

## **Access Now submission to the Universal Periodic Review**

### **“Digital rights to privacy & freedom of expression”**

#### **Burundi, Third Cycle**

##### **About Access Now**

1. Access Now ([www.accessnow.org](http://www.accessnow.org)) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 10 countries around the world, including engagement with stakeholders and policymakers in India, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet’s continued openness and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to digital security that promotes good security policies that protect user rights, including privacy and freedom of expression.
3. With this submission, Access Now draws attention to threats to human rights and the open internet in Burundi, including blocking of websites and communication services, invasive surveillance and unlawful invasions of privacy.

##### **Domestic and international human rights obligations**

4. This is the third review for Burundi, last reviewed in 2013, under the Universal Periodic Review mechanism (UPR).
5. Burundi has ratified many international human rights instruments, including the [International Covenant on Civil and Political Rights](#) (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the [Convention against Torture](#) (CAT), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
6. The Burundi Constitution protects the liberty of expression (Article 31) and the right to privacy (Article 43), including “privacy in one’s correspondence and communications.”

##### **Developments of digital rights in Burundi**

7. The internet has enabled significant advances in health, education, and creativity, and it is now essential to fully realize human rights including participation in elections and access to information. Shutdowns and blocking of internet services delay and deter the benefits of these advances and economic development more broadly, by obstructing trust in the digital economy, undermining access to information, and frustrating personal communications and resources needed for crisis response. Fixed-line and

mobile internet connectivity is essential for economic, social, cultural, political, and civic development in the digital age.

8. Though increasing, access to mobile communications networks in Burundi remains low. According to 2015 ITU statistics, Burundi only had 46.22 mobile-cellular telephone subscriptions per 100 inhabitants.<sup>1</sup> Fewer than 2 percent of Burundi residents use the internet.
9. These low penetration rates show that Burundi must take urgent steps to invest in digital communications infrastructure and networks, while improving its population's digital literacy and capacity to enjoy the fruits of digital information and communications technology (ICTs).
10. Despite the low rates of internet and mobile connectivity, according to various reports, the government of Burundi ordered the shutdown of certain social media applications on the mobile internet beginning on April 27, 2015. The applications, including Twitter, Facebook, Whatsapp, and Viber, continued to be blocked as of the morning of April 29, 2015 Central Africa Time. Although fixed--line internet did not appear to be impacted, the majority of internet users in Burundi rely upon mobile internet for connectivity.
11. The shutdown appears to have been timed to repress public demonstrations and the exercise of free expression. Protests had begun in the capital of Bujumbura in April 2015 when the ruling party nominated president Pierre Nkurunziza for a third term.<sup>2</sup> In addition to shutting off internet access, phone lines of private radio stations were cut.<sup>3</sup>
12. This incident followed the 2013 implementation of a restrictive Press Law that required journalists in the country to become accredited and reveal their confidential sources under certain circumstances, and imposes strict content restrictions requiring journalist to publish "balanced" information. This law allows "prior censorship, prohibits publication of anything relating to national security, and levies heavy fines on editors and journalists who violate the law."<sup>4</sup>

### **Privacy and data protection**

13. Despite its progressive Constitutional protection of privacy in communications, Burundi does not yet have a data protection regulation.<sup>5</sup> Data protection regulations ensure the security of personal information collected, stored, processed, and transmitted online, thereby increasing trust in and growth of digital ecosystems across the public and private sectors.

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<sup>1</sup> ITU Statistics, "Mobile-cellular subscriptions," *available at* <[http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2016/Mobile\\_cellular\\_2000-2015.xls](http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2016/Mobile_cellular_2000-2015.xls)>.

<sup>2</sup> Jillian C. York, "Despite Low Internet Use, Burundi Blocks Viber and WhatsApp Amidst Protests," Electronic Frontier Foundation, 29 April 2015 <<https://www.eff.org/deeplinks/2015/04/despite-low-internet-use-burundi-blocks-viber-and-whatsapp>>.

<sup>3</sup> <http://www.bbc.com/news/world-africa-32496088>

<sup>4</sup> York, Electronic Frontier Foundation.

<sup>5</sup> See e.g. Patricia Boshe, African Data Privacy Laws. "Data Protection Regulation in Burundi," Springer, available at <[https://link.springer.com/chapter/10.1007/978-3-319-47317-8\\_14](https://link.springer.com/chapter/10.1007/978-3-319-47317-8_14)>.

14. Data protection is also affirmed as a right in the African Union Convention on Cyber Security and Personal Data Protection. In the Convention, each State party commits to establish a legal framework that strengthens fundamental rights, "particularly the protection of physical data." The Convention's Article 10.5 affirms that, "personal data processing undertaken on behalf of the Government, a public institution, a local community, a private corporate body operating a public service, shall be in accordance with a legislative or regulatory act enacted after an informed advice of the protection authority."<sup>6</sup>
15. Burundi has not signed or ratified the Convention.<sup>7</sup>

### **Freedom of expression and internet shutdowns**

16. The right to free expression should be protected online as it is offline.<sup>8</sup> The internet is an essential enabler for the exercise of free expression in the 21st century and should be protected and promoted as the right itself.<sup>9</sup>
17. Blocking popular and affordable communications services, and surveillance and jailing prominent internet personalities, interferes with the human right to free expression. Blanket bans on entire communications services do not satisfy the recognized test for restrictions on freedom of expression.<sup>10</sup>
18. Burundi's April 2015 block of popular social media and messaging applications, coming during public protests, appears to have targeted those exercising freedom of expression, an impermissible restriction on that right. Public demonstrations do not warrant blanket bans on the communications platforms essential to realizing freedom of expression in the digital age. Civil society beseeched regional and international human rights experts to speak out on the blocking incident.<sup>11</sup>
19. The international community labels this type of blocking of telecommunications networks and services as an "internet shutdown."<sup>12</sup> Research shows that internet

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<sup>6</sup> African Union, "African Union Convention on Cyber Security and Personal Data Protection," *available at* <[https://www.au.int/web/sites/default/files/treaties/29560-treaty-0048\\_-\\_african\\_union\\_convention\\_on\\_cyber\\_security\\_and\\_personal\\_data\\_protection\\_e.pdf](https://www.au.int/web/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf)>.

<sup>7</sup> [https://www.au.int/web/sites/default/files/treaties/29560-sl-african\\_union\\_convention\\_on\\_cyber\\_security\\_and\\_personal\\_data\\_protection\\_.pdf](https://www.au.int/web/sites/default/files/treaties/29560-sl-african_union_convention_on_cyber_security_and_personal_data_protection_.pdf)

<sup>8</sup> See A/HRC/RES/32/13, "The promotion, protection and enjoyment of human rights on the Internet," 18 July 2016, available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/32/13](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13)>

<sup>9</sup> "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue," 16 May 2011, available at <[http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.PDF](http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.PDF)>.

<sup>10</sup> See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, 30 March 2017, available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/22](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/22)>.

<sup>11</sup> "Access Now, "Access urges UN and African Union experts to take action on Burundi internet shutdown," 29 April 2015, available at <<https://www.accessnow.org/access-urges-un-and-african-union-experts-to-take-action-on-burundi-interne>>.

<sup>12</sup> "Fighting Internet Shutdowns" (Access Now) <<https://www.accessnow.org/internet-shutdowns>>

shutdowns and human rights infringements go hand-in-hand.<sup>13</sup> Shutdowns disrupt the free flow of information and create a cover of darkness that allows state and non-state actors to persecute vulnerable groups without scrutiny. They also drastically harm the economy, especially by impacting mobile money transfers.

20. A growing body of jurisprudence declares shutdowns to violate international law. In 2015, experts from the United Nations (UN) Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR), issued an historic statement declaring that internet "kill switches" can never be justified under international human rights law, even in times of conflict.<sup>14</sup> In 2016, the Human Rights Council referred to internet shutdowns in its consensus Resolution 32/13, which "*condemns unequivocally* measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures".<sup>15</sup>

## Recommendations

21. Burundi can improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the government of Burundi:
- a. Commit to refrain from slowing, blocking, or shutting down internet and telecommunications services, including voice-over-internet-protocol (VoIP) and messaging applications, particularly during elections and public assemblies;
  - b. Sign and ratify the African Union Convention on Cyber Security and Personal Data Protection;
  - c. Pass data protection legislation, after robust and inclusive public consultation and drafting to ensure compatibility with the human right to privacy, the AU Convention, and the Burundi Constitution;
  - d. Commit to enhancing freedom of expression online and preventing violations by state and non-state actors, such as companies;
  - e. Commit to increasing access to and use of digital information and communications technologies;
  - f. Improve cooperation with United Nations treaty mechanisms and issue standing invitations to UN special procedures such as the UN special rapporteurs on the rights to freedom of expression and opinion, the right to and privacy;

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<sup>13</sup> Sarah Myers West, 'Research Shows Internet Shutdowns and State Violence Go Hand in Hand in Syria,' Electronic Frontier Foundation, 1 July 2015, <<https://www.eff.org/deeplinks/2015/06/research-shows-internet-shutdowns-and-state-violence-go-hand-hand-syria>> accessed 18 February 2016.

<sup>14</sup> Peter Micek, (Access Now 4 May 2015) 'Internet kill switches are a violation of human rights law, declare major UN and rights experts' <<https://www.accessnow.org/blog/2015/05/04/internet-kill-switches-are-a-violation-of-human-rights-law-declare-major-un>> accessed 18 February 2016.

<sup>15</sup> A/HRC/RES/32/13 (18 July 2016), available at <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/32/13](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13)>.

- g. Enact laws and telecommunications regulations protecting access to information and preventing network discrimination, also known as Net Neutrality.
9. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.
10. For additional information, please contact Access Now General Counsel Peter Micek ([peter@accessnow.org](mailto:peter@accessnow.org)).