

LONDA 2023

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



RWANDA

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Rwanda

The Rwandan Patriotic Front (RPF)-led government has overseen Rwanda's economic recovery since the 1994 genocide against the Tutsi and Rwanda. It has enjoyed an annual Gross Domestic Product (GDP) growth of more than 6%⁷³³ since 1994. The service sectors have been growing rapidly and the share of services has increased from 29% to over 47%⁷³⁴ in 2015, particularly the Information and Communication Technology (ICT) sector, which currently contributes up to 3% of the national GDP.⁷³⁵ Thus, there can be little doubt that the Rwandan government has worked hard, particularly regarding internet broadband, mobile network coverage and digital transformation. The government has also heavily invested and delivered an impressive nationwide internet 4 Generation (4G) LTE infrastructure. Rwanda has been in the limelight. However, the spotlight similarly means more attention is drawn to the Rwandan regime's flawed human rights record. For instance, the state-controlled telecommunications infrastructure and the legislative framework has enabled the national intelligence, the security service and the Rwanda national police to conduct indiscriminate mass digital surveillance of the population. This is a great source of concern given the current absence of effective judicial checks and effective oversight of Rwanda's surveillance agencies, as power is largely left in the

hands of the executive.

Nevertheless, on 15th October 2021, President Kagame signed and promulgated law no 058/2021, which relates to protecting personal data and privacy. With the passing of this law, the country became the third country in East Africa to enact comprehensive legislation on data protection and privacy, following Uganda and Kenya. Although the law spells out the various rights of the data subject, the law remains silent on certain aspects, as it does not elaborate on the modalities for processing personal data for surveillance and law enforcement purposes. provide any significant limitations to the authorities' capacity to intercept communications.

In addition, it is uncertain whether the data protection supervisory authority will execute its mission independently without yielding to external pressure, especially from the executive power, which is also the appointing authority in this case. This situation is particularly concerning, given the fact that RPF has been tightening its grip on power by cracking down on human rights online and offline.

Introduction

Rwanda is a small, landlocked, hilly and highly elevated country bordered by Uganda, Tanzania, Burundi and the Democratic Republic of Congo (DRC). Its hilly landscape earned it the sobriquet: “land of a thousand hills”. Rwanda is the 14th most densely populated country in the world⁷³⁶ and as of 2022, the population of Rwanda was above 13 million.⁷³⁷ The population is young and predominantly rural. Kinyarwanda is the principal and national language, with English, French and Swahili as additional official languages. Although Rwanda is not well endowed with natural resources, the country has made remarkable progress in the socio-economic sphere, especially after the 1994 genocide. With the support of the World Bank and other Western donors and the Rwandan regime’s good technocratic governance, the country registered a GDP growth of about 8%. During the decade from 2000-2010 the country’s per capita GDP increased from \$264 to US\$360 billion.⁷³⁸ Economic growth is mostly driven by tourism revenues, heavy public investments and agriculture production.⁷³⁹

The government has displayed vision and ambition in the context of ICT and digital innovation. The country adopted robust policies to advance the digital agenda and position Rwanda as a regional innovation hub. In 2021, Rwanda passed a new data protection law, allowing individuals and institutions to employ processes that ensure personal data is handled in a trusted, lawful and secure manner. The country is also amongst African states that have pioneered strategies and policies related to emerging technologies and Artificial Intelligence (AI). On 31 March 2023, a Centre for the Fourth Industrial Revolution (C4IR) was launched in Kigali. In May 2023, it was announced that Kigali would host the headquarters of TIMBUKTOO, the new UNDP’s technology innovation financing facility. Also, Norresken Kigali house, a start-up that opened in December 2021 and construction scheduled for completion by March 2024, aims to become a continental entrepreneurship support infrastructure - commissioned by the Swedish Norresken Foundation.⁷⁴⁰ Despite the progressive digital policies, the government has been criticised for the use of technology for surveillance and censorship, which violates fundamental human rights.

736 <https://worldpopulationreview.com/countries/rwanda-population>

737 NISR: Rwanda’s population reaches 13,2 million in 2022 available at https://www.statistics.gov.rw/publication/Rwanda_population_2022#:~:text=Rwanda’s%20population%20has%20reached%2013%2C246%2C394,data%20collected%20in%20August%202022.

738 World bank Group: Rwanda Economic Update; Inclusiveness of Foreign Direct Investment in Rwanda, June 2023, Ed no21, P.2 available at <https://openknowledge.worldbank.org/server/api/core/bitstreams/982206fa-fa03-4083-820d-39171ca6f80b/content#:~:text=Inflation%20has%20eased%20but%20remained,remittances%20outweighing%20rising%20import%20prices>.

739 Ibid,

740 Kagire, E: “President Kagame officially opens Norresken Kigali House, calls on young innovators to be more daring”, Kigali Today, 2023 available at <https://www.ktpress.rw/2023/11/president-kagame-officially-opens-norresken-kigali-house-calls-on-young-innovators-to-be-more-daring/>

► Country Analysis

Access to Internet and Digital Infrastructure

Despite its small size, Rwanda has distinguished itself as a country that has bet big on digitisation, as a means to accelerate economic growth and reduce poverty. The country's expansion in digital infrastructure has been impressive, especially with the roll out and the expansion of the national fiber optic backbone network. The 3G network coverage is now at 93,5% compared with a regional average of 76%.⁷⁴¹ Furthermore, by leveraging a public-private partnership, the Rwandan government was able to deliver a nationwide 4G network. Currently, Rwanda's 4G coverage officially stands at 96,6%⁷⁴² and is one the highest rates on the continent.⁷⁴³

Rwanda has also progressed in digitising public records, by expanding the use of management information systems and rolling out shared cloud-based infrastructure, for instance "Irembo", an e-government platform⁷⁴⁴. Irembo, which means gateway in Kinyarwanda, is an e-citizen portal designed for the provision of various government services to the public. The portal is managed by Rwanda Online Company Limited which is a local public and private partnership technology company. The Irembo portal has enabled most state agencies to digitise their services by drastically eliminating paperwork thereby improving government's public services delivery. Public services in sectors such as family, social affairs, immigration, identification, civil registration, land, health, education offer services on the platform. Since its launch, the platform has processed over 25 million applications worth US\$300 million.⁷⁴⁵ Further, in the decade 2010-2018, ICT was the fastest growing service sub sector and currently it represents about 1.4% of Rwanda GDP.⁷⁴⁶ This dynamism was mainly driven by mobile phone penetration and it is estimated that 74,3 % of the population has access to a mobile device.

In terms of digital infrastructure, while the national expansion has been impressive, the actual use of the Internet is estimated to be much lower. This is due to various factors related to low digital literacy, affordability and the quality of service. Despite at least 74,3% of current Rwandan mobile subscribers, tangible efforts to boost local manufacturing, including the launch of the Mara group's local smartphone production and assembly plant, the cost of smartphones is still high and those in the low income bracket are most affected. This is also due to the urban-rural divide that is still acutely pronounced.⁷⁴⁷ At least 26% of all individuals living in urban areas report being computer literate compared to rural folks who stand at a paltry 6,8%.⁷⁴⁸ In addition, Rwanda's online gender gap is much higher than that of its peers in the East African region. As of January 2023, 35,5% of Rwanda's social media users were women and 63,5% were men.⁷⁴⁹ Lastly, human development is

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741 P, Behuria: between Party Capitalism and Market reforms; Understanding sector differences in Rwanda, p.12, available at <https://research.manchester.ac.uk/en/publications/between-party-capitalism-and-market-reforms-understanding-sector->

742 Rwanda Digital Acceleration Project ; available at <https://documents1.worldbank.org/curated/en>

743 Rwanda Economic Update: Regional Integration in Post Covid-19era available at <https://www.worldbank.org/en/news/pressrelease/2022/02/rwanda-economic-update-regional-integration-in-posy-covid-era>. (accessed on 12 december,2023)

744 https://irembo.gov.rw/home/citizen/all_services

745 Cipesa: Patient Data Privacy in the age of telemedicine : case studies from Ghana, Rwanda, and Uganda available at <https://cipesa.org/fr/2023/12/patient-data-privacy-in-the-age-of-telemedicine-case-studies-from-ghana-rwanda-and-uganda/>

746 Op Cit Rwanda Economic Update: regional Integration in Post-covid era.;

747 Ministry of Infrastructure : Joint Sector Review 2019/2020, Urbanization and Rural settlement sector, October 2020 available at <https://www.minecofin.gov.rw/index.php?eID=dumpFile&t=f&f=56169&token=5ed71d63556d31bcd75395a7f86e33a1e515809a>

748 Op Cit NISR: Rwanda's population reaches 13,2 million in 2022

749 <https://foundation.mozilla.org/en/blog/narrowing-the-online-gender-gap-in-rwanda/>

very low and the country ranks 160th out of 189 on the Human Development Index⁷⁵⁰ (HDI Ranking). Furthermore, it's also important to highlight Rwanda has not experienced restrictions on internet connectivity or shutdown.

Online Freedom of Expression

Free Speech and Media Freedoms in 2023

Almost three decades after the 1994 genocide, the ruling party has consolidated its dominance over the political space. As a result of this hegemony is the clear absence of political competition, the restrictions on personal freedom as well as the state's tight control over the society. The Constitution of Rwanda includes the Bill of Rights.⁷⁵¹ Article 38 provides for freedom of expression, including for members of the press and other media "in conditions prescribed by the law". However, the practice is different as the state routinely continues to police the public narrative about the country and interferes in journalistic work in a very subtle manner, such as the use of censorship, unjustified arrests and prosecution of journalists and YouTube bloggers. Although there is no evidence that the government filters internet content, most Rwandan journalists often practise self-censorship to avoid government's interferences.

However, the journalists or political commentators who express views deemed critical of the government policies, especially on sensitive topics are often threatened, harassed or arrested.⁷⁵² Authorities continue to harass and prosecute YouTube bloggers, like the former computer science lecturer Karasira Aimable who is in detention and currently accused of genocide denial, and the case of Yvonne Idamange, who is serving a 15-year jail term since 2021 after accusing President Paul Kagame of being an autocrat and using the genocide of the Tutsi for political manipulations and recuperations vis-à-vis of the international community forum, via her YouTube channel.⁷⁵³ Three journalists of Iwacu web TV⁷⁵⁴ were acquitted by the High Court of Kigali after they were arrested and prosecuted in October 2018 for inciting insurrection and spreading false information. They spent four years in pre-trial detention which contradicted Rwanda's obligations under the international human rights law.⁷⁵⁵

In November 2023, the intermediate court of Nyarugenge in Kigali ordered the release of the YouTube blogger Manirakiza Theogene⁷⁵⁶, after he had been arrested a month earlier and charged with corruption and blackmail among other accusations. He was arrested a few weeks after he allegedly published on his YouTube Ukwazi web TV damaging allegations of corruption involving a senior public official and an influential city lawyer who conspired to grab a citizen's property. It is also common to observe digital threats and harassment through social media and public smear campaigns on the web, where government-affiliated trolls and social media accounts regularly mobilise against individuals who are critical of the government. These social media 'trolls' call themselves #TeamPK, known for systematically harassing and discrediting opponents online. Besides, pro-government accounts also use mass reporting as a silencing tactic. A prominent Rwandan dissident alleged that Rwandan pro-government accounts reported his Facebook posts as violating META's community standards and META removed his posts from the platform before

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750 https://hdr.undp.org/sites/all/theme/hdr_themes/hdr_theme/country-notes/RWA.pdf. (accessed on 10 December, 2023)

751 The Constitution of the Republic of Rwanda of 2003 as revised in 2015 available at <https://www.constitutionproject.org/constitution/Rwanda-2015.pdf?lang=en> (accessed on 12 December, 2023)

752 <https://www.afrikareporter.com/rwandan-journalist-arrested-over-tax-evasion-story/>. (accessed on 12/12/2022)

753 <https://www.africanews.com/2021/10/01/rwandan-govt-critic-on-youtube-sentenced-to-15-years/>

754 <https://www.theeastafrican.co.ke/tea/rest-of-africa/rwanda-acquits-three-journalists-detained-for-four-years-3975044>

755 Principle 38: Body of principles for the protection of all persons under any form of detention or imprisonment.

756 Ufitwabo, A: Media self-Regulatory body speaks out on journalists 'arrest in the New Times, 2023 available at <https://www.newtimes.co.rw/article/11636/news/rwanda/media-self-regulatory-body-speaks-out-on-journalists-arrest>

reinstating them after he submitted an appeal.⁷⁵⁷

Gendered Disinformation

The Internet has been lauded for advancing access to information and enhancing freedom of expression. It has also been plagued by issues like online violence, misinformation, and hate speech, which are gender-discriminatory tendencies mirroring offline patriarchal and societal structures. Despite Rwanda's legal and constitutional guarantees of the right to freedom of opinion and expression, especially article 10 regarding the fundamental principles of the constitution on gender equity and its international and regional obligations in the International Covenant on Civil and Political Rights. Many Rwandan women are still subjected to gender-based violence, including harassment, bullying, false information, and psychological violence.

Despite the country's stellar performance on gender metrics at the global level during the last two decades, gendered disinformation still constitutes a serious source of concern amongst Rwandan female online users. In Rwanda, gendered disinformation has been mostly used as a deterring factor for young women who take up a political career, especially in the opposition movement. For instance, in 2017, a few days after Diane Rwigara's public announcement of her plans to contest for the presidency, photoshopped nudes of her became viral on social media. This was a tactic to discredit her political ambitions.

The operational patterns are often similar: female politicians are targets of image-based disinformation, as these images are used to sexualise them and to create false narratives in order to shift the public focus from the main political discourse. More recently, Ingabire Victoire Umuhoza, a Rwandan opposition politician, was subjected to an aggressive online harassment campaign following her public criticisms of the UK-Rwanda migration deal.⁷⁵⁸ The smear campaign was of extreme violence against Ingabire Victoire Umuhoza. The smear campaign consisted of sexual slurs and memes. She was also accused of being a witch. The ultimate aim was to destroy her reputation as a woman and a politician.

The same tactic has been often used to demonise feminism and feminist activists. Rwandan feminist activist Sylvie Nsanga, has been regularly exposed and targeted online by vile and sexist content marred with insults and obscene threats. She is constantly bullied and the character assassination seeks to diminish her credibility.⁷⁵⁹ Online users claimed that Sylvie and other feminist activists are pushing for a "feminist agenda" and conducting a "witch-hunt" against prominent Rwandan men. Lastly, the case of Rwandan socialite Lilian Mugabekazi is worth noting. Lilian was arrested and charged in August 2022 for "public indecency" after pictures of her wearing a sheer dress while attending a concert in Kigali became viral on social media. The incident⁷⁶⁰ caused a social media uproar while some online users supported her and called for her release, others attacked her with sexual slurs and memes accusing her of being a prostitute.

In this regard, it is critical for the Rwandan government to launch awareness and educational campaigns about the dangers of gender misinformation in its various forms, especially hate speech and violence based on gender and campaigns of defamation of women. In parallel with launching awareness campaigns that will bring about much needed changes in our social and cultural attitudes.

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757 [Medium.com/@david.himbara_27884/kagames-social-media-army-got-facebook-to-block-my-posts-days-later-facebook-to-block-my-posts-days-later-facebook-apologizer-9a3316b47d2](https://medium.com/@david.himbara_27884/kagames-social-media-army-got-facebook-to-block-my-posts-days-later-facebook-to-block-my-posts-days-later-facebook-apologizer-9a3316b47d2)
758 <https://www.theguardian.com/uk-news/2023/dec/14/rwanda-politician-criticised-sunak-bill-fears-for-her-safety>
759 <https://www.africa-press.net/rwanda/all-news/safer-internet-day-is-it-possible-to-make-the-internet-safe-for-all>
760 <https://nation.africa/africa/news/rwanda-woman-faces-two-years-in-jail-for-shameful-dress-3919316>

Privacy and Surveillance

Understanding the practice of mass surveillance in Rwanda

Electronic systems in the digital era have created an environment of pervasive surveillance, where most if not all, communications channels are monitored in some capacity. Digital surveillance is pervasive, and the Internet is the primary ground of the battle. Given the Rwandan context, the most prevalent surveillance actors are the state and, to a lesser extent, corporate entities. State security agencies mostly target mass surveillance of telephone metadata and call content.

The Constitution and the Bill of Rights guarantee the right to privacy. However, the reality is the opposite of the letter of the law. Article 23 of the Constitution guarantees privacy protections to Rwandan citizens in their homes, correspondence, and telephone conversations. However, public surveillance in Rwanda takes the form of telecommunications backdoor requirements. Based on the provisions of Article 7 of law no 60/2013 regulating the interception of communications, telecommunications corporations are required to grant access to national security agencies. Additionally, under the provisions of law no 73/2013 determining the powers, mission, organisation and functioning of the National Intelligence and Security Services (NISS), the NISS is authorised to receive and collect information to carry out its mission, including protecting national security. Therefore, based on the mandate granted by the law, the NISS has sweeping access to all communications in Rwanda without the need to seek approval from the public prosecutor.⁷⁶¹

In 2017, the Rwandan government allocated five billion Rwandan Francs⁷⁶² (approximately US\$5 million) to procure and deploy CCTV cameras in Kigali and other main towns nationwide. The official government explanation was that the CCTV cameras were meant to prevent and detect crime. Every single footage and data being recorded by the CCTV network is stockpiled by the Rwanda national police, and all of these measures have been implemented in the absence of sufficient legal safeguards and guidelines. For instance, persons subjected to cyber and phone surveillance are not notified, and there are no effective legal remedies in case of violations.

Lastly, the recent proliferation of biometrics and other forms of data collection in everyday life for accessing essential services such as banking, access to workplaces, or mobile phones may also have a corrosive effect on privacy, especially due to the sensitivity of data collected without proper control or oversight. The right to privacy is not absolute. It may be interfered with to advance legitimate state and public interests, such as national security or to combat terrorism. However, this interference must be lawful, necessary and proportionate. Nevertheless, there is a critical need for legal reform as the current Rwandan legal framework regulating the NISS surveillance activities fails to satisfy international law's legality and proportionality standards.

Data Protection and Cyber Security

The Constitution of Rwanda reaffirms the respect for privacy as Article 23 of the Constitution states that every person has the right to privacy, which includes the right not to have information relating to their family unnecessarily acquired or revealed. Besides the Constitution, other relevant laws like the Law no 04/2013 relating to access to information, the Organic Law Instituting the Penal Code of Rwanda (14 June 2012) and the Law No. 18/2010 of 12/05/2010 relating to Electronic Messages, Electronic Signatures and Electronic Transactions (the Telecommunications Law) recognise and

⁷⁶¹ Article 09 of the law no 60/2013 provides: if required by "urgent public security interests" the interception warrant can be issued by the national prosecutor verbally but this must be followed by a written warrant within 24 hours or the interception will be presumed illegal.

⁷⁶² The New Times: Rwf 5Bn earmarked for CCTV surveillance system in Kigali available at: <https://www.newtimes.co.rw/news/rwf5bn-earmarked-cctv-surveillance-system-kigali>

provide for guidelines regarding the protection of privacy and personal data information.

In 2021, Rwanda enacted its first data protection legislation, which gives effect to Article 23 of the Constitution on the right to privacy. Law No. 058/2021 of 13 October 2021 relating to the Protection of Personal Data and Privacy⁷⁶³ (the Law) is modelled after the EU General Data Protection Regulation (GDPR). It aims to protect the fundamental rights of natural persons that may be jeopardised during the processing of personal data by public and private bodies. It applies to manual and electronic processing of personal data and to data handlers and processors residing inside or outside the country. The law is instructive on data protection principles, including the rights of data subjects and the duties and obligations of data collectors, controllers, and processors. This clarity will facilitate the processing of personal data within the confines of the law.

In this regard, the law provides Rwandans with the strongest safeguards of their right to privacy as it sets out the norms and the standards for the State and private actors to provide for the protection and sovereignty of personal data. In the context of surveillance, the law places a positive obligation on the State to set up adequate safeguards for the right to privacy, including where justifiable targeted surveillance has been undertaken in crime prevention and the investigation and enforcement of laws for a legitimate aim. The law buttresses privacy as a fundamental human right for Rwandans. It provides certainty on the enforcement of data and privacy rights by providing for the duties and obligations of the respective parties.

Nevertheless, it should be noted that it falls short in certain aspects, such as individual autonomy over personal data, as it is more concerned with regulation than rights and their enforcement by the data subject. In addition, it is also important to mention that concerning rules for processing personal data for surveillance purposes, the law remains silent on this specific aspect as it does not make elaborate provisions on the modalities for processing personal data for surveillance or law enforcement purposes.

On a positive note, Rwanda is a party to the African Union Convention on Cybersecurity and Personal Data Protection (the Malabo Convention). It domesticated the Convention by enacting data protection legislation in October 2021⁷⁶⁴. Law no 058/2021, relating to the protection of personal data and privacy, allows individuals and institutions to adopt mechanisms that ensure personal data is processed in a lawful manner. This legislation also provides guidance for notification in case of personal data breaches and cross-border data transfers. In terms of exemptions, it provides for the processing of personal data for national security purposes. The law also establishes the office of the data supervisory authority, whose mandate is to oversee the enforcement of the data protection legal framework. The data protection office was officially launched by the National Cyber Security Authority (NCSA) in March 2022. The role of the data protection office is to oversee the following: registration of data controllers and data processors in Rwanda; the conduct of data compliance audits; investigation of complaints; research on data processing and computer technology; and exercise control on personal data protection.

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Existence and Functioning of Data Protection Supervisory Authority

Article 27 of law no 058/2021 relating to the protection of personal data and privacy provides for the establishment of a supervisory authority. In October 2021, the Ministry of Information Communication and Innovation announced⁷⁶⁵ and designated the National Cyber Security Authority (NCSA) as the supervisory authority in charge of the enforcement of the law. On March 31st 2022, the

763 file:///C:/Users/Kigali%20Attorneys/Downloads/personal_data_protection_and_privacy_law.pdf

764 <https://www.risa.gov.rw/index.php?elD=dumpFile&t=f&f=65369&token=15e7fad700949646dd7c1faae89f9663048f4f92>

765 MICT Press Release : “Rwanda Passes new law Protecting personal data”, October 21, 2021 available at <https://www.minict.gov.rw/index.php?elD=dumpFile&t-f=30553&token=d44bb5a417c65872b4b0ece892e5d8ba34c8c91> (accessed on 12 December, 2023)

government through the National Cyber Security Agency⁷⁶⁶ officially launched the data protection supervisory office, an implementation move that is aimed at the effective implementation of the personal data governance framework. In terms of the law, the supervisory authority has the following powers:

1. To monitor compliance and sanction data protection law violations.
2. To create further regulations for implementation.
3. To receive complaints and claims relating to the processing of citizens' personal data.
4. To authorise processing operations that involve high risk to the rights and freedoms of individuals.

However, the law does not make elaborate provisions for the organisation and the operational structure of the supervisory authority.

The Data Protection Supervisory Authority

On October 17th, 2022, a few days after the cabinet enacted the law relating to the protection of personal data and privacy, the Minister in charge of ICTs announced that concerning the law, she designates the National Cyber Security Authority (NCSA) as the supervisory authority charged with the enforcement of this piece of legislation. Further, on March 31, 2022, the cabinet officially launched the data protection office through the National Cyber Security Authority as an implementation move aiming at effective data governance. In addition, it's important to note that the Rwanda Data Protection Office is not an independent agency but operates under the supervision of the national cyber security authority. The NCSA chief executive officer is appointed and removed from office by a presidential order.

Lastly, as the data protection and privacy law is being implemented, it's important to keep in mind that it is uncertain whether the supervisory authority will execute its mission independently and without yielding to external pressure.

1. Is there relevant case law regarding privacy or data protection in Rwanda?

So far, no data protection litigation or public interest petition has been initiated under Article 23 of the Constitution before domestic courts in Rwanda. However, mentioning a series of ongoing litigation cases pending before the High Court of the United Kingdom (UK) and their future impacts on the Rwandan data protection law is important.

On April 14, 2022, the Rwandan government announced a pilot plan of relocating migrants and asylum seekers to Rwanda to address the UK's continuing refugee crisis.⁷⁶⁷ The Memorandum of Understanding (MoU)⁷⁶⁸, provides for: "the transfer of asylum seekers whose claims are not being considered by the UK to Rwanda, which will process their claims and settle individuals after their claim is decided". However, the implementation phase of this controversial deal has been the subject of a series of public interest petitions lodged before the UK Supreme Court by individuals selected for relocation seeking to challenge their removal. Amid legal challenges⁷⁶⁹,

766 <https://www.cyber.gov.rw/about/>

767 A, Iliza: "Rwanda gets \$157m in deal with UK to host migrants, asylum seekers" in the East African, April 14, 2022 available at <https://www.theeastafrican.co.ke/tea/news/east-africa/rwanda-uk-in-deal-to-host-migrants-3782012> (accessed on 15 December, 2023)

768 Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement available at <https://www.publications.parliament.uk/pa/ld5803/ldselect/ldintagr/71/71.pdf> (accessed on 10 December, 2023)

769 AAA v.SSHD Rwanda Judgement, available at <https://www.judiciary.uk/wp-content/uploads/2022/12/>

the UK jurisdictions may proceed towards a data protection impact assessment and standards adequacy for the exchange of the information between the UK Home Office and Rwanda general directorate of emigration and immigration as well as how envisaged data transfers would likely work in practice under the MOU.

Following these petitions, the Supreme Court should assess whether the MOU is data protection compliant, particularly with regards to reliance on Article 49(1)(d) of the UK Data Protection Act⁷⁷⁰ as the basis for the international transfer; such as what the mechanisms that have been put in place to prevent the information being shared where it may cause the relocated individual or their family to be placed at risk of serious harm. On November 15, 2023, the UK Supreme Court⁷⁷¹ struck down the key government's policy to send migrants to Rwanda. In the application of AAA (Sudan) and others v. Secretary for the Home Department, the UK Supreme Court held that the Secretary of State's policy to remove protection seekers to Rwanda was unlawful. Further, the UK Supreme Court then applied the correct test amongst the evidence it had on the general human rights situation in Rwanda and the lack of adequacy and appropriate safeguards for the transfer of personal data⁷⁷² between Rwanda's Directorate of Emigration and Immigration and the UK Border force, as well as the lack of independence concerning the judiciary and the court system in Rwanda.

Cybersecurity

Vulnerability and Threats Landscape

Rwanda's cybersecurity landscape is evolving as disruptive technologies such as AI and digital spyware facilitate state mass surveillance and pose significant societal challenges and specific threats in human and digital rights. A 2020 study by SYSEC Limited, a UK cybersecurity and threat intelligence firm, found that the majority of Rwandan firms are vulnerable to cyber threats.⁷⁷³ Only 26 out of 750 firms' systems were reviewed as good. The largest vulnerabilities were found through email scams such as phishing. According to the Rwanda Investigation Bureau, the rate of cybercrimes increased by 30% during the last quarter of 2022, and mobile money frauds were particularly on the rise.⁷⁷⁴ Further, in February 2020, threat actors targeted a data centre that hosted, among others, government servers that went offline for several hours.⁷⁷⁵

The Rwandan government has allegedly acquired state-of-the-art spyware from Israel to spy on citizen's email and other internet communications.⁷⁷⁶ The 2018 report by the Canadian-based Citizen Lab⁷⁷⁷ disclosed that Israeli-based cyber warfare vendor NSO's group allegedly sold surveillance technologies such as "Pegasus spyware", a mobile phone spyware, to Rwanda and to many other African countries designed to spy on their own citizens' mobile⁷⁷⁸ and internet communication.

AAA-v-SSHD-Rwanda-judgement.pdf/ (accessed on 19/11/2023)

770 Data Protection Act 2018

771 Voice of America; UK Court reject deal to send migrants to Rwanda available at: <https://www.voaafrica.com/a/uk-court-rejects-deal-to-send-illegal-migrants-to-rwanda-/7355684.html>

772 Judgement (on Application of SAA(Sudan) respondent v. Secretary for the Home Department(Appellant) available at <https://supremecourt.uk/cases/UKSC-2023-0097.html>

773 Mwai., The new Times(2020): Cybersecurity: Majority of Rwandan SMEs vulnerable available at <https://www.newtimes.co.rw/news/cybersecurity-majority-rwandan-smes-vulnerable>

774 <https://www.newtimes.co.rw/article/173528/News/fifteen-arrested-in-mobile-money-scam-crackdown>

775 Taarifa(2020) Government Data center goes down-president's website off, available at <https://taarifa.rw/government-data-center-goes-down-presidents-website-off>

776 Financial Times: Inside the WhatsApp hack how an Israeli technology was used to spy available at:<https://www.ft.com/content/d9127eae-f99d-11e9-98fd-4d6c20050229>

777 Citizen Lab :Hide and Seek: Tracking NSO Group's Pegasus spyware operations in 45 countries, Op cit P.8.

778 S,Maphumulo:"Hunt for super-spy machines"(IOL,27 August2015)available at :https://mg.co.za/news/hunt-for-super-spy-machines-1906508#.Vd7X7nvV_BE

Pegasus can be installed on a target phone in many ways: first, by sending infected links (phishing) or through social engineering. This malware is designed to penetrate security features on the phone and install Pegasus without the users' knowledge and permission.⁷⁷⁹ It can also avoid detection by anti-virus software and can be removed only by its operators.⁷⁸⁰ Once Pegasus is installed, it contacts the operator command servers to receive and execute the operator's command and send back the target's private data, such as contact lists and text messages; it can screenshot the device screen, record live voice calls from popular social media such as WhatsApp and Facebook messenger⁷⁸¹ and take full control of a device.⁷⁸² In addition, this spyware enables the state security services to conduct real-time surveillance and remote, geo-localization, tracking, and monitoring of citizens and political dissidents.⁷⁸³ This situation raises significant extraterritoriality concerns as these practices can endanger individuals living across different states and jurisdictions.⁷⁸⁴ Also, this has significantly boosted the state security services' capacity and ability to conduct transnational repression.

Overview of Rwanda's Cybersecurity Legislative Framework

Currently, Rwanda's primary laws governing cybersecurity policy are Law No 60/2018 and Law No 24/2016. Law no 60/2018 prevents cybercrime offences and provides the judiciary and law enforcement agencies with the legislative framework to investigate cybercrime and spell out the penalties. In addition, the law also lays the foundation for state entities and the private sector to collectively combat cybercrimes affecting Rwanda. Law 28/2017 defines the National Cyber Security Authority's (NCSA) mission and responsibilities. The law officially established the NCSA as the national regulatory entity in charge of cybersecurity in Rwanda. Law no 24/2016 establishes the framework for ICT policy and regulation.

Digital And Biometric Identity

Around the world, states and business entities are increasingly using systems that rely on collecting and using biometric data, such as DNA, facial geometry, retina and fingerprints. Some countries have created centralised databases that store such information for various purposes,⁷⁸⁵ including national security and criminal investigations and the provision of public services such as education or finance.

Since 2008, the National Identification Agency (NIDA) has been collecting citizen's biometric data. Every person who applies for a national ID card is requested to submit their biometric data, such as two fingerprints and a photograph. This practice has been done for over a decade without a clear legal operational mandate, as biometric data have been collected since 2008 without an enabling legal framework. Additionally, the current legal framework (law no 14/2008 governing registration of the population and issuance of the national identity card, which was amended in 2018) does not provide for or define clearly the nature of data to be collected. Rather, the law delegates powers

779 Citizen Lab: Hide and Seek, Op Cit.

780 Ibid.

781 Ibid.

782 Ibid.

783 Ibid.

784 Ibid.

785 Human Rights Council: the Right to privacy in the Digital Age, report of the United Nations High commissioner for Human Rights, available:https://www.ohchr.org/Documents/Issues/DigitalAge/ReportPrivacyinDigitalAge/A_HRC_39_29_EN.pdf

to the Minister of Interior and Local Government to determine the specifications of the national ID card and the fee structure related to national identification services.

However, it's important to note that on April 3, 2023, the Cabinet pushed for legislative amendments for formally and legally implementing a digital ID ecosystem in Rwanda. These reforms seek primarily to adjust NIDA's operations under the scope of the law. The reforms are envisaged to expand the scope of eligible persons under the 2008 law governing population registration in order to include stateless persons. While defending the Bill before Parliament, the Rwandan Cabinet Minister in charge of innovation and ICT explained that the digital ID card will come in two versions: a physical card fitted with a machine-readable QR code⁷⁸⁶ containing biometric data and an online version that will use biometrics to access the ID.

Additionally, one of the innovative features of this project is the ID number assigned to children during their birth registration data. The same numbers can also be used when the child attains the legal age to carry a national ID. However, it's important to keep in mind that the Rwanda Digital ID project is still in its nascent phase and there are still no clear indications from the Ministry regarding the timelines and modalities of its implementation. The World Bank will fund the project at the tune of US\$40 million.

The Rwandan Cabinet tabled the national digital ID proposal for debate in Parliament; however, many questions are pending, especially cybersecurity concerns related to biometrics and the critical question of consent. There are also fears that without clear rules on data governance, the digital system can be politicised and the incumbent government can make unilateral decisions on the use and sharing of data. Here lies the tough and challenging issue of consent. Consent is critical in the ethical and legal use of personal information. Unfortunately, the cabinet policy is vague and does not address the question of consent in the context of this digital ID project. Therefore, it is crucial to ensure the protection of Rwandan citizens' privacy and rights, together with clear limitations and definition of access, withdrawal or removal of consent in cases of changes of identity. While changing one's passport or driving licence is possible, this does not apply to biometric data. Also, as the policy is tabled before Parliament, it is important to involve users in the decision-making processes through public consultations and participation, especially towards the implementation phase of the digital ID, which can contribute to more ethical and user-centric solutions.

The National Universal Service Fund

The National Universal Service Fund (NUSF) is a funding mechanism to incentivise expanding internet services in remote and underserved locations of Rwanda. NUSF was established in 2004⁷⁸⁷ and was previously managed by the Rwanda Utilities Regulatory Authority (RURA). The Presidential order no 025/01 of 12/05/2023 was enacted to regulate the management of the fund.⁷⁸⁸ The NUSF is financed through mandatory contributions from telecommunications. The law⁷⁸⁹ provides that all telecommunication services providers operating in Rwanda should deduct a 2,5%⁷⁹⁰ levy from their gross annual revenues and the interconnection fee between licensed telecommunications operators. The legislation also allows funds to be raised through donations and grants from international donors and development partners. The funds are allocated through a

786 Sabiti, D :Stateless Persons and Newborns to get Rwandan Digital ID, KT Press,2023 available at <https://www.ktpress.rw/2023/04/stateless-persons-newborns-to-get-rwandan-digital-id/>

787 Presidential Order no 05/01/ of 15/03/2004 determining the functioning of the universal access fund and public operator's contributions available at <https://www.rura.rw/fileadmin/documents/docs/pl05.pdf> (accessed on 24 December, 2023)

788 Presidential order no 025/01 of 12/05/2023 governing universal funds available at <https://www.minijust.gov.rw/index.php?eID=dumpFile&t=f&f=68425&token=81ce3dba53d7971109768f42004ca74470789f9d>

789 Ibid.

790 Article 7: Every licensee referred to in Article 3 of this Order pays to the Fund an annual contribution which must not exceed 2.5% of the turnover of each category of regulated service

competitive bidding process.

Priorities and what the Fund has achieved to date

The priorities of the NUSF include internet connectivity to all districts, especially those located in rural areas, police stations, army barracks, immigration and border posts, public and private universities, and primary and secondary schools. Through the NUSF, the government invested in a number of projects to support connectivity in rural areas. Some of the achievements include:

1. The funding and the implementation of the government flagship one laptop per child program in rural areas.
2. The connectivity of 45 secondary schools located in remote and rural areas.
3. The 2016 provision of financial support to Ms Geek Africa, a competition which aims to encourage and sensitise girls to participate in science and technology.

Developments in Ict And Emerging Technologies

Artificial Intelligence National Strategy

The future of AI in Rwanda looks promising. Rwanda hosts world-class universities such as the Carnegie-Mellon University–Africa and the African Institute of Mathematical Studies which have their campuses based in Kigali. At the same time, these institutions attract a substantial number of regional and global talents, which positions the country as a potential leading destination for IT and AI education on the continent. Additionally, the country recently launched the Centre of the Fourth Industrial Revolution and the Rapid Innovations (C4IR) on March 31, 2023.⁷⁹¹ The Centre will focus on data governance, artificial intelligence and machine learning. It will work with the government on the development of new policies and strategies in technology governance that enable agile implementation and to foster inclusive innovation. This project is a partnership between the government of Rwanda through the Ministry of Innovation and ICT and the World Economic Forum.⁷⁹² In addition, the government of Rwanda in coordination with key stakeholders launched the national AI policy. The national AI policy identifies five priority policy areas:⁷⁹³

1. Positioning Rwanda as Africa’s AI lab.
2. Creating an open data ecosystem as an enabler of the AI revolution, by increasing storage infrastructure and high-performance computer resources.
3. Driving public sector transformation to accelerate AI adoption.
4. Accelerating responsible AI adoption in the private sector in order to intensify the application of AI to boost productivity and efficiency in key sectors of the economy.
5. Building AI literacy and 21st-century skills with the objective of positioning Rwanda as a leader in AI higher education and research in Africa.

791 Ingabire, P: How can Rwanda leverage the fourth Industrial Revolution to strengthen post-covid-19 resilience available at <https://www.weforum.org/agenda/2022/03/rwanda-leveraging-the-fourth-industrial-revolution-to-strengthen-post-covid-resilience/> (accessed on 14/12/2023)

792 <https://www.c4ir.rw>

793 How Rwanda AI Policy helps to shape the evolving AI ecosystem available at <https://www.digicenter.rw> (accessed on 17/12/2023)

In addition, the policy advocates for creating open public sector data to reduce entry barriers. As the country's AI ecosystem is growing, there are tangible developments in the use of AI in the public domain, particularly in sectors such as public health, transport, and immigration. Since 2016, Zipline International has been operating in Rwanda, in partnership with the government. It uses drone technology to deliver blood and medicines to remote health centres across the country. In 2019, the Rwanda General Directorate for Immigration and Emigration introduced the E-gates to FastTrack immigration formalities at the major entry points of the country. E-gates were deployed at the Kigali International Airport and Rubavu border post on Rwanda's western border with DRC to facilitate immigration and customs processes.⁷⁹⁴

794 Musoni, E; Kigali Airport gets Ultra-modern electronic gates in the New Times, in the New Times, February 20, 2020 available at <https://www.newtimes.co.rw/article/68080/national/kigali-airport-gets-ultra-modern-electronic-gates> (accessed on 13 December, 2023)

► Conclusion & Recommendations

Conclusion

Rwanda is positioning itself as a leading African country that fosters innovation, especially in embracing digital transformation. Meanwhile, the actions of the government are clearly in contradiction with the progressive digital policies that are promoted by the same state. The government is still rightly criticised for online censorship and self-censorship. During and after the COVID-19 pandemic, the government, through its farm trolls and law enforcement entities, has been aggressively harassing journalists, dissidents, bloggers and media outlets. The clampdown has dramatically forced many independent media outlets to close down. This situation, coupled with mass surveillance of communications metadata and the acquisition of spyware, has substantially worsened the climate of fear and self-censorship among the public. Therefore, recommendations are proposed for different stakeholders in this context of restrictions.

Recommendations

Government

- » Publicly express its commitment to freedom of expression by significantly amending the laws and penal code.
 - » Create a conducive environment for the free flow of information in the country.
 - » Review the past convictions of journalists and bloggers convicted on vague public disorder charges to ensure compliance with human rights.
 - » Reform the training of Rwanda Investigation Bureau staff and public prosecutors on investigating accusations so that freedom of expression is protected on paper and in practice.
 - » Refrain from the general tendency of state security agencies to rely on mass surveillance for intelligence purposes, which violates the principle of legality, necessity and proportionality under International law.
 - » Review all laws and regulations to ensure that they do not impose requirements of blanket, indiscriminate retention of communications data on telecommunications and internet services provider companies operating in Rwanda.
 - » Invest at least 50% of the funds of NUSF in projects that target gender inclusion and women's internet use.
 - » Increase transparency of the NUSF, especially in regard to disbursements and operations, as the current legal framework lacks clear rules of operations of the allocations of USAF funds between the bidders and the USAF.
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- » Reform and strengthen the policy and legal mechanisms for the independent authorisation and oversight of state surveillance to ensure that those mechanisms are competent and adequately resourced to monitor the legality of surveillance measures.
 - » Policies on the digital ID must reflect the country's socio-economic context through a deep analysis of the country's challenges, with a clear understanding of what the intended system will solve and how the citizens will benefit from the digital ID system.
 - » Conducting meaningful public participation so citizens can be educated about the benefits and risks of digital ID systems.
 - » A digital ID system must be developed under a strong regulatory framework that protects citizen data and provides a clear mandate and accountability mechanism.

Civil society

- » Coordinate their actions to create awareness and monitor online and offline human rights violations.
- » Conduct public awareness and sensitisation against online gender disinformation.
- » Streamline the flow of information between the different community grassroots organisations and NGOs to build effective domestic human rights monitoring mechanisms.
- » Build the capacity of their members in the detection, investigation and policy advocacy against human rights violations.
- » Hold the State accountable through public interest litigation.
- » Collaborate with open-sourced technologies that provide strong encryption protocols for vulnerable and targeted members of the civil society (journalists, public dissidents and human rights workers, and HRDs).

Private Sector

- » Internet Service Providers and Telecommunications companies should be transparent and publish state security services surveillance requests and must disclose the types of devices and tools being used in monitoring citizens to advance transparency and public confidence
- » ISPs and Telcos should tackle the gender digital divide through ambitious and more conscious corporate social responsibility policies, with more generous access to broadband for gender equity.
- » Through corporate social responsibility actions, provision should be made for financial assistance in establishing e-learning and e-services centres in rural areas to provide access to affordable ICT services to rural communities.

Media

The media should shift the narrative and focus on the following :

- » Covering legal developments related to the national digital ID project. The publicity is essential in informing the public about their rights and, more importantly, on the available safeguards, such as the regulatory framework which protects personal data.
- » Holding public authorities accountable through genuine public debate by reporting and highlighting instances of digital rights violations in the country.
- » Raising awareness by bringing the general public's attention to privacy breaches and targeted surveillance abuses using spyware, including Pegasus.
- » Shaping the national opinion on digital rights issues through investigative journalism and expert-based content which provides in-depth analysis of the loopholes in the regulatory framework and advocates for bold policy reforms that protect citizens' right to privacy, freedom of expression and access to information.

Academia

The academia should play a crucial role in promoting digital rights and internet freedom through:

- » Conducting multidisciplinary approach research on emerging technologies in partnership with civil society; especially on emerging technologies such as AI, digital spyware and their impacts on society.
- » Building a national momentum for promoting the right to freedom of expression online, access to information and digital rights through a series of public engagements and forums to disseminate knowledge to disseminate knowledge and citizen's informed consent.
- » Leading public reforms through policy advocacy by providing evidence-based recommendations to stakeholders and policymakers, including developing AI ethical guidelines.
- » Contributing to the resilience of the Rwandan civil society ecosystem through providing capacity building, technical support and engaging in joint research projects.
- » Contributing to national efforts towards digital literacy by producing educational materials that empower Rwandan citizens to navigate the digital landscape responsibly.
- » Building international collaboration with regional and international partners such as think-tanks, higher learning institutions and academics in order to significantly contribute to the advancement of digital rights in Rwanda and across the continent.



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