

LONDA



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Senegal Digital Rights and Inclusion Report

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SENEGAL DIGITAL RIGHTS AND INCLUSION 2021 REPORT

A PARADIGM INITIATIVE PUBLICATION

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SENEGAL DIGITAL RIGHTS AND INCLUSION 2021 REPORT

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EXECUTIVE SUMMARY

Senegal is a republic dominated by a strong executive branch. Although often cited as an example of democracy in Africa, human rights are often questioned due to certain violations. Among the human rights violations, those cited included the use of torture and arbitrary arrest by security forces, harsh and potentially harmful prison conditions, a lack of independence of the judiciary, the arrest of political opponents, and the restriction of freedom of expression to specific periods.

This report aims to provide an overview of the human rights situation and shortcomings in Senegal since the beginning of the COVID-19 in 2020. Therefore, the report look at the themes of privacy and mass surveillance, and the impacts of COVID-19 on places of deprivation of liberty, or freedom of expression on communication networks in 2021. Key recommendations are also made.





INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN SENEGAL

PRIVACY, DIGITAL IDENTITY AND MASS SURVEILLANCE IN SENEGAL

Personal data management has become a serious issue worldwide and legislation has become a relevant tool for the protection of personal data, in particular the right to privacy. Today, personal data is one of the most important assets traded in the private and commercial sectors as well as in the public sector, between law enforcement and surveillance agencies.

Aware of this, Senegal has had a law on personal data since 2008, Law No. 2008-10 of January 25, 2008 on the Information Society Orientation Law (ISOL) [<https://www.cdp.sn/textes-legislatifs>]¹, one of the few African countries to have adopted such a law. In addition, it should be said that it is one of the first African countries to have signed the Malabo Convention of 2014 (23rd ordinary session of the AU summit) [Ibid].²

This agreement between member countries aims to strengthen confidence and security in cyberspace in Africa. Indeed, Senegal was the first signatory of this convention, followed by Mauritius in 2018. Massive and individual surveillance as well as tracking techniques are not without flaws, however, despite the monitoring carried out in this area. In this report, it will be appropriate to take stock of privacy, digital identity and mass surveillance in Senegal.



LAW No. 2008 - 10

LAW ON PERSONAL DATA

1. <https://www.cdp.sn/textes-legislatifs>
 2. IBID



MOTIVATIONS FOR THE ADOPTION OF LAW NO. 2008-10 OF JANUARY 25, 2008 ON THE INFORMATION SOCIETY ORIENTATION LAW (LOSI)

This broad and comprehensive data protection law covers the collection, processing, transmission, storage and use of personal data by legal entities under public or private law. The law applies to all data processing in Senegal and in any place where Senegalese law applies.

The adoption of Law No. 2008-10 of January 25, 2008 on the protection of personal data covers different protection regimes and settles the question of institutional anchoring by creating an independent administrative authority responsible

for implementing the protection regimes.

This administrative authority, the Data Protection Commission (DPC), is the guarantor of privacy in the processing of personal data. Its role is to ensure that any processing of personal data complies with the law. Its responsibilities also include informing data controllers and data subjects of their rights and obligations, handling complaints, conducting audits and sanctioning data controllers who violate the law.

FROM A NATIONAL PERSPECTIVE

The use and exploitation of personal information is of paramount importance in today's society and is expected to increase in the future. As a result, states are threatened by the practice of surveillance. Senegal has adopted a set of legal provisions to regulate this practice.³

**First of all, the
Senegalese Constitution
in its article 13 governs that:**



***“The secrecy of correspondence,
postal, telegraphic, telephone and
electronic communications is inviolable.
It can only be ordered to restrict this
inviolability in application of the law”.***

3. (Texts available on this link : <https://www.cdp.sn/textes-legislatifs>)

The law N°2008-12 of 25 JANUARY 2008 on the protection of personal data regulates the surveillance and use of personal data.

Article 1:

The law ensures that ICTs do not infringe on privacy. *"The purpose of this law is to set up a mechanism to combat breaches of privacy that may be caused by the collection, processing, transmission, storage and use of personal data."*

It guarantees that all processing, in whatever form, respects the fundamental rights and freedoms of individuals; 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 individual or public freedoms, in particular privacy.

Article 18:

Declaration of any monitoring device to the CDP: *"Apart from the cases provided for in Articles 17, 20 and 21 of this law, the processing of personal data is subject to a declaration to the Data Commission Personal"*.

The Commission shall certify receipt of any declaration. It issues, within one (1) month, a receipt that allows the applicant to implement the processing without, however, exonerating him from any of his responsibilities. This time limit may be extended once by the reasoned decision of the Commission.

The declaration, which conforms to a model established by the Commission, includes an undertaking that the processing operation meets the requirements of the law. However, only the receipt of the receipt shall entitle the implementation of a processing operation.

Article 33:

Consent: *"The processing of personal data is considered legitimate if the data subject gives his consent."*

However, this consent requirement may be waived when the processing is necessary:

- i) to comply with a legal obligation to which the controller is subject;
- ii) the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or the third party to whom the data are disclosed
- iii) for the performance of a contract to which the data subject is party or for the performance of pre-contractual measures taken at his request;
- iv) to safeguard the interest or the fundamental rights and freedoms of the data subject.

Article 34:

Unlawful collection: *"The collection, recording, processing, storage and transmission of personal data must be lawful, fair and not fraudulent."*

Article 35:

Data must be collected for specified, explicit and legitimate purposes and may not be further processed in a way incompatible with those purposes.

It must be adequate, relevant and not excessive in relation to the purposes for which it is collected and further processed. They must be kept for no longer than is necessary for the purposes for which they were collected or processed. Beyond this required period, the data may only be kept for the specific purpose of processing for historical, statistical or research purposes in accordance with the legal provisions.

Article 58:

Right to prior information: When personal data are collected directly from the data subject, the controller must provide the data subject, at the latest at the time of collection and regardless of the means and media used, with the following information:

- i) the identity of the controller and, where applicable, of his representative.
- ii) the specific purpose(s) of the processing for which the data are intended
- iii) the categories of data concerned.
- iv) the recipient or recipients or categories of recipients to whom the data may be disclosed.
- v) whether replies to the questions are obligatory or voluntary, and the possible consequences of failure to reply.
- vi) the possibility of requesting to be removed from the file;
- vii) the existence of a right of access to and rectification of data concerning him/her.
- viii) how long the data will be kept.
- ix) where applicable, any transfers of personal data envisaged to foreign countries.

Law N°2016-29 of November 08, 2016 amending the Penal Code: Art.363 bis: Of the invasion of privacy. These include:

- The invasion of privacy and the representation of the person by capturing image or sound;
- The endangerment of others, the false alarm.

In addition, in order to fight terrorism more effectively, it is imperative to modify certain offences and provide for new ones.

ON THE PROHIBITION OF UNLAWFUL RECORDING

Law N°2016-30 of November 08, 2016 amending the Penal Code: Art.90-11. - If the necessities of the search for evidence are so required, the investigating judge or the judicial police officer in the execution of a judicial delegation, may use the appropriate technical means to collect or record in real time the data relating to the content of specific communications transmitted by means of a computer system.

Therefore, the judge may oblige a service provider, within the framework of its technical capabilities and in the application of the existing technical means, to collect or record or to assist the competent authorities in collecting or recording such computer data.

PROCESSING OF PERSONAL DATA

Thus, the direct collection of personal data from users, the keeping of files, the recording, the simple handling of personal data, the consultation, dissemination, transfer of such data, storage, etc. constitute the processing of personal data. All companies processing personal data must scrupulously respect the terms of the law of January 25, 2008. However, this law excludes from its scope the processing of data by a natural person exclusively in the context of his or her daily or domestic activities, provided that there is no subsequent communication to a third party. Temporary or transitory technical copies are also excluded.

Examples of processing operations often carried out by companies include payroll, customer and prospect management, video surveillance, list of partners and suppliers, access control to premises, management of applications and hiring, management of telephone calls, and the news register.

Therefore, the CDP ensures that the processing of personal data is carried out in accordance with legal provisions. To do so, it does the following:

- informs data subjects and data processors of their rights and obligations;
- ensures that information and communication technologies (ICT) do not pose a threat to the public freedoms and privacy of Senegalese citizens;
- approves the charters of use presented by those responsible for the processing of information or data;
- keeps a directory of personal data processing available to the public;
- advises persons and organizations that have recourse to the processing of personal data or that carry out tests or experiments likely to result in such processing;
- presents to the government any suggestion likely to simplify and improve the legislative and regulatory framework for data processing;
- publishes the authorizations granted and the opinions issued in the directory of personal data processing;
- draws up a report on the processing of personal data;
- draws up an annual activity report submitted to the President of the Republic and to the President of the National Assembly;
- formulates all useful recommendations to ensure that personal data processing is carried out in accordance with the provisions in force;
- cooperates with the personal data protection authorities of third countries and participates in international negotiations on personal data protection.

LIMITATIONS AND IMPROVEMENTS TO CONTROL AND PROCESSING LAWS

Senegal has made significant progress in the monitoring and management of personal data. However, despite the legal framework for personal data processing, there are still gaps in the regulation of this sector.

For this reason, it is important to put in place new mechanisms to update the legal framework for personal data protection in Senegal.



REGISTRATION OF THE MOBILE SIM (SUBSCRIBER IDENTITY MODULE) CARD

The Director of the Regulatory Agency for Telecommunications and Posts (RATP) of Senegal, in his decision 2006-001 ART/DG/DRJ/DT/D.Rég of December 5, 2006 on the obligation to identify mobile telephone service subscribers, imposes in its first article: *“Operators are required, at the time of subscription to the mobile telephone service, to identify their customers.”*

In addition, *“they shall take all measures to oblige their distributors to carry out this identification before any sale of a mobile network smart card.”*

This policy is justified for reasons of public safety and peace of mind of citizens.

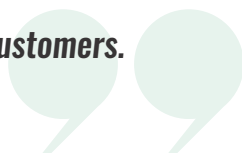
This decision does not refer to users' rights to access their data or to rectify errors in their data.

Operators are not obliged to inform users about the use and processing of their data. No information is given to users about procedures for deleting their data when they change operators, and RATP has not provided any response on this issue.

This law does not provide security for users of registered SIM cards and the right to be forgotten is not guaranteed. It, therefore, facilitates surveillance, but also monitoring and control of users by law enforcement authorities.



Operators are required, at the time of subscription to the mobile telephone service, to identify their customers.



THE IMPACTS OF COVID-19 ON DEPRIVATIVE MEASURE OF FREEDOM

While COVID-19 is still not eradicated and cases continue to increase in Senegal, the government has taken measures to reduce the number of cases. In 2020, the government took measures that affected the functioning of the justice system. Thus, the Minister of Justice had decided to suspend hearings in the country's courts and tribunals, starting March 16, 2020, for three weeks.

These measures have contributed to the overcrowding of prisons and the deprivation of liberty of people whose guilt has not yet been established. Ultimately, this undermined the effectiveness of the authorities' congestion relief measures.

EXCESSIVE USE OF FORCE

Security forces used excessive force in maintaining public order.⁴ In January 2020, a man died in police custody in the city of Fatick after reportedly being beaten by police. His autopsy findings that he died of *“natural causes”* sparked violent protests. The authorities then opened an investigation into the three police officers suspected of being responsible for the death.

In May, gendarmes used tear gas at a press conference held by youth in Cap Skirring to protest the lack of potable water in their town. At least two participants, a man and a woman, were seriously injured. In June, four people protesting the 2013 demolition of their homes in Gadaye on the outskirts of the capital Dakar were injured when police violently dispersed their rally.

4. <https://www.amnesty.org/fr/location/africa/west-and-central-africa/senegal/report-senegal/>

FREEDOM OF EXPRESSION ONLINE IN 2021: THE GOVERNMENT OF SENEGAL PLAN TO REGULATE SOCIAL NETWORKS

The communiqué of the Council of Ministers of the Government of Senegal of February 03, 2021⁵ [Council of Ministers of February 03, 2021, Government of Senegal (sec.gouv.sn)] announced that the President of the Republic has invited the Government to put in place a regulation and supervision system specific to social networks. According to the results of a new Afrobarometer survey in Senegal, the majority of citizens consider that social media facilitate the spread of false information and intolerance.⁶

However, even more believe that social media make people better informed and more effective citizens, and overall, the majority prefer unrestricted access.

The majority of Senegalese are in favor of limiting false information, false news and hate speech against the President of the Republic; but they oppose regulating access to social media and the internet.

However, the motives for the implementation of this device are questionable when you consider that the legal framework is existing.

Developed in 2016 and based on the following laws: Law No. 2016-33 on Intelligence Services, Law No. 2016-29 on the Criminal Code, Law No. 2016-30 on the Criminal Procedure Code, Law No. 2017-27 of July 13, 2017 on the Press Code, and Law No. 2018-28 of December 12, 2018 on the Electronic Communications Code, [JOURNAL OFFICIEL DE LA REPUBLIQUE DU SENEGAL]⁷ the current legal framework constitutes a real danger to freedom of expression online and the right of access to information but also to freedom of the press.



Also, this project of regulation of social networks could have as a consequence the reinforcement of the powers attacking the freedom of the press. The reasons given by the Head of State are to ensure the quality of programs broadcast on radio and television to strengthen social peace, national cohesion, the authority of the State and the interests of Senegal. But in the context of elections and political and social tension since the events of March 2021 and the prospect of presidential elections in 2024 in Senegal, it is doubtful of the good faith of this device, which seems to restrict the freedom of expression and social protest movements.

We know that social networks have allowed various political and social leaders a media presence that traditional media do not offer. Therefore, it is the treatment that journalists make of information on social networks that this device should address.

Faced with the discourse of citizens, civil society organizations, and opposition politicians who criticize government action and demand transparency, accountability, and good governance, those who claim to govern us are trying to legitimize the adoption of a legal strategy to control the way in which this information disseminated on the networks is treated by the mass media, namely radio and television.

5. Conseil des ministres du 03 février 2021 | Gouvernement du Sénégal (sec.gouv.sn)

6 <https://afrobarometer.org/press/consentiments-des-effets-positifs-et-negatifs-des-reseaux-sociaux-la-majorite-des-senegalais>

7. JOURNAL OFFICIEL DE LA REPUBLIQUE DU SENEGAL

RECOMMENDATIONS

This report highlights that freedom of expression is a fundamental human right. Every citizen can therefore speak, write and print freely, except for the abuse of this freedom in cases determined by laws and regulations. The study found that restrictions on freedom of expression in the context of platform regulation are of the legislative origin or emanate from the will of public authorities.

States tend to infringe on freedom of expression through Internet blackouts, use of force, invasion of privacy through continuous surveillance of citizens, and blocking of Internet access. These methods of regulation used by the rulers can subsequently harm the rights and freedoms of citizens. The following recommendations to the government are pertinent:

- There is a need for the government to update the legal framework for the protection of personal data. To do this, new legislation should be adopted and provisions made to adapt the legal arsenal to the digital ecosystem.
- There is a need for proper management of personal data in accordance with international standards.
- Government should ensure improved institutional frameworks for personal data protection and change the status of the personal data commission into a national regulatory authority.
- The government needs to constantly inform citizens about its surveillance practices, ensure respect for the right to privacy and personal data protection and defend against unjustified and illegal surveillance of communications.
- Ensure that any regulation of communications surveillance complies with the 13 international principles on the application of human rights to government communications surveillance.
- Ensure that the rights of cell phone subscribers with respect to their personal data are guaranteed in accordance with the Personal Data Protection Act 2008-2012.
- Establish a climate of trust, and serenity and focus on raising awareness about hate speech and disinformation.
- Invite the press to be responsible in the way they disseminate information obtained on social media platforms.

Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights - respecting Africa.



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