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DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



MAURITANIA

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Mauritania

EXECUTIVE SUMMARY

This report assesses the situation of digital rights in Mauritania during the year 2023. To this end, the report addressed internet access and disruptions, online freedom of expression, privacy and surveillance, data protection and cyber security, and the Universal Service Fund. This report concludes that although the legal frameworks address digital rights, to a limited extent, they can potentially violate digital rights and close the online civic space. This report used an analytical methodology and qualitative research methods for collecting data. The report depends on an intensive desk review, including academic work, research, online articles, and reports. It highly recommends the adoption of specific laws regulating the use and deployment of AI systems. It emphasises a human rights-based approach, protecting personal data and enacting access to information law.

Introduction

Mauritania is a North African country with an estimated population of 4,862,989 in 2023⁵⁴⁴. In 2023, 61.2% of the population lived in urban areas, while 38.8% lived in rural areas⁵⁴⁵. Generally, and in terms of freedoms, Mauritania is considered a partly free country according to the Freedom House Index⁵⁴⁶. However, regarding digital rights, Mauritania has a history of blocking the Internet during social movements such as presidential elections and exams. Despite the Mauritanian Constitution of 1991 and its following amendments guaranteeing fundamental human rights such as political freedoms and freedom of expression, most laws adopted to regulate digital rights undermine online freedoms, including freedom of expression and opinion. Although Mauritania is considered partly free according to Freedom House indicators and ranked 36 out of 100 in 2023 in terms of general freedoms - political rights and civil liberties-⁽⁵⁴⁷⁾, this does not directly mean it is free in terms of internet freedom. Mauritania is one of the African countries that has resorted to internet shutdowns in the past, with repressive laws that have been adopted undermining online freedom of expression.

It is extremely significant at the beginning of this report to mention that Mauritania is a state party to the most international and regional human rights treaties which constitute the basis of digital rights, such as the International Covenant on Civil and Political Rights (ICCPR) ratified in 2004, the International Covenant on Economic, Social and Cultural Rights, ratified in 2004, the Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2010 and the Convention on the Rights of the Child. Other treaties include the International Convention on the Elimination of All Forms of Racial Discrimination, the African Charter on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance and the African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention 2014), adopted in 2023. The adoption of the Malabo convention brought the treaty into force on 8 June 2023 after Mauritania ratified it on 9 May 2023.⁵⁴⁸

The ratification of the International frameworks is meant to promote digital rights and inclusion in Mauritania. Article 80 of the Constitution gives the ratified treaties supremacy over the ordinary laws. This means the laws should not contradict human rights conventions. In case of contradiction, the legal provisions should immediately be suspended in favour of the provisions in the conventions. Under Article 80 of the Constitution, all international human rights treaties are considered integral parts of the Mauritania legislative structure. The government should deal with them as part of the country's national laws.

544 Worldometers, Mauritania , <https://www.worldometers.info/demographics/mauritania-demographics/#pop>

545 Worldometers, Mauritania , <https://www.worldometers.info/demographics/mauritania-demographics/#pop>

546 . Freedom house, freedom in the world 2023, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2023>

547 . Freedom House, Freedom In The World 2023, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2023>

548 African Union <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>

► Country Analysis

Internet access and disruptions

According to the International Telecommunication Union (ITU), by July 2023, 113 mobile-cellular subscriptions per 100 inhabitants were recorded.⁽⁵⁴⁹⁾ Regarding the population with a fixed broadband telephone subscription, only 1 per 100 inhabitants are subscribers⁽⁵⁵⁰⁾. Moreover, 62% of the population has active mobile broadband subscriptions⁽⁵⁵¹⁾. According to The Speedtest Global Index, the fixed broadband speed in Mauritania by November 2023 was 21.44 Mbps, ranking 136 globally⁽⁵⁵²⁾. Regarding connectivity, in 2021, only 59% of the population used the Internet⁽⁵⁵³⁾. In terms of mobile network coverage, in 2022, 97% of the population are covered. However, only 44% of the population is covered by 3G mobile networks.⁽⁵⁵⁴⁾ In January 2023, 17.1% of the population were social media users.⁵⁵⁵ These figures show that there is still more to be done to ensure more people access the internet and engage on social media platforms.

From March 6-12, 2023, Mauritanian authorities shutdown and blocked mobile internet access.⁵⁵⁶ According to Access Now, “Mauritanian authorities cut off mobile internet access on March 6, 2023, immediately after four prisoners, described as “terrorists” by the Interior Ministry, escaped from a jail in Nouakchott”⁵⁵⁷. The internet shutdown targeted mobile internet while fixed internet (WiFi) remained functional⁽⁵⁵⁸⁾. This deliberate restriction on internet access followed two days of widespread protests ignited by the killing of a young man at the Sebkhya police station”⁽⁵⁵⁹⁾. This was not the first time Mauritanian authorities resorted to internet shutdowns, as the government blocked internet access before social movements such as after the presidential election in 2019.⁽⁵⁶⁰⁾ The government has shut down the internet during exam periods between 2017 to 2020.⁽⁵⁶¹⁾

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- 549 International Telecommunication Union (ITU), (2022), The Digital Development Dashboard, Mauritania . P1. https://www.itu.int/en/ITU-D/Statistics/Documents/DDD/ddd_MRT.pdf
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- 552 Speedtest Global Index. <https://www.speedtest.net/global-index/egypt#mobile>
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- 555 DataReportal , Digital 2023: Mauritania, <https://datareportal.com/reports/digital-2023-mauritania>
- 556 Netblocks <https://netblocks.org/reports/mobile-internet-disrupted-in-mauritania-following-prison-break-3An41by2> .
- 557 Access Now, KeepItOn in Mauritania: authorities must restore internet connectivity, <https://www.accessnow.org/press-release/keepiton-in-mauritania/>
- 558 Access Now, Internet shutdown in Mauritania: stop the abuse, turn it on, Published: 31 MAY 2023. <https://www.accessnow.org/press-release/internet-shutdown-in-mauritania-stop-the-abuse-turn-it-on/>
- 559 Access Now, Internet shutdown in Mauritania: stop the abuse, turn it on, Published: 31 MAY 2023. <https://www.accessnow.org/press-release/internet-shutdown-in-mauritania-stop-the-abuse-turn-it-on/>
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- 561 Waleed Ahmed, Abed Kataya, Mauritania: The drawbacks of disrupting mobile internet after prisoners escape, SMEX, 10 Mar 2023. <https://smex.org/mauritania-the-drawbacks-of-disrupting-mobile-internet-after-prisoners-escape/>

Online Freedom of Expression

Principle 1 of the African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression 2019⁵⁶² stressed the importance of freedom of expression and access to information, stipulating that "The respect, protection and fulfillment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights"⁵⁶³

Article 10 of the 2012 Constitution of Mauritania stipulates that "The state guarantees to all citizens public and individual freedoms, in particular, freedom of movement and residence in all parts of the territory of the Republic, freedom of opinion and thought and freedom of expression." Online freedom of expression is guaranteed under the law No.006-2016 Directive law on information society⁵⁶⁴. Article 7 of the latter law explicitly states that "the principle of freedom guarantees the individual the right and freedom to express, communicate, and participate in the creation and take advantage of digital information resources.". The same article stipulates that "...every individual has the right and freedom to create, use, receive, exchange and obtain information across borders." However, this legally binding article did not prevent Mauritanian authorities from using internet shutdowns on many occasions in the country.

Despite freedom of expression and opinion being entrenched in the Constitution and different legislation, the Mauritanian parliament enacted provisions that hinder online freedom of expression. Article 21 of law No. 007-2016 on Cybercrimes issued in 2016 criminalises posting photos, phrases or voice or text messages containing prejudice to Islamic values. It is vague what Islamic value refers to, or what is considered to be against Islamic values. Article (27) of the law stipulated that "any doubt in this law should be interpreted to the interest of freedom of expression". This article establishes the principle of benefit from doubt, as the priority will be given to the freedom of expression unless the freedom of expression prejudices the holy Islamic principles. This means any thoughts contradicting Islam will not be considered freedom of thought and expression. Furthermore, article 23 of the same law has criminalised using the Internet to post messages, photos or thoughts that are incitement to hatred or crimes against humanity. While hate speech is not condoned, without clarity on what is considered as incitement to hatred, this might have adverse impacts on freedom of opinion and thoughts. Article 13 of the same law clearly states that the practice of freedom of expression must respect the applicable laws and not harm the freedoms of others or public order or good manners. The law is vague and includes no provisions or list of actions that harm public order and good manners. This is, in essence, a violation of freedom of expression.

In November 2021, the Mauritanian Parliament adopted a law No.021-2021⁵⁶⁵ concerning protecting national symbols and criminalising attacks on the prestige of the State and the honour of the citizen. Article 1 of this law stipulated, "This law aims, without prejudice to the provisions stipulated in other laws, to criminalise and punish acts committed intentionally using digital media and communication technologies, and social media platforms, related to harming the prestige of the state and its symbols, national security, civil peace, social cohesion, personal life, and the honour of the citizen". This provision contains several undefined, vague, and elastic terms such as national security and social cohesion. What constitutes exact acts considered as harm to the

562 African Commission on Human and Peoples' Rights, The Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 <https://achpr.au.int/en/node/902#:~:text=The%20Declaration%20establishes%20or%20affirms,to%20express%20and%20disseminate%20information.> .

563 African Commission on Human and Peoples' Rights, The Declaration of Principles of Freedom of Expression and Access to Information in Africa 2019 <https://achpr.au.int/en/node/902#:~:text=The%20Declaration%20establishes%20or%20affirms,to%20express%20and%20disseminate%20information.> .

564 Law No.006-2016 directive law on information society. <https://mtnima.gov.mr/sites/default/files/loi201606orientationso-cietecivil.pdf>

565 Islamic republic of Mauritania Ministry of general secretariat of government ,[https://www.msgg.gov.mr/sites/default/files/2022-04/J.O.1499F DU 15.12.2021 V A.pdf](https://www.msgg.gov.mr/sites/default/files/2022-04/J.O.1499F%20DU.15.12.2021%20V.A.pdf)

prestige of the state and to states' symbols is not defined. This provision undoubtedly undermines digital rights in general and freedom of expression and opinion.

In December 2023, this law was used to sentence blogger Mohamed Vall Abdallah to one year of suspended imprisonment, coupled with a fine of one million Ouguiyas for the charge of offensive conduct and insulting the President of the Republic.⁵⁶⁶ According to SMEX, this provision is similar to provisions such as article 21 of Law No. 2016-007 on Cybercrime and the controversial article 306 of the Penal Code that has a mandatory death penalty for “blasphemous speech” and “sacrilege,” with no possibility of appeal. Such laws have a chilling effect on freedom of expression⁵⁶⁷. These two provisions already restrict the activities of journalists and human rights defenders and are more broadly incompatible with Article 19 of the ICCPR.⁽⁵⁶⁸⁾ In addition, this provision contradicts the principle of legal certainty, which demands a person knows in advance without any doubt what action constitutes an offense at law.

Privacy and Surveillance

Article 13⁵⁶⁹ of the Constitution explicitly mentions that the State must safeguard the right to privacy and the sanctity of person, property, and correspondence. In addition, article 24 of Cybercrime Law No.007-2016 criminalised the abuse of the right to privacy. Article 24 stipulates that it is considered intentional abuse of private life, recording voices, text, and images for persons by using any means and without their knowledge. A person who records any private information shall be punished by imprisonment for one month to one year and a fine from 100.000 ouguiya (USD 2500) to 1 million ouguiya (USD 25000). The same article also added that a person who intentionally published the recording should be imprisoned for two months to one year and a fine from 200.000 ouguiya (USD 5000) to 2 million ouguiya(USD 50000). Article 13 of the Directive Law of the Information Society, Law No.006-2016, clearly states that personal data must be processed without prejudice to the private lives of citizens. The law safeguards data and ensures that individual privacy is not at risk.

Article 83 of the electronic communication law No. 25-2013 states that “ operators and their employees are required to respect the confidentiality of correspondence via electronic communications and the conditions for protecting the private lives and personal data of users, provided that they respect obligations related to public security, national defense, and the powers of the judicial authority”. Article 84 of the same law prohibits listening, intercepting, disclosing, and recording correspondence transmitted via electronic communications without prior permission from the investigating judge or public prosecutor in accordance with the law within the framework of a judicial or administrative investigation aimed at national defense or public security. It is clear from the latter provision that it includes some safeguards that may protect the right to privacy and combat the arbitrary surveillance practices in Mauritania. However, Article 85 of the same law limits privacy in pursuance of a criminal investigation and for the requirements of public order, national defense, and public security.

Furthermore, in January 2020, blogger Mohamed Ali Abdel Aziz was arrested for publishing a social media video criticising President Ould Ghazouani; authorities claimed the video included insulting and racist language. Later that month, journalist Cheikh Ould Mami and video producer Abdou Ould Tajeddine were arrested concerning the video's publication. All three were released

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566 The Media Foundation for West Africa (MFWA), Mauritania: court sentences blogger over comments on social media <https://www.mfwa.org/country-highlights/mauritania-court-sentences-blogger-over-comments-on-social-media/>

567 SMEX, Mauritania: New law on protection of national symbols threatens free speech, 03 Dec 2021

568 . SMEX, Mauritania: New law on protection of national symbols threatens free speech, 03 Dec 2021.

569 This article was added to the constitution in 2012 by the constitutional law No.015-2012. <https://www.wipo.int/wipolex/ar/text/587662>

later that month ⁽⁵⁷⁰⁾. This statement by Freedom House indicates existing surveillance practices in Mauritania. Generally, the right to privacy is protected under national legislation in Mauritania. However, the above-mentioned practices illustrate that internet surveillance practices are present in Mauritania.

Data Protection and Cyber Security

In 2016 and 2017, the Mauritanian Parliament enacted Cybercrime Law No.007-2016 and Law No. 020-2017 on the protection of personal data, respectively. In terms of cybercrime law, as discussed early in this report. Regarding personal data protection, article 64 of the Data Protection Law No. 020-2017 states that “An authority shall be established to protect personal data and charged with ensuring that personal data is processed in accordance with the provisions of the law. It acquires legal personality and becomes independent”. In 2023, the Parliament passed law No.02-2023⁵⁷¹, according to which Mauritania ratified The African Union Convention on Cybersecurity and Personal Data Protection (Malabo Convention). Mauritania’s ratification of the convention on May 9, 2023 came as the 15th ratification, accordingly bringing the Malabo convention into force per article 36 of the Convention.⁵⁷²

Universal Service Fund

According to article 1/26 of Electronic Communications Law No. 25-2013, the Universal Service Fund comprises of “financial resources derived from, among other sources, contributions from operators and allocated to finance for universal access to services.” Effectively, the main source of the USF is the financial contribution of operators. Article 70 of the same law states that universal access is aimed at ensuring access to electronic communications services of good quality and acceptable prices, including the establishment of communications networks throughout Mauritania”. The law prioritises serving groups such as people with limited income, persons with disabilities and people in remote and isolated areas. Article 71 of the law stipulated that “to ensure universal access, upon the request by the Minister, the regulatory authority can take special measures to ensure that the telecommunications needs of some social groups and populations are met, including people with limited income, residents of isolated areas, and people with disabilities.

This measure is not mandatory and not under the responsibility of the regulator as long as this measure is only taken upon request from the Minister not as one of the main tasks of the regulatory authority. Furthermore, Article 4 of Decree No. 132 of 2020, which sets directions and priorities for universal access to electronic communications services, generally refers to the main usage of the USF. Article 4 of the decree states that comprehensive service programs must be implemented in areas that do not have electronic communications services or were not planned to be covered to ensure access to comprehensive service. Article 5 of the same decree added that the universal service is to provide all residents, regardless of their geographical location, at affordable prices and without interruption, with a set of electronic communications services, including the provision of fixed or mobile services, data transmission, access to high-flow Internet, installations of public telephone stations and communications centers.

570 . Freedom House, Freedom In The World 2021, Mauritania. <https://freedomhouse.org/country/mauritania/freedom-world/2021>.

571 Law No.02-2023 in concern of ratification of Malabo convention <https://msgg.gov.mr/sites/default/files/2023-07/J.O 1535 F du 15.06.2023.pdf>

572 ALT Advisory <https://dataprotection.africa/malabo-convention-set-to-enter-force/>

▶ Conclusion & Recommendations

Conclusion

Conclusion and Recommendations

Although Mauritania has a range of legislation promoting digital rights, the same laws bear the seeds that may contribute to breaching them. The different laws highlighted in this report contain vague terms which open the door to breach of digital rights. The discussion throughout the report reveals an existing gap concerning available and reliable information surrounding digital rights in Mauritania. The following recommendations are pertinent.

Recommendations

Government

- » To make information related to the USF available via governmental websites.
- » Issuing annual reports on the activities of the USF and funded projects to illustrate to what extent the USF contributes to filling the digital gap and reducing the digital divide.
- » To refrain from shutting down the Internet.
- » To desist from the practice of attacking freedom of expression using vague laws.
- » To amend the mentioned problematic laws and give a clear definition to avoid vague terms violating fundamental rights.

Academia

- » To conduct evidence-based research on digital rights in Mauritania and avail information in practice using qualitative methods to collect information, particularly interviews with human rights defenders, activities, specialised lawyers, and journalists.

Civil Society

- » To monitor, document and report on digital rights abuse.
 - » To engage more in regional events linked to digital rights, such as the Digital Rights and Inclusion Forum (DRIF) and Forum on Internet Freedom in Africa (FIFAfrica), learning regional trends and strategies to improve capacity to address cited challenges.
 - » Regional and international NGOs should invest in building the capacity of human rights defenders and activists in Mauritania to promote and defend digital rights.
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