafrik.com/Le-journalist-Babacar-Toure-inculpe-puis-place-sous-controle-judiciaire_a256823.html) , accessed May 7, 2023.

<sup>27</sup>"The report, by text, image and sound, of war, terrorist acts, accidents and disasters finds its limits in the respect of 'secret-defence', the suffering of the victims and /or loved ones, the morale of troops or populations in times of crisis".

<sup>28</sup>"When the obstacle to the freedom of the press and of communication is exerted with violence on the journalist, the media technician or against the press company, the provisions of the Penal Code relating to willful violence, destruction and degradation are applicable. "

<sup>29</sup>Report on the state of freedom of expression in Senegal ( MFWA/SYNPICS) in 2021, p 6.

<sup>30</sup> Senegal. Laws against fake news must meet international standards" by Article 19, published on July 04, 2023 at: <https://www.article19.org/resources/senegal-laws-for-disinformation/>

<sup>31</sup>GOMIS (NC), "Offence of offense to the Head of State, law on defamation, law on rape...: these catch-all laws which confine the citizen" published on February 03, 2023 on: [www.sudquotidien.sn/delit-doffense-au-chef-de-letat-loi-sur-la-defamation-law-sur-le-rape-ces-lois-fourre-tout-qui-confinent-le-citoyen/](https://www.sudquotidien.sn/delit-doffense-au-chef-de-letat-loi-sur-la-defamation-law-sur-le-rape-ces-lois-fourre-tout-qui-confinent-le-citoyen/) , accessed April 30, 2023.

22. Under the review period, people were arrested for having expressed critical political opinion against the government, in particular through social networks. Several arbitrary arrests were conducted of people who commented or shared opinions and charged with either spreading false news, attacking the honour of magistrates or insulting the Head of State and defamation<sup>32</sup>.
23. In July 2019 journalist Adama Gaye was arrested for insulting the President in a post on Facebook<sup>33</sup>. He was prosecuted and then granted provisional release on 21 September 2019 and was exiled to Egypt.<sup>34</sup> Activist Guy Marius Sagna was prosecuted for spreading false news, indecent remarks and insulting the head of state<sup>35</sup>.
24. In the midst of the electoral campaign for the 2022 legislative elections, opposition MP Cheikh Abdou Bara Dolly was arrested and charged with spreading false news, insulting the Head of State and defamation for remarks he allegedly held during a meeting in place of the nation.<sup>36</sup> He had been granted parole, but the magistrate ordered that the case be referred to the criminal court.
25. On 3 August 2022, Pape Ibra Guèye, also known as Papito Kara, a famous satirical columnist on social media was arrested for the offence of disseminating false news, and "for deletion, modification, fabrication and use of computer data to publish headlines from media outlets and newspapers" before they were made public by the outlets.<sup>37</sup> He spent six months in detention before being granted provisional release on 16 January 2023.
26. A few days later, activist Outhmane Diagne, a close friend of the political opposition opponent Ousmane Sonko, was arrested and detained for spreading false news for "sharing emoticons on satirical front pages".<sup>38</sup> He shared the front pages of satirical newspapers on his Facebook page, along with 3 smiley face emojis.<sup>39</sup> He spent six months in detention before being granted provisional release at the beginning of January 2023. Falla fleur, a high-profile opposition activist was also arrested for his online remarks<sup>40</sup>. Adding to the high number of persons arrested and prosecuted for online expression.

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<sup>32</sup>Amnesty international report Senegal 2022, available at: [www.amnesty.org](http://www.amnesty.org)

<sup>33</sup>[https://www.pressafrik.com/Arrestations-de-Guy-et-Adama-Gaye-Quand-le-journalist-Daouda-Mine-corrige-le-procureur\\_a203537.html](https://www.pressafrik.com/Arrestations-de-Guy-et-Adama-Gaye-Quand-le-journalist-Daouda-Mine-corrige-le-procureur_a203537.html)

<sup>34</sup> <https://www.rfi.fr/fr/afrique/20190921-senegal-journaliste-adama-gaye-remis-liberte-provisoire>

<sup>35</sup>[https://www.pressafrik.com/Arrestations-de-Guy-et-Adama-Gaye-Quand-le-journalist-Daouda-Mine-corrige-le-procureur\\_a203537.html](https://www.pressafrik.com/Arrestations-de-Guy-et-Adama-Gaye-Quand-le-journalist-Daouda-Mine-corrige-le-procureur_a203537.html)

<sup>36</sup>Ibid.

<sup>37</sup> <https://www.article19.org/resources/senegal-rise-in-censorship-free-speech/>

<sup>38</sup>Ibid.

<sup>39</sup> <https://www.article19.org/resources/senegal-rise-in-censorship-free-speech/>

<sup>40</sup>CISSE (MB), " Dic : here is the reason for the arrest of Falla Fleur", published on May 30, 2023 on: [www.seneweb.com](http://www.seneweb.com), consulted on June 20, 2023.

**Internet Shutdowns**

27. In March 2021, internet services were disrupted including social media platforms such as WhatsApp and YouTube were partially blocked for a few days, as clashes between protesters and riot police intensified following the arrest of opposition leader Ousmane Sonko. The Audiovisual Regulatory Council (CNRA) also briefly suspended two television stations for their coverage of the protests, saying that such coverage "could threaten national stability or social cohesion."<sup>41</sup>
28. A criminal court in Dakar sentenced Senegalese opposition figure Ousmane Sonko, a candidate in the 2024 presidential election, to two years in prison for "corruption of youth" and acquitted him of alleged rape. Following the conviction on June 1, 2023, three days of violent protests <sup>42</sup> broke out in Dakar and other localities in Senegal, in which 25 people have died, making it one of its deadliest bouts of civil unrest in decades.<sup>43</sup>
29. During that time the Senegalese government cut access to mobile internet services in certain areas and the Minister of Interior, Antoine Diome confirmed the social media shutdown as a "necessary measure" by the government to prevent the spread of violence and hatred on those platforms. Access was restricted to instant messaging platforms and social networks such as WhatsApp, Twitter, Facebook, Instagram and YouTube<sup>44</sup>. A press release from the Ministry of Communication, Telecommunications and the Digital Economy, stated that "mobile data internet is temporarily suspended in certain localities of the country and on certain time slots <sup>45</sup>" in order to put an end to the "dissemination of messages of hatred and subversion in the context of disturbing public order" <sup>46</sup>. These restrictions fail the three-part test set out in Article 19(3) of the ICCPR in terms of legality, legitimacy and proportionality.
30. Internet shutdowns adversely affect journalists and media in general because they compromise the exercise of their profession and drastically restrict the right to access information on online platforms and social networks <sup>47</sup>.

<sup>41</sup> <https://freedomhouse.org/country/senegal/freedom-world/2022>

<sup>42</sup> <https://www.reuters.com/world/africa/senegals-protest-hit-capital-left-with-looted-shops-debris-2023-06-03/>

<sup>43</sup> <https://www.amnesty.org/fr/latest/news/2023/06/senegal-amnesty-international-demande-une-enquete-independante-sur-la-repression-meurtriere-lors-des-manifestations/>

<sup>44</sup> <https://www.accessnow.org/press-release/keep-people-connected-senegal/>

<sup>45</sup> See official press release from the MCTEN of Senegal. [https://senego.com/diffusion-de-messages-haineux-letat-decide-de-couper-linternet-mobile\\_1558999.html](https://senego.com/diffusion-de-messages-haineux-letat-decide-de-couper-linternet-mobile_1558999.html)

<sup>46</sup> THIOUBOU (MW), "consequences of the riots: the State temporarily suspends the Internet of mobile data", published on June 05, 2023 on: <https://lequotidien.sn/consequences-des-emeutes-letat-suspend-temporairement-linternet-des-donnees-mobiles/>, consulted on June 19, 2023.

<sup>47</sup> Senegal: access to social networks restricted in a climate of protest, published on March 05, 2021, on: <https://teknolojia-news.com/2021/03/05/reseaux-sociaux-senegal-succombe-aux-sirenes-de-la-censure/>, consulted on March 26, 2023.

31. Article 8 of the Constitution guarantees *"the right to plural information"*.
32. The bill on access to public information and its implementing decrees was drafted on 20 June, 2017 and has been slow to be adopted <sup>48</sup>. This delay has hindered the exercise of the right to access information <sup>49</sup>. As a result, journalists always run the risk of prosecution under press offences for publishing information relating to the defence security forces <sup>50</sup>.
33. Although access to information is enshrined in Article 5 of law 2017-27 of July 13, 2017 on the Press Code, however, the media encounters enormous difficulties in the exercise of this right.  
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34. Despite the repetitive arrests and the restrictive laws,<sup>52</sup> Article 27 of the 2018 Electronic Communications Code grants the regulatory authority unlimited powers in the sense that it not only allows it to regulate online communications, but also to control content and restrict internet access. This constitutes a form of censorship in the sense that it can lead to a violation of the right of access to information and may hinder freedom of information <sup>53</sup>.
35. With regard to these provisions, there are concerns regarding law enforcement controls on data governance including certain obligations of intermediaries, including risks of disclosure of information/data to law enforcement authorities, filtering or blocking of content and limitations of internet service <sup>54</sup>.

### **Right to data protection and online privacy**

36. Article 13 of the Constitution guarantees the right to privacy as follows; *"The secrecy of correspondence [and] of postal, telegraphic, telephonic and electronic communications[,] is inviolable. Restriction of this inviolability, may only be ordered in application of the law"*.
37. Currently, the final adoption of the 2019 draft law amending law 2008-12 of 25 January 2008 on the protection of personal data is eagerly awaited by civil society actors. Civil society

<sup>48</sup> [https://dataactivist.coop/guide\\_pagof/documentation/1-senegal-rendre-effectif-droit-acces-information/](https://dataactivist.coop/guide_pagof/documentation/1-senegal-rendre-effectif-droit-acces-information/), consulted on May 08, 2023.

<sup>49</sup>Report on the state of freedom of expression in Senegal ( MFWA/SYNPICS) in 2021, op cit .

<sup>50</sup>Article 64 of the Penal Code punishes the disclosure of military information with imprisonment from one to five years.

<sup>51</sup>Report on the state of freedom of expression in Senegal ( MFWA/SYNPICS) in 2021, p 6.

<sup>52</sup>Senegal: freedom of expression threatened by the revision of the penal code, by the organization ARTICLE 19, July 2021 , available at: [www.article19ao.org](http://www.article19ao.org), consulted on April 25, 2023.

<sup>53</sup>DIOUF (A), "regulation of digital platforms and freedom of expression in West Africa", Study published by the Heinrich Böll Foundation, May 2021.

<sup>54</sup> <https://cipesa.org/2021/06/apercu-de-la-responsabilite-des-intermediaries-au-senegal/>

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groups have implored the state to “expand the content of the definition of terrorism with a view to restricting freedom of expression and human rights<sup>5556</sup> at the cost of maintaining national security.

38. Further, to take "measures for the adjustment of sentences to contribute to the decongestion of prisons." Senegal adopted law 2020-28 of July 07, 2020 modifying law n ° 65-60 of July 21, 1965 on the Penal Code and enshrining placement under electronic surveillance as a mode of sentence adjustment<sup>57</sup>.
39. With regard to the protection of privacy<sup>58</sup>, the government also introduced the wearing of the electronic bracelet<sup>59</sup> under the electronic surveillance amendment. Citizens wearing the devices are at risk of sharing personal data without consent to data centres managed by the authorities. However, these standards appear to be disproportionate, illegitimate or even unethical with regard to the principles and rules which guarantee the protection of personal data in Senegal (articles 58, 62, 71, 72 of law 2008-12 of January 25, 2008 on the protection of personal data).
40. Despite protections under Article 33 on the protection of personal data which stipulates that: the processing of personal data is considered legitimate if the data subject gives his consent and the sanctions retained by the Penal Code, during the Covid-19 pandemic, the authorities processed, collected and geolocated citizens suspected of contracting the virus. This made it possible to surveil and trace<sup>60</sup> people and continuously disclose private information online without the consent of the persons<sup>61</sup>.
41. In addition, the government introduced the sponsorship of candidates for the presidential and legislative elections to which personal data of voters were collected<sup>62 63</sup>. Such data collection

<sup>55</sup> <https://freedomhouse.org/country/senegal/freedom-world/2022>

<sup>56</sup> Article 19, Senegal: Freedom of expression threatened by penal code revisions, published on August 11, 2021 at: <https://www.article19.org/fr/resources/senegal-penal-code-amendments-threaten-free-speech/#:~:text=On%2015%20june%202021%2C%20le,examine%C3%A9%20et%20adopt%C3%A9%20la%20r%C3%A9forme> .

<sup>57</sup> See JORS special issue n°7342 of Monday July 27, 2020.

<sup>58</sup> Universal Periodic Review Working Group 31st session, national report of Senegal submitted in accordance with paragraph 5 of the review of Human Rights Council resolution 16/21 11, see: A/HRC/WG.6 / 31/SEN/1 ([upr-info.org](http://upr-info.org))

<sup>59</sup> See, <http://www.bbc.com>

<sup>60</sup> GUEYE (ND), “Digital surveillance to combat covid-19: the right to privacy and the right to information at risk in Senegal”, available at: <https://africaninternetrights.org/sites/default/files/Ndiaga%20Gueye.pdf> , accessed April 27, 2023.

<sup>61</sup> Article 431-22 of Law 2016-29 of November 08, 2016 on the amended Penal Code , establishes criminal penalties can go from one prison sentence of one (1) to seven (7) years and a fine of 500,000 to 10,000,000 CFA francs or one or the other of these two penalties.

<sup>62</sup> A mini guide has been developed by the CDP Data Protection Commission to help political actors comply with current data legislation; see: [https://www.cdp.sn/mini-guide-parrainage/MINI-GUIDE\\_PDP\\_PARRAINAGE\\_ELECTIONS.pdf](https://www.cdp.sn/mini-guide-parrainage/MINI-GUIDE_PDP_PARRAINAGE_ELECTIONS.pdf)

<sup>63</sup> See Articles 70 and 71 of Law 2008-12 of January 25, 2008 on the protection of personal data in Senegal.



facilitates the identification and location of potential voters in order to optimise possible socio-political propaganda strategies<sup>64</sup>. This sponsorship system, as indicated by the Court of Justice of the ECOWAS, "violates the secrecy of the vote by obliging voters to declare in advance which candidate they intend to vote for since a voter can only sponsor one candidate"<sup>65</sup>. the collection and processing of data for sponsorship, the manipulation of data can contribute to tainting the sincerity of the vote.

42. The African Digital Right Network report published in October 2021 revealed mass surveillance practices attributed to six African countries including Senegal<sup>66</sup>. With regard to surveillance practices in the means of electronic communication, article 1 of law 2016-33 of 14 December 2016 relating to intelligence services specifies that "the intelligence services have the common mission of researching, collecting, using and the provision to the decision-making authorities of information relating to threats against the security and fundamental interests of the Nation". On the basis of article 1 and with regard to the provisions of article 10 of the said law, the intelligence services have the possibility of monitoring the Senegalese population when threats against security and national interests are threatened<sup>67</sup>.

43. In addition, when consistent evidence relating to the types of threats provided for in Article 2 of the Intelligence Act are established and in the absence of any other means, the special intelligence services may use intrusive procedures, localization techniques or surveillance to gather useful information to neutralise the threat.

44. Article 90-11 of Law 2016-30 of July 08, 2016 amending Law No. 66-61 of July 21, 1965 on the Code of Criminal Procedure allows the investigating judge or the judicial police officer or on the authorization and/or control of the public prosecutor to send requisitions to telecommunications operators and service providers or telecommunications networks for the purpose of communicating any information useful to the investigation. Article 90-17 allows

<sup>64</sup>ASUTIC report on the perception of the protection of personal data in the political and electoral context 34, available at:

[https://asutic.org/wp-content/uploads/2021/02/2021\\_02\\_25\\_ASUTIC\\_Rapport\\_Donnes\\_Personnelles\\_Contexte\\_Politique\\_Electoral\\_Senegal.pdf](https://asutic.org/wp-content/uploads/2021/02/2021_02_25_ASUTIC_Rapport_Donnes_Personnelles_Contexte_Politique_Electoral_Senegal.pdf)

<sup>65</sup>Legislative elections and sponsorship system in Senegal, see: <https://senegalpolitique.org/elections-legislatives-et-systeme-de-parrainage-au-senegal/#:~:text=La%20loi%20impose%20d%C3%A9sormais%20%C3%A0,%2C8%25%20for%20the%20pr%C3%A9sidentiel>.

<sup>66</sup> THIAMDOUM(MB), "Mass surveillance: pinned Senegal", published on October 23, 2021 at :

[https://toutinfo.net/2021/10/23/surveillance-de-masse-le-senegal-epingle/#:](https://toutinfo.net/2021/10/23/surveillance-de-masse-le-senegal-epingle/#:~:text=The%20surveillance%20of%20mass%20is%20practiced%20by%20the%20State)

[~:text=The%20surveillance%20of%20mass%20is%20practiced%20by%20the%20State](https://toutinfo.net/2021/10/23/surveillance-de-masse-le-senegal-epingle/#:~:text=The%20surveillance%20of%20mass%20is%20practiced%20by%20the%20State).

<sup>67</sup>GUEYE (ND), op cit .,

investigating judges to order intermediaries<sup>68</sup> to decrypt data or provide information on the operation of encrypted systems. However, this prerogative allows the judge to issue orders that are not subject to appeal, but again, it ignores the need to find a balance between the interests of law enforcement and respect for fundamental rights.<sup>69</sup>

45. In addition, article 20 relating to the communication obligation of law 2018-28 of December 12, 2018 on the Electronic Communications Code, allows service providers and electronic communication operators to make the required information available to authorities. However, the data may contain sensitive information or any other information likely to establish a profile on the person concerned. This is why when a treatment is carried out by public authorities or for reasons of execution of a mission of public interest (reason of public health), the law 2008-12 of January 25, 2008 relating to the protection of personal data requires a specified and rigorously supervised processing framework provided for in articles 41 paragraph 9, article 43 paragraph 5 and paragraph 8<sup>70</sup> of the law on the protection of personal data under the supervision of the data protection commission (CDP), authorising it in all legality to monitor, identify, locate and profile citizens in a disproportionate way, in particular for reasons of public health. This constitutes de facto forms of violation of online privacy. Therefore, such processing of data for purposes of public interest in general should in no way affect human rights in the digital age and particularly, privacy and personal data<sup>71</sup>
46. Faced with the risks that weigh on online privacy, Senegalese legislators established a protection regime that punishes all forms of offences relating to personal data. These include articles 421-14 and section II of law 2016-29 of November 08, 2016 amending the Penal Code. Article 431-23 of Law 2016-29 of November 08, 2016 amending the Penal Code related to the illicit processing of health data.
47. In addition, article 363 of the Criminal Code which stipulates a sentence of one to five years and a fine of 500,000 to 5,000,000 CFA for anyone who voluntarily infringes on the intimacy of private life. Articles 431-27 sanction the collection and processing of data whose disclosure would be likely to undermine the consideration of the person concerned or the intimacy of private life, by means of any process whatsoever.<sup>72</sup> Articles 431-60, sanction provides a

<sup>68</sup> Article 3(1) of Law No. 2008-08 of January 25, 2008 relating to electronic transactions designates intermediaries as " persons whose activity is to provide the public with access to services through electronic information and communication ".

<sup>69</sup> <https://cipesa.org/2021/06/apercu-de-la-responsabilite-des-intermediaries-au-senegal/>

<sup>70</sup> Ibid.

<sup>71</sup> GUEYE (ND), op cit .,

<sup>72</sup> Invasion of privacy in the digital age : the urgent need for the effectiveness and strengthening of this right, by ASUTIC Dakar, published on July 09, 2020 updated on September 23, 2022 at: [www.apc.org](http://www.apc.org), accessed April 27, 2023.

penalty of 5 to 10 years, for anyone who, by means of electronic communication, displays, exposes or projects in public view, any content contrary to morality.

## **RECOMMENDATIONS**

48. We urge that freedom of expression, access to information, and the right to privacy become prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Senegal;
  1. Stop the practice of shutting down the internet and blocking social media platforms, and make a state pledge to refrain from imposing any unlawful restrictions on internet access and telecommunication in the future, particularly in upcoming elections and protests
  2. Enact a comprehensive data protection act in line with international standards including minimising the use of personal data and end illegitimate surveillance programs
  3. Uphold media freedom by eliminating harsh penalties for press offences and end the practice of unnecessary restrictions on broadcasts, harassment and arrest of journalists and commentators critical of the state.
  4. Repeal provisions in the Penal Code, Press Code, Electronic Communications Code and others that arbitrarily interfere with the exercise of free expression, both online and offline. In particular:
    - Consider decriminalising defamation and insult laws in line with international standards.
    - Revise vague prohibitions on "national security", hate speech ", "cyber crime" and "false news" and ensure laws addressing disinformation and propaganda are in line with international standards.