

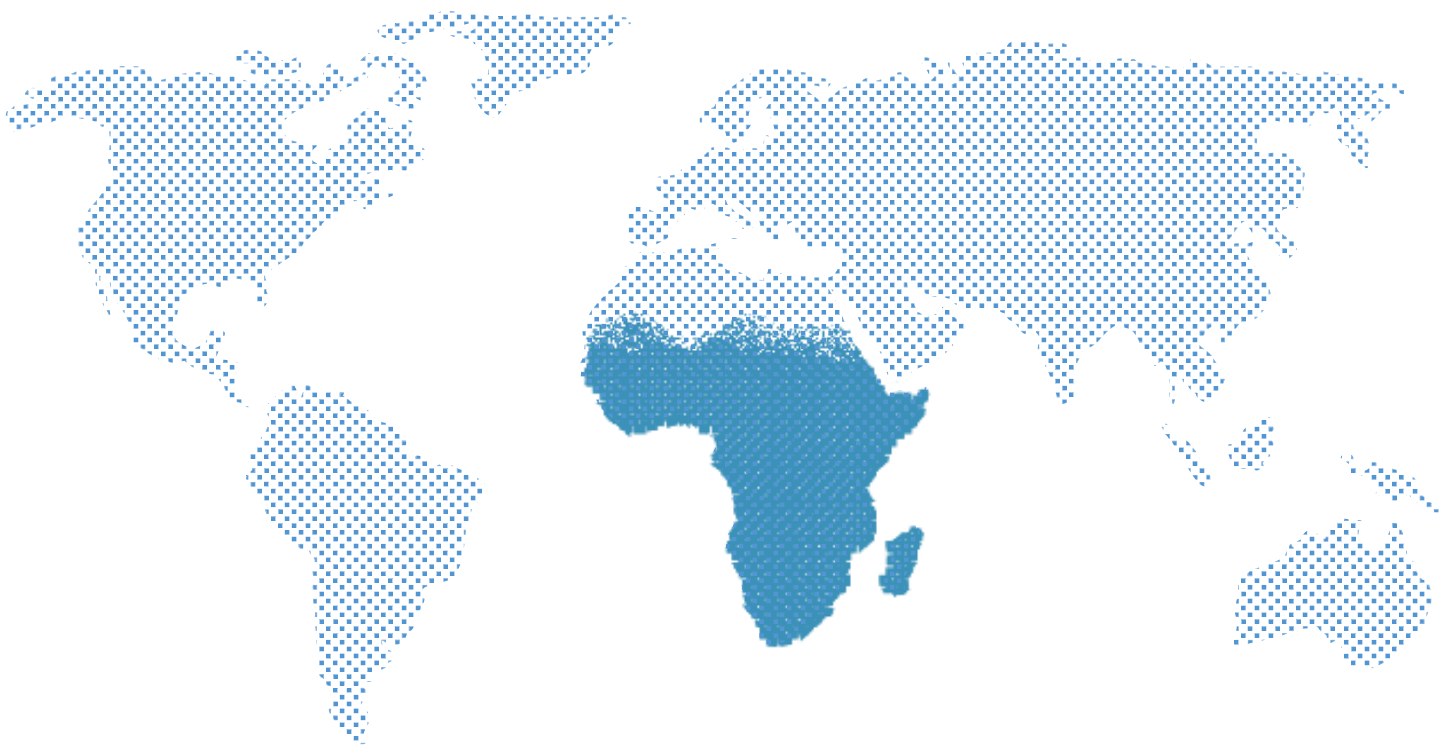


**CENTRE FOR LAW
AND DEMOCRACY**

**Restrictions on Civic Space Globally:
Law and Policy Mapping Series**

Volume 5: Sub-Saharan Africa

August 2020



Centre for Law and Democracy
info@law-democracy.org
+1 902 431-3688
www.law-democracy.org

Restrictions on Civic Space Globally: Law and Policy Mapping Series

This Report is part of a five-part Series. Each Report maps the legal restrictions on civic society in selected countries in five geographic regions, as of 2019. The five volumes are as follows:

Volume 1: Asia Pacific Region

Volume 2: Europe and Central Asia Region

Volume 3: Latin America Region

Volume 4: Middle East and North Africa Region

Volume 5: Sub-Saharan Africa Region

This report was Commissioned by:



Acknowledgements

This Series has been developed by the Centre for Law and Democracy (CLD), Canada, with the support of the Transparency International Secretariat in Berlin.

The primary author is Laura Notess, Legal Officer, CLD, with support from Toby Mendel, Executive Director, CLD, and comments and inputs from the staff of Transparency International. The Report also benefitted from the research support of various CLD interns, including Julia Kalinina, Jennifer Goodhart, Emma Brown, Adam Ward, Andrew Thrasher and Liam Scanlon.

The Centre for Law and Democracy and Transparency International would like to thank the European Union and Global Affairs Canada for their generous support which made the production and publication of this Series possible. This publication was produced with the financial support of the European Union and Global Affairs Canada. Its contents are the sole responsibility of the Centre for Law and Democracy and do not necessarily reflect the views of the European Union or Global Affairs Canada.



Global Affairs
Canada

Affaires mondiales
Canada

Table of Contents

Restrictions on Civic Space Globally: Law and Policy Mapping Series	2
Acknowledgements	2
Executive Summary	4
Approach and International Standards	5
Country Analysis	11
Benin	11
Burundi.....	15
Congo-Brazzaville.....	20
Democratic Republic of the Congo.....	23
Ethiopia	28
Kenya	34
Liberia	40
Madagascar.....	45
Malawi.....	49
Mozambique.....	55
Niger.....	59
Nigeria.....	63
Rwanda.....	71
Sierra Leone	76
Uganda	81
Zambia.....	86
Zimbabwe.....	90

Executive Summary

This Report reviews the law and policy environment for civic space in 17 countries in Sub-Saharan Africa: Benin, Burundi, Congo-Brazzaville, Democratic Republic of the Congo, Ethiopia, Kenya, Liberia, Madagascar, Malawi, Mozambique, Niger, Nigeria, Rwanda, Sierra Leone, Uganda, Zambia and Zimbabwe. It focuses on identifying laws and policies that represent more serious threats to civic space as of November 2019. Some key trends across the region include:

- **Overly Complex and Intrusive Regulation of Non-Governmental Organisations (NGOs):** Some countries have overly complicated registration regimes, while in others procedures or legal frameworks are unclear. Regulators often have broad discretion to refuse or cancel registration. Some countries require NGOs to provide burdensome reporting or to have projects approved for alignment with national development goals.
- **Inappropriate Content Restrictions:** Positively, there appears to be a regional trend towards decriminalising defamation, but some countries have removed criminal penalties only for defamation but retained them for other reputational offences (such as insult). And criminal defamation rules, sometimes with heightened penalties for public figures or heads of State, remain in some countries. Other common problematic restrictions include prohibitions on false information, unclear or broad hate speech rules and vague prohibitions on disrupting public order or inciting division.
- **Emerging Threats to Digital Rights:** New or proposed cyber laws in several countries include special online content restrictions including some which effectively reintroduce criminal defamation (for online speech). A key concern is the power of government authorities to block websites or the Internet without a court order, whether through explicitly powers to do so under the law or taking advantage of unclear legal rules.
- **Insufficient Independence in Media Regulation:** Most media regulators in the region are not properly independent. This is a serious concern given governments' already significant control over the media and because many of these regulators license the print media and/or the practice of journalism, in addition to the broadcast media.
- **Restrictions on Public Meetings and Assemblies:** Many countries require prior authorisation for assemblies or have prior notice requirements which effectively operate as prior authorisation schemes, giving authorities the power to disallow demonstrations on sensitive topics. In some cases, prior notice even extends to public meetings.
- **National Security:** Many countries in the region have strong security or intelligence institutions with minimal oversight. Combined with laws which define sedition or terrorism in ways that could apply to peaceful activity, this represents a potentially serious risk for some civil society organisations. The rules in several countries also allow for significant powers of surveillance, without sufficient judicial oversight.
- **Lack of Right to Information and Whistleblower Protection Laws:** Although many countries in the region have limited whistleblower protection, such as under an anti-corruption law, only three out of the seventeen had a general, stand-alone whistleblower protection law (with some countries having draft legislation). Five of the 17 countries lack any right to information law. The remaining countries vary in the strength of their RTI laws, with a few having very strong laws. However, implementation of these laws has been a major challenge and in some instances is almost non-existent.

Approach and International Standards

Laws which regulate civil society are numerous and often complex. Rather than provide a comprehensive review, this Mapping focuses on more problematic provisions in each country with the goal of identifying areas in need of reform. For example, it documents legal provisions which have been used to bring criminal charges against journalists and activists. The result is that the overall description for each country may skew towards the negative, as even countries which generally have an enabling environment for civil society often still have problematic laws in some areas.

This Mapping conducts comprehensive reviews of four countries, according to the nine categories below. For each category, domestic laws are assessed against international human rights standards. The nine categories are presented here, along with the key international standards for each area.

In addition, this Mapping provides a shorter summary of the conditions for civic space in an additional five countries. The categories below guide these summaries although each category is not explored in depth.

Category 1. Freedom of association: non-profit registration requirements and restrictions on advocacy: Are civil society organisations required to register? Are features of the registration process burdensome? Do authorities have discretion to deny registration? What limitations are placed on the ability of civil society organisations to operate and advocate?

The right freely to associate with others is guaranteed by Article 22 of the International Covenant on Civil and Political Rights (ICCPR),¹ among other international treaties. States should create an enabling environment in which organisations can be established and operate freely.² Any restrictions on the right to association must be prescribed by law and be necessary to protect national security, public safety, public order, public health or public morals, or the rights or freedoms of others.³

Civil society organisations should not be required to register as a legal entity; the right to form informal associations is protected under human rights law. Should an organisation choose to be formally legally registered, the procedures for this should be simple, accessible, non-discriminatory and not overly burdensome.⁴ If officials can deny registration, it should be on narrow, objective grounds, with the opportunity to appeal to an independent oversight body, such as a court.

¹ Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

² UN Human Rights Council Resolution 24/5, 8 October 2013, p. 2. Available at: <https://undocs.org/A/HRC/RES/24/5>.

³ ICCPR, Article 22(2).

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 95. Available at: <https://undocs.org/A/HRC/20/27>.

Once registered, States should not impose highly burdensome reporting obligations on organisations or intrude on their internal operations. Laws should not prevent organisations from engaging in advocacy activities on matters of public interest. Dissolution of an organisation should be permitted only where there has been a very serious breach of the law, based upon narrow grounds which are clearly articulated in the law, as decided by an independent authority, preferably a court.⁵

Category 2. Funding restrictions, financial reporting requirements and special tax requirements:
Are limits placed on the ability of civil society organisations to obtain foreign funding? Are there burdensome financial reporting or tax requirements?

The right to freedom of association protects the right of organisations to seek, receive and use funding. This includes the ability to access foreign funding, meaning that prohibitions on accessing foreign funding or onerous requirements for organisations receiving foreign funding are not legitimate. States may screen for fraud, money laundering or terrorist financing activities, and promote transparency in the use of funds. However, financial reporting requirements should be tailored to the operating realities of non-profit organisations, and not inhibit their ability to engage in legitimate operations.⁶

States should also not indirectly limit the work of civil society via tax laws. Rather, better practice is to create an enabling environment for civil society, including mechanisms such as allowing tax exempt status for non-profit organisations and tax deduction options for donors.⁷

Category 3. Media regulation: Are there registration or licensing requirements for print media or journalists? Are any bodies which are responsible for regulating the media independent?

Regulation of the media must respect the right to freedom of expression, meaning it should respect media independence and should not become a means of government control. On the other hand, intervention may be necessary to promote media diversity and to prevent the emergence of media monopolies.

States should not require journalists to obtain licences or register in order to engage in journalistic activities.⁸ Print media should also not be subject to a licensing regime, although merely technical registration requirements may be permissible if they are not overly complex and do not grant authorities discretion to deny registration.⁹ In the broadcasting sector, licensing requirements may

⁵ See Report of the Special Rapporteur, note 4, paras. 75-76 and 100; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 38. Available at: <https://undocs.org/A/HRC/23/39>.

⁶ Report of the Special Rapporteur, note 4, paras. 67-72.

⁷ Report of the Special Rapporteur, note 4, para. 72.

⁸ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/G/GC/34, para. 44, available at: <http://undocs.org/ccpr/c/gc/34>; and International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, available at: <https://www.osce.org/fom/28235?download=true>.

⁹ International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, *ibid.*

be appropriate to ensure diversity when allocating broadcasting frequencies, but the process should be fair and transparent, and be overseen by an independent authority.¹⁰

Bodies that regulate the media should be independent from political or private sector actors. Such regulatory bodies should be accountable and have a clear mandate and structure. The appointment process for members and manner of allocating funding should protect their independence.¹¹

Category 4. Content restrictions: Are there undue restrictions on the content that the media or civil society may disseminate? Is defamation criminalised? Are there other overbroad or vague restrictions on speech?

The right to freedom of expression, guaranteed by Article 19 of the ICCPR, may only be subject to restrictions which: 1) are provided by law; 2) aim to protect the rights or reputations of others, public order, national security, or public health or morals; and 3) be necessary to protect that interest. Several types of content restrictions commonly found in the Asia Pacific region frequently fail to meet this test:

- Defamation laws: While it is legitimate to protect the reputation of others, special or heightened protections for the reputations of heroes or public figures are inappropriate, since the public has a greater interest in their actions. Criminal penalties for defamation are almost always disproportionate and, as such, do not pass the “necessity” part of the test; defamation should therefore be decriminalised. National symbols, institutions or icons should not be protected by defamation or libel rules, as they cannot be said to have reputations of their own.¹²
- Hate speech: Hate speech is prohibited by Article 20(2) of the ICCPR, which provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. States should, therefore, prohibit such speech. However, hate speech laws should not be crafted in vague terms or go beyond the narrow scope of hate speech as recognised under international law. They should also require hateful intent and a sufficiently close nexus to an act of discrimination, violence or hostility. Without these elements, hate speech laws are easily abused to target non-hateful speech.¹³ Laws prohibit the expression of opinions about historical facts (genocide denial laws) or impose certain interpretations of history are also not legitimate.¹⁴

¹⁰ General Comment No. 34, note 8, para. 39.

¹¹ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Adopted at the 65th Ordinary Session, 21 October to 10 November 2019, Principles 17(1)-(2), available at: <https://www.achpr.org/legalinstruments/detail?id=69>; and Council of Europe, Recommendation (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000, available at: [https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec\(2000\)23.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec(2000)23.pdf).

¹² General Comment No. 34, note 8, paras. 38 and 47.

¹³ *Jersild v. Denmark*, 23 September 1994, Application No. 15890/89 (European Court of Human Rights), paras. 24 and 35-36, available at: <http://hudoc.echr.coe.int/eng?i=001-57891>; and Article 19, Camden Principles on Freedom of Expression and Equality, April 2009, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

¹⁴ General Comment No. 34, note 8, para. 49.

- Religious offence: Speech which incites hatred of certain religious groups may properly be restricted as a form of hate speech. However, other speech criticising religious views or practices should be protected rather than criminalised via blasphemy laws, which often allow for the suppression of minority religious views or inappropriately limit public discourse on religious matters.¹⁵
- Disinformation: Laws generally prohibiting the dissemination of “fake news” or the sharing of false information are too vague to meet the Article 19 test for restrictions on freedom of expression.¹⁶ Instead, States should only prohibit false statements linked to particular harmful results, such as defamation or fraud, subject to them being made with malicious intent.
- Contempt of court: Contempt of court laws can be legitimate as a means of maintaining order in a courtroom and the fair administration of justice, but laws which prohibit criticism of the judiciary, such as so-called “scandalising the judiciary” offences, improperly restrict public scrutiny of the judiciary.¹⁷
- Other overly vague offences: The Article 19 test requires restrictions on freedom of expression to be “provided by law”, meaning that they should be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.”¹⁸ Prohibitions on obscenity, for example, may be subject to abuse if not clearly defined.

Category 5. Internet and digital rights: Is online speech subject to more burdensome restrictions than offline speech? Do data retention laws raise privacy concerns? Are intermediaries responsible for content posted by users?

International law clearly establishes that the “rights that people have offline must also be protected online.”¹⁹ Although the digital era brings some new challenges that require novel regulation, States should not generally create special content restrictions or impose harsher penalties for Internet speech.²⁰ Blocking of certain websites or requiring the takedown of specific content should only apply to clearly illegal content, following a court order or order from another independent oversight body.

Intermediaries which provide merely technical Internet services, such as Internet service providers, should not be liable for content posted by others. The question of intermediary liability is more complex for intermediaries which play a more proactive role in supporting and interacting with

¹⁵ Rabat Plan of Action, 11 January 2013, para. 25. Available at:

https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

¹⁶ International Mandates for Promoting Freedom of Expression, Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: https://www.law-democracy.org/live/wp-content/uploads/2017/03/mandates.decl_.2017.fake-news.pdf.

¹⁷ International Mandates for Promoting Freedom of Expression, 2002 Joint Declaration. Available at: <https://www.osce.org/fom/39838?download=true>.

¹⁸ General Comment No. 34, note 8, para. 25.

¹⁹ UN Human Rights Council Resolution 32/13, 18 July 2016, para. 1, available at: <https://undocs.org/A/HRC/RES/32/13>; and UN General Assembly Resolution 68/167, 21 January 2014, para. 3, available at: <https://undocs.org/A/RES/68/167>.

²⁰ International Mandates for Promoting Freedom of Expression, 2018 Joint Declaration on Media Independence and Diversity in the Digital Age, para. 3. Available at: <https://www.osce.org/representative-on-freedom-of-media/379351?download=true>.

user content. However, at a minimum, such intermediaries should not be directly liable for user content and should not be required to monitor user content proactively. Overreaching takedown requirements for intermediaries incentivise them to over-police user speech.²¹

Category 6. Right to information and secrecy laws: Are public authorities required to provide access to the information they hold? What rules, including secrecy laws, are in place which limit public access to information and/or penalise civil society for disseminating it?

The right to seek and receive information held by public authorities (the right to information or RTI) is a crucial component of freedom of expression. It should be given effect through comprehensive legislation which enables persons to request information from their governments. Such legislation should establish a presumption in favour of public access to information, subject only to a narrow regime of exceptions.²² The strength of legal frameworks for RTI is assessed based on CLD and Access Info Europe's RTI Rating (rti-rating.org). This uses 61 indicators to assess the strength of the legal framework for RTI in seven categories: (1) the extent to which the law supports a fundamental right to access information; (2) the scope of the law; (3) the procedures for requesting information; (4) what exceptions justify denying requests for information and the process for such denials; (5) appeals; (6) sanctions for misconduct and protections for those who disclose public interest information; and (7) measures to promote the right to information.

This category also assesses what secrecy laws prohibit the disclosure of information and what penalties are imposed by those laws. Overly broad secrecy laws undermine transparency and public access to information. Of particular concern are provisions which penalise third parties, such as civil society or journalists, for sharing or re-sharing information which has been disclosed to them.²³

Category 7. Restrictions on freedom of assembly: Must organisers obtain prior permission before holding an assembly? Are there other restrictions on or criminal sanctions for participating in an assembly?

The right to assembly, guaranteed by Article 21 of the ICCPR, protects the right to organise and participate in non-violent gatherings, subject to restrictions which meet a test which is similar to the one which applies to freedom of expression and association. States must therefore allow assemblies and protests to occur without unwarranted interference. They may require advance notice of an assembly but laws which require organisers to obtain permission for an assembly are not appropriate.²⁴ In the interests of public order, some limited requirements regarding the time,

²¹ International Mandates for Promoting Freedom of Expression, 2011 Joint Declaration on Freedom of Expression and the Internet. Available at: <https://www.osce.org/fom/78309?download=true>.

²² International Mandates for Promoting Freedom of Expression, 2004 Joint Declaration on Access to Information and on Secrecy Legislation. Available at: <https://www.osce.org/fom/38632?download=true>.

²³ General Comment No. 34, note 8, para. 30; and 2004 Joint Declaration on Access to Information and on Secrecy Legislation, note 22.

²⁴ Report of the Special Rapporteur, note 4, para. 28; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, U.N. Doc. A/68/299, para. 24, available at: <https://undocs.org/A/68/299>; and African Commission on Human and Peoples' Rights, Guidelines on Freedom of

location or manner of assemblies may be legitimate, subject to the Article 21 test, and participants must be able to assemble “within sight and sound” of their audience and with enough time to express their views.²⁵

Law enforcement actions should respect and protect the exercise of the fundamental rights of the participants and the public. Policing should aim to enable an assembly to take place as planned and minimise the potential for injury to persons or damage to property.²⁶ Force should be used only when necessary and should be proportionate; lethal force is only permissible “as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.”²⁷ States should also avoid bringing disproportionate penalties against protestors. Laws which criminalise mere participation in a protest or impose criminal penalties on protest organisers for acts committed by other participants are particularly problematic.²⁸

Category 8. National security: Are crimes based on national security concerns, such as terrorism, defined in such a way as to include peaceful civil society activity? What surveillance powers do authorities have? What powers do governments have to suspend human rights obligations during states of emergency?

Where there is a “public emergency which threatens the life of the nation”, States may announce states of emergency and derogate from certain of their human rights obligations. However, derogations are allowed only insofar as they are strictly required by the exigencies of the situation.²⁹ States of emergency are exceptional circumstances; unrest or internal conflict that does not gravely and imminently threaten the life of the nation, or economic difficulties, are not sufficient to meet this standard.³⁰ Furthermore, certain rights cannot be derogated from even in emergencies, such as the right to life and the right to be free from torture or slavery.³¹

Where a legitimate state of emergency is not in place, any restrictions on national security grounds must meet the standard tests for restrictions on human rights. States often problematically rely on national security to justify overbroad criminal restrictions on expression, such as in anti-terrorism

Association and Assembly in Africa, 10 November 2017, para. 71, available at:

<https://www.icnl.org/post/tools/guidelines-on-freedom-of-association-and-assembly-in-africa>.

²⁵ See, for example, Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Communication No. 1948/2010, 10 September 2013, available at: <https://juris.ohchr.org/Search/Details/1672>; and Organization for Security and Co-operation in Europe, *Guidelines on Freedom of Peaceful Assembly: Second Edition*, 25 October 2010, paras. 99-100, available at: <https://www.osce.org/odihr/73405>.

²⁶ UN Human Rights Council Resolution 38/11, 18 July 2016, para. 10, available at:

<https://undocs.org/A/HRC/RES/38/11>; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 April 2018, UN Doc. A/HRC/26/36, para. 51, available at: <https://undocs.org/A/HRC/26/36>.

²⁷ UN Human Rights Council Resolution 38/11, note 26, para. 11.

²⁸ See, for example, Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders*, Chapter 3(B)(2), 31 December 2015. Available at:

<http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

²⁹ ICCPR, note 3, Article 4.

³⁰ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1 July 1984, Principles 40 and 41. Available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

³¹ ICCPR, note 3, Article 4.

or treason laws. Such laws should not rely on vague terms like “glorification” of terrorism or “extremism”. Instead, they should only punish behaviour which specifically intends to promote violence and is directly linked to an actual increased risk of a violent or terrorist attack.³²

Laws should also protect against arbitrary surveillance of civil society actors by the State. Legal frameworks often fail to provide adequate procedural protections to ensure surveillance is not conducted arbitrarily. Surveillance regimes should be clearly established in law and be subject to precise limits on their scope and duration. Monitoring of private communications should be subject to oversight by an independent body, subject to judicial review and should incorporate adequate due process protections.³³

Category 9. Whistleblower, witness and other protection systems for those at risk: Are any such systems in place and, if so, are they sufficiently robust?

Whistleblowers play an essential role in exposing institutional corruption, fraud and human rights violations. Due to the high personal risk assumed and the public’s interest in the disclosure of this information, States should enact whistleblower protection laws which prohibit retaliatory actions taken by the State or private actors. Strong whistleblower protections laws will also establish accessible channels for reporting wrongdoing, provide whistleblowers with access to remedies and create enforcement mechanisms which enable follow-up and reform following a disclosure. For standards on international better practice in this area, see Transparency International’s *International Principles for Whistleblower Protection Legislation*.³⁴

Country Analysis

Benin

Freedom of association: non-profit registration requirements and restrictions on advocacy

The foundational law governing associations in Benin is a 1901 colonial-era law. It protects the right of associations to freely form, although registration is necessary to obtain legal personality. Under the 1901 Law, organisations cannot have an illicit object, be contrary to the law or good

³² International Mandates for Promoting Freedom of Expression, 2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, available at: <https://www.osce.org/fom/99558?download=true>; and The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 6(c), available at: <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

³³ UN and OAS Special Rapporteurs on freedom of expression, Joint Declaration on Surveillance Programs and their Impact on Freedom of Exchange, 21 June 2013, paras. 7-10, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=927&>; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 17 April 2013, para. 3, available at: undocs.org/A/HRC/23/40.

³⁴ 5 November 2013. Available at: https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

morals, or aim to interfere with the national territory or republican form of government.³⁵ Since no further clarification of these terms is given, and no subsequent legislation constrains the grounds for denying registration, the imprecision of this provision could result in subjective denials of registration. An update to the 1901 Law is under consideration but it does not appear to have been adopted at the time of writing.³⁶

A 2001 decree regulates the actual registration process, which involves a number of steps including declaring the association to the local administrative jurisdiction, obtaining a certificate of deposit, publishing that certificate in the Official Gazette, obtaining approval from the Ministry of Interior, obtaining a receipt confirming legal existence and then (usually) also obtaining acknowledgement from the Ministry corresponding to the association's activities. Elements of these procedure are unnecessarily complex, particularly the involvement of multiple entities, and in practice there are lengthy delays to issuing receipts.³⁷

Funding restrictions, financial report requirements and special tax requirements

There are no notable restrictions on access to funding for civil society. Non-profit organisations may qualify for tax exemption and there are no indications that the process of obtaining a tax exemption is particularly challenging.³⁸

Media regulation

The Constitution establishes the High Authority for Audiovisual Media and Communications (HAAC) as the media regulatory body, covering both print and broadcasting media.³⁹ The HAAC is supposed to be an independent body. Of its nine members, the Authority's President and two others are appointed by Benin's President, three others are appointed by the National Assembly and three others by media professionals.⁴⁰ In theory, this should provide protection for HAAC's independence. In recent years, however, the body is increasingly seen as non-independent. The fact that HAAC's President is appointed by the executive appears to facilitate this. For example, in 2016, HAAC's President, who had close ties with the then President of Benin, was exerting outsized influence over HAAC, including reportedly by making some decisions without consulting other board members.

HAAC is responsible for a broad range of media regulatory activities, including broadcast licensing, issuing press cards and investigating and sanctioning violations. Sanctions can include

³⁵ Law of the 1 July 1901. Available in French at:

<https://benindoeingbusiness.bj/media/Loi%20du%201er%20juillet%201901.pdf>.

³⁶ Groupe d'Action pour le Progrès et la Paix, Enabling Environment National Assessment of Civil Society Organisations in Benin, July 2016, pp. 11-12. Available at: https://www.civicus.org/images/EENA_Benin_En.pdf.

³⁷ Decree 2001-234. A copy of this decree could not be located but a detailed description of its provisions is available at: Groupe d'Action pour le Progrès et la Paix, note 36, pp. 11-12.

³⁸ Groupe d'Action pour le Progrès et la Paix, note 36, p. 58.

³⁹ Constitution, Articles 142 and 143. English translation available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/cf2ff43e6cfefeb09dc125768e0048233f/\\$FILE/19243233.pdf/Benin%20-%20Constitution.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/cf2ff43e6cfefeb09dc125768e0048233f/$FILE/19243233.pdf/Benin%20-%20Constitution.pdf).

⁴⁰ Law 1993-017, amending Organic Law 92-021, Article 16. Available at: <https://sgg.gouv.bj/doc/loi-1993-018/> and <https://sgg.gouv.bj/doc/loi-organique-92-021/>.

closing or suspending media outlets.⁴¹ In recent years, HAAC has ordered several controversial media closures, including closing a newspaper in 2018 for insulting the President and closing four opposition-affiliated broadcasters in 2016. In both cases, it appears that HAAC exceeded its legal authority, in the first instance because it does not have the authority to close a newspaper based on that sort of violation and in the second because it did grant the outlets notice and an opportunity to correct the grounds cited for the closure, as legally required.⁴²

Content restrictions

Article 3 of the law which establishes HAAC allows freedom of expression to be limited to protect the dignity, freedom or property of others; the pluralist expression of opinion; public order and national unity; public health and the environment; childhood; cultural identity; public service needs; national defence needs; and the need to promote the national cultural heritage. This is a broader set of permissible grounds than under human rights law, and because the terms are not further defined and HAAC has broad discretion to interpret them, of potential concern.⁴³

The 2015 Code on Information and Communication contains several content restrictions. It requires journalists not to publish anything that will incite regionalism, ethnocentrism, discrimination, hate, xenophobia, violence or debauchery.⁴⁴ The Code also prohibits the dissemination of personal attacks or unfounded insinuations, insulting or outrageous words, calls for disruption of public order, statements which are contrary to decency or morals, obscene or indecent images, false information, and content compromising the general interest or invading privacy.⁴⁵

Unlike the previous rules, the Code does not impose prison sentences for reputation-based offences. However, it does retain steep fines for defamation, with higher minimum fines for defaming the President. Public contempt of certain public officials is also prohibited. Media outlets which publish or broadcast defamatory statements may be temporarily suspended.⁴⁶

Furthermore, a new Penal Code, adopted in 2018, provides for five to ten years imprisonment for anyone who publicly attacks the symbols, values or representations of the State, religions, ethnic groups or any community.⁴⁷

Internet and digital rights

In 2017, Benin passed a comprehensive Code on Digital Law. Chapter IX of the Law addresses “abusive content and online press offences”, creating a separate regime of content restrictions for

⁴¹ Organic Law 92-021, Article 55. Available in French at: <https://sgg.gouv.bj/doc/loi-organique-92-021/>.

⁴² Reporters without Borders, Popular Opposition Newspaper Closed for Insulting Benin’s President, 25 May 2018. Available at: <https://rsf.org/en/news/popular-opposition-newspaper-closed-insulting-benins-president>.

⁴³ Organic Law 92-021, note 41, Article 3.

⁴⁴ Law 2015-07, Article 36. Available in French at: <https://www.rti-rating.org/wp-content/uploads/2018/09/Benin.Code-on-Info.Jan2015.pdf>.

⁴⁵ Law 2015-07, note 44, Article 13.

⁴⁶ Law 2015-07, note 44, Articles 268-275 and 318.

⁴⁷ Penal Code, 2018, Article 280. Available in French at: <http://www.legibenin.net/pdfs/le%20nouveau%20code%20penal%202018.pdf>.

online speech. Some of these are much broader than their offline equivalents, such as “incitement to rebellion”, which is simply defined as direct provocation to rebellion by electronic means, without any clarifying language or definition of rebellion. Incitement or provocation to acts of terrorism is defined in a similar manner. Aspects of the offence of online harassment, such as a limited intent requirement, could facilitate its use against politically controversial speech. Particularly problematically, disseminating or relaying false information about a person by means of social networks or other electronic system can result in one to six months imprisonment, which could cover a range of innocent behaviour.⁴⁸

Right to information and secrecy laws

The 2015 Information and Communication Code includes a chapter on the right to information. However, in terms of right to information legislation, this is a weak law, ranking in the bottom ten of the 128 laws currently assessed on the RTI Rating. The scope of information and public authorities that the law applies to is limited, aspects of the requesting procedure are unclear or fail to facilitate the requesting process and there are no measures for promoting the right to information.⁴⁹

Benin’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	7	23%
3. Requesting Procedures	30	12	40%
4. Exceptions and Refusals	30	14	47%
5. Appeals	30	14	47%
6. Sanctions and Protections	8	3	38%
7. Promotional Measures	16	0	0%
Total score	150	52	35%

Restrictions on freedom of assembly

Freedom of assembly is still governed by an 1881 French law, which requires prior notice of 24 hours before any assembly but does not establish a prior authorisation requirement.⁵⁰ In practice, this is mostly respected but there have been notable exceptions where officials have restricted protests on sensitive political issues on alleged public order grounds, thereby creating a *de facto* prior authorisation regime.⁵¹

⁴⁸ Law 2017-20, Chapter IX. Available in French at: <https://www.afapdp.org/wp-content/uploads/2018/06/Benin-Loi-2017-20-Portant-code-du-numerique-en-Republique-du-Benin.pdf>.

⁴⁹ RTI Rating, Benin. Available at: <https://www.rti-rating.org/country-data/Benin/>.

⁵⁰ Law of 30 June 1881. The historic French law is available at: <https://mjp.univ-perp.fr/france/1881reunion.htm>. Benin’s iteration is described in Groupe d’Action pour le Progrès et la Paix, note 36, p. 44.

⁵¹ Groupe d’Action pour le Progrès et la Paix, *ibid*.

A provision in the 2018 Penal Code criminalises gatherings which could disturb public tranquillity.⁵² This provision has been used to justify the arrest and detention of participants in peaceful protests.⁵³

National security

There is significant controversy in Benin over a specialised court responsible for terrorism and corruption cases. Known as CRIET, by its French acronym, it has drawn controversy for convicting a political opponent of the President. The opponent, lacking a right to appeal domestically, appealed to the African Court of Human and Peoples' Rights, which found that Benin had violated his due process rights. It also found that some provisions of CRIET's foundational law violated his rights to equality before the law, calling into general question the legal basis for CRIET.⁵⁴

Whistleblower, witness and other protection systems for those at risk

A decree enacted under the anti-corruption law provides some limited whistleblower protection by preventing retaliation against whistleblowers who collaborate with authorities on corruption matters. It also specifies that they may receive security assistance from the police or security forces. However, the Decree does not establish reporting channels and only establishes a limited range of protection options for a limited class of whistleblowers.⁵⁵

Burundi

Freedom of association: non-profit registration requirements and restrictions on advocacy

NGOs in Burundi are governed by two registration regimes, a declaration scheme and an accreditation scheme. The declaration regime, which is simpler, involves submitting an application to the local authority to obtain legal personality.⁵⁶ NGOs which operate in more than one province are "collective" NGOs and then international NGOs are also required to apply for accreditation. This involves submitting a more extensive application, including an action plan for the next three years, to the competent Minister.⁵⁷ The Minister must provide a decision on accreditation within two months. The association may appeal this decision to an administrative court.⁵⁸

⁵² Penal Code, note 47, Article 237.

⁵³ Amnesty International, Benin: Crackdown on Protests and Wave of Arrests Fuel Tense Election Period, 26 April 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/04/benin-crackdown-on-protests-and-wave-of-arrests-fuel-tense-election-period/>.

⁵⁴ African Court on Human and Peoples' Rights, *Sebastien Germain Ajavon v. Republic of Benin*, para. 226. Available at: <http://en.african-court.org/images/Cases/Judgment/Judgement%20on%20Merits%20%20in%20the%20Matter%20of%20AJAVON%20Vs%20%20Republic%20of%20Benin%20Application.pdf>.

⁵⁵ Decree 2013-122. Available in French at: <http://www.anlc.bj/wp-content/uploads/downloads/2014/09/Decret-2013-122-protection-dononciateurs-temoins-victimes.pdf>.

⁵⁶ Law 1/02 of 2017, Article 8. Available in French at: <http://www.presidence.gov.bi/wp-content/uploads/2017/04/loi-02-2017.pdf>.

⁵⁷ *Ibid.*, Articles 14 and 21.

⁵⁸ *Ibid.*, Articles 23 and 24.

The government has far-reaching control over NGOs. National NGOs must receive approval for their activities from the relevant sectoral ministries before they can carry the out activities. Failure to do so may result in the dissolution of the organisation. The relevant ministry may also suspend any association which it determines has departed from its official objects. This suspension does not require any independent or judicial authorisation.⁵⁹ In practice, various NGOs have been banned from operating after the government accused them of “inciting hatred”, “tarnishing the image of Burundi”, “sowing divisions”, and “causing public disorder”.⁶⁰

International NGOs are subject to a separate law which has similarly intrusive requirements, such as mandatory alignment with the government’s development programmes and the implementation of ethnic hiring quotas. In 2018, the National Security Council suspended the operation of international NGOs operating in Burundi for three months, citing lack of compliance with this law, and required all such NGOs to re-register by a process requiring the conclusion of a cooperation agreement with the Ministry of Foreign Affairs, a plan to address hiring quotas and other obligations.⁶¹

Funding restrictions, financial report requirements and special tax requirements

All foreign funding must pass through the government controlled central bank and must be accompanied by a document outlining the origin and allocation of the funds. Some organisations believe there is a risk of government misappropriation of these funds.⁶²

Media regulation

Burundi has no independent media regulator. The National Communications Council (CNC) is the national media regulatory body but, while it ostensibly operates independently, all of the members of its governing council are appointed directly by the President.⁶³

Journalists are required to register and receive accreditation from the CNC. The CNC has the power to refuse to accredit or to withdraw journalists’ accreditation, although journalists are given the right to appeal to a competent court.⁶⁴ Newspapers are also required to register prior to publication and are required to notify the CNC if any of the information submitted in their application changes at any point.⁶⁵

⁵⁹ *Ibid.*, Articles 82 and 86.

⁶⁰ Civicus, “Burundi: Joint Submission to the UN Universal Periodic Review”, 29 June 2017. Available at: <http://www.civicus.org/images/Burundi.JointUPRSubmission.pdf>.

⁶¹ Civicus, Burundi Bans International NGOs, 8 October 2018. Available at: <https://www.civicus.org/index.php/media-resources/news/interviews/3540-burundi-bans-international-ngos>.

⁶² Law 1/02 of 2017, note 56, Article 74; and Godfrey Musila, Freedom under Threat: The Spread of Anti-NGO Measures in Africa, Freedom House, available at: <https://freedomhouse.org/report/special-reports/freedom-under-threat-spread-anti-ngo-measures-africa>.

⁶³ Constitution of Burundi, 2018, Article 275, available at: <http://www.presidence.gov.bi/wp-content/uploads/2018/07/constitution-promulguee-le-7-juin-2018.pdf>; and Law 1/06 of 2018, amending Law 1/03 of 2013, Articles 1 and 16.

⁶⁴ Law 1/19 of 2018, *ibid.*, Articles 11, 19 and 77.

⁶⁵ *Ibid.*, Article 23.

The CNC also regulates broadcast media.⁶⁶ Broadcasting licences may be suspended temporarily or indefinitely based on a violation of the law or on grounds of public interest.⁶⁷ In practice, the CNC has regularly suspended media that broadcast human rights or anti-government opinions.⁶⁸ Recently, the BBC was banned for “damaging the country’s reputation” after it broadcast a documentary on secret torture and detention sites in Burundi.⁶⁹ In 2016, a radio program was suspended for a month for airing a song titled “Human Rights for Journalists”.⁷⁰ In September 2017, the CNC revoked the licences of over a dozen media outlets.⁷¹

Partly because of these closures, State-run media outlets dominate the media sector. In July 2019, the head of the Imbonerakure militia, which has been accused of committing atrocities against opposition activists during violence in 2015, was appointed to head the State-run radio and television broadcaster via a presidential decree.⁷²

Content restrictions

Under the Penal Code, various reputation offences are subject to criminal penalties. These include publicly insulting a person and maliciously imputing a fact likely to undermine the honour of a person.⁷³ Contempt for a public official is also prohibited, which includes anything that is offensive or defamatory related to the performance of the official’s duties. Contempt against the Head of State may result in six months to five years imprisonment.⁷⁴

Article 376 makes it a crime publicly to commit an unlawful act or to engage in contempt for established powers, agents of public authority or certain emblems or insignia adopted by public authorities.⁷⁵ In addition, Article 602, which make it a crime, publicly to attack the binding force of law, provoke people to disobey, spread false rumours of a nature to alarm the public or excite

⁶⁶ *Ibid.*, Article 31.

⁶⁷ *Ibid.*, Articles 38 and 39.

⁶⁸ Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, Joint Submission to the Universal Periodic Review of Burundi, 29 June 2017, p. 5-6, available at: <https://www.article19.org/data/files/medialibrary/38816/Joint-submission-to-the-Universal-Periodic-Review-of-Burundi-by-ARTICLE-19-and-others.pdf>; and Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, 29 June 2017, p. 8, available at: <http://www.civicus.org/images/Burundi.JointUPRSubmission.pdf>.

⁶⁹ Human Rights Watch, Burundi Tightens Screws on Media Freedom, 29 March 2019. Available at:

<https://www.hrw.org/news/2019/03/29/burundi-tightens-screws-media-freedom>.

⁷⁰ Freedom House, Freedom of the Press 2017: Burundi. Available at: <https://freedomhouse.org/report/freedom-press/2017/burundi>.

⁷¹ UN General Assembly, Report of the Commission of Inquiry on Burundi, A/HRC/39/36, 8 August 2018, at p. 10-11. Available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIBurundi/ReportHRC39/A_HRC_39_63_EN.pdf.

⁷² BBC, Burundi’s Imbonerakure Leader Named Head of RTNB, 14 July 2019, available at:

<https://www.bbc.com/news/world-africa-48980959>; and BBC, Burundi Profile: Media, 29 July 2019, available at: <https://www.bbc.com/news/world-africa-13085066>.

⁷³ Law 1/05 of 2009, Articles 251 and 252. Available at: [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/cb9d300d8db9fc37c125707300338af2/\\$FILE/Code%20P%c3%a9nal%20du%20Burundi%20.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/cb9d300d8db9fc37c125707300338af2/$FILE/Code%20P%c3%a9nal%20du%20Burundi%20.pdf).

⁷⁴ *Ibid.*, Articles 378 and 379.

⁷⁵ *Ibid.*, Article 376.

them against public authorities, disseminate false news or display in public places things that “disturb the public peace”.⁷⁶

In practice, these provisions have allowed for significant censorship by the State, including through their closure of media houses and arrest of journalists.⁷⁷ Self-censorship is also pervasive, due to the prevalence of physical attacks and threats against members of the media by police and the militia.⁷⁸

Internet and digital rights

There have been past incidents of widespread blockages of social media platforms, such as Twitter, WhatsApp and Facebook, but the legal authority for requiring Internet service providers to impose these blockages is not clear. They may have been ordered informally by the National Security Services.⁷⁹

Burundi does not have data protection legislation. Internet service providers are required to allow regulatory authorities to access user data.⁸⁰ The public prosecutor has the power to issue written orders for the interception of electronic communications of a person under investigation and to instruct service providers to install devices to facilitate interception.⁸¹

Right to information and secrecy laws

Burundi currently has no access to information law, and the right to information is not guaranteed in the Constitution.

Restrictions on freedom of assembly

Freedom of assembly is guaranteed pursuant to Article 32 of the Constitution but is closely regulated under a 2013 law.⁸² Spontaneous assemblies are not allowed.⁸³ Organisers are required to notify authorities of assemblies four days in advance and to provide information about the organisers, the time and date of the demonstration, its purpose, the expected participants and its path. The authorities must issue a decision within 48 hours but Article 10 of the Law gives

⁷⁶ *Ibid.*, Article 602.

⁷⁷ Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, note 68, p. 8. Available at:

<http://www.civicus.org/images/Burundi.JointUPRSubmission.pdf>.

⁷⁸ Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68, p. 1, 3-4; and Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, note 68, p. 8.

⁷⁹ Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68.

⁸⁰ CIPESA, State of Internet Freedom in Burundi 2016, December 2016, p. 7, available at:

https://cipesa.org/?wpfb_dl=230; and Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68, p. 6.

⁸¹ Law 1/09 of 2018, Articles 69, 70 and 71. Available at:

<http://www.assemblee.bi/IMG/pdf/9%20du%2011%20mai%202018.pdf>.

⁸² Constitution of Burundi, 2018, Article 32 Available at: <http://www.presidence.gov.bi/wp-content/uploads/2018/07/constitution-promulguee-le-7-juin-2018.pdf>.

⁸³ ICNL, Freedom of Assembly in Burundi. Available at:

<http://www.icnl.org/research/resources/assembly/FoA%20in%20Burundi.pdf>.

authorities broad powers to refuse or ban assemblies on grounds of public order.⁸⁴ If no response is provided within 48 hours, the assembly is presumed to have been approved.⁸⁵ In practice, the government frequently invokes Article 10 to refuse protest applications from NGOs which focus on democracy, anti-corruption and the rule of law. Organisers can also be held criminally and civilly liable for offences committed by protesters during assemblies.⁸⁶

Police often use force against protestors. In 2014, the government released a directive on the policing of demonstrations which allowed for lethal force to be used to disperse protests. Since then, the State has frequently used violence against peaceful protestors, particularly in post-election violence in 2015 when hundreds of protestors were killed and injured.⁸⁷ A new Police Law was enacted in 2017 which requires that the use of force be necessary and proportionate to the circumstances but broader legal reform, such as stronger oversight, is still lacking.⁸⁸

National security

Burundi's National Intelligence Service has been implicated in numerous rights abuses, including arbitrary arrest and detention, torture, summary execution and enforced disappearances. These abuses are primarily extra-legal activities which are facilitated by a lack of oversight and strong control by the President.⁸⁹ The youth wing of the ruling party, known as Imbonerakure, has also been implicated in these abuses. It has no formal legal authority but a UN Commission of Inquiry found that it is effectively operating under the control of state agents, including law enforcement.⁹⁰

Whistleblower, witness and other protection systems for those at risk

Under the Anti-Corruption Law, people who have given information regarding corruption offences or who have assisted or collaborated with authorities to investigate these offences are to be protected.⁹¹ However, this protection only applies to whistleblowers who report offences set out in the Anti-Corruption Law, which does not provide for a general protection scheme for whistleblowers who provide other types of information.

⁸⁴ Law 1/28 of 2013, Article 10, as described by Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68, p. 6; and Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, note 68, p. 12.

⁸⁵ ICNL, Freedom of Assembly in Burundi, note 83.

⁸⁶ Law 1/28 of 2013, Article 13, as described by Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68, p. 7; and Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, note 68, p. 12.

⁸⁷ Article 19, CIPESA, the East Africa Law Society, PALU and Defend Defenders, note 68, p. 7; and Civicus, Burundi: Joint Submission to the UN Universal Periodic Review, note 68, pp. 12-14.

⁸⁸ Organic Law 1/03 of 2017, note 84, Article 13.

⁸⁹ Geneva Centre for Security Sector Governance, Burundi SSR Background Note, 28 June 2017. Available at: <https://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles/Burundi-SSR-Background-Note>.

⁹⁰ Human Rights Council, Report of the Commission of Inquiry on Burundi, 8 August 2018, UN Doc. A/HRC/39/63. Available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIBurundi/ReportHRC39/A_HRC_39_63_EN.pdf.

⁹¹ Law 1/12 of 2006, Article 12. Available at:

http://www.assemblee.bi/IMG/pdf/n%C2%B01_12_18_avril_2006.pdf.

In 2016, the Law for the Protection of Witnesses, Victims and Vulnerable Persons was adopted but the government has failed to establish the required dedicated unit within the Ministry of Justice to render it operational.⁹²

Congo-Brazzaville

Freedom of association: non-profit registration requirements and restrictions on advocacy

The Congolese Constitution guarantees freedom of association⁹³ but NGOs face unclear registration requirements that undermine this right. The registration process appears to be formally governed by the former colonial French Law of 1 July 1901 and the accompanying colonial Decree of 16 August 1901.⁹⁴ Pursuant to the original 1901 law, associations can be formed informally without authorisation or a declaration but a declaration is required in order to obtain formal legal personality.⁹⁵ In Congo, this declaration must be submitted to the Ministry of the Interior and Decentralization.⁹⁶ Confirmation will be published in the Official Gazette, at which point the association obtains legal personality.⁹⁷ CLD was unable to confirm further details of the registration process, and it is possible that a more detailed legal framework has not been put in place. In practice, associations which are critical of the government often face more stringent registration requirements.⁹⁸

In 2016, a new NGO law failed to pass in the Senate.⁹⁹ The draft law would have created bureaucratic barriers to registration, including a requirement that each NGO seek approval from each administration with which it wanted to work. The law would also have allowed registration to be refused if an association's purpose was to "undermine institutional stability" and thereby extend administrative control over associations' activities.¹⁰⁰

Regardless of the legal environment, NGOs are heavily restricted in practice. One source suggests that CSOs which oppose the ruling party are not permitted to operate. This, combined with the real

⁹² US State Department, 2018 Trafficking in Persons Report – Burundi, 28 June 2018. Available at: <https://www.refworld.org/docid/5b3e0b883.html>.

⁹³ Constitution of the Republic of Congo, Article 27. Available at: https://www.constituteproject.org/constitution/Congo_2015.pdf?lang=en.

⁹⁴ Law of 1 July 1901 and Decree of 16 August 1901. Available at: https://niort-associations.fr/loi_decret_1901.pdf.

Note this source is the French law which includes amendments made in France which are not applicable in the Congo. Otherwise, however, secondary sources indicate that 1901 law is still the relevant governing framework. Commission Justice et Paix Pointe-Noire, Liberté d'association et d'expression menaces au Congo, 23 June 2016. Available at: http://www.rpdh-cg.org/sites/default/files/pdf/analyse_loi_sur_les_associations_cjp_rpdh_niosi_rajlc_juin_2016.pdf.

⁹⁵ Law of 1 July 1901, Article 2 and Decree of 16 August 1901, note 94.

⁹⁶ Freedom House, Freedom of the World 2018: Congo-Brazzaville, available at: <https://freedomhouse.org/report/freedom-world/2018/congo-republic-brazzaville>.

⁹⁷ Decree of 16 August 1901, Article 1 and Law of 1 July 1901, Article 6, note 94.

⁹⁸ Freedom House, Freedom in the World 2018: Congo-Brazzaville, note 96.

⁹⁹ Godfrey Musila, note 62.

¹⁰⁰ Commission Justice et Paix Pointe-Noire, Liberté d'association et d'expression menaces au Congo, note 94.

threat of physical reprisals, means that organisations self-censor, dedicating themselves to “modest reform, at best”.¹⁰¹

Funding restrictions, financial report requirements and special tax requirements

No foreign funding restrictions were identified.

Media regulation

All types of media outlets are required to register with the High Council for Freedom of Communication (CSLC, from the French name). Seven of the 11 members of CSLC are appointed by the President, National Assembly or Senate, two are appointed by the Supreme Court and two by media professionals. While in theory the involvement of multiple branches of government should provide for some independence, the President’s party has dominated the legislature for several years meaning that in practice the CSLC is not sufficiently independent.¹⁰²

The Council appears to have broad powers to issue and rescind broadcasting licences and to sanction and suspend media outlets, although since the relevant laws are not available online, CLD cannot confirm the extent to which these powers are based in actual legal authority. A 2013 source indicated that key licensing rules had not been enacted and that there was some confusion over regulatory authority to issue licences.¹⁰³ In practice, the CSLC appears to sanction and suspend media outlets regularly on a political basis. On the other hand, although a majority of media outlets have not completed the mandatory registration process with CSLC, many still operate in practice without interference.¹⁰⁴

Content restrictions

Freedom of expression is guaranteed by Article 25 of the Congolese Constitution,¹⁰⁵ and a 2001 law decriminalised various press offences, including defamation.¹⁰⁶ Instead, the press law specifies monetary penalties or suspension of media outlets for defamation.¹⁰⁷ CSLC has also variously suspended media outlets for offences such as inciting division and tribal and ethnic hatred,

¹⁰¹ Bertelsmann Stiftung, BTI Rating 2018: Congo, Republic, available at: <https://www.bti-project.org/en/reports/country-reports/detail/itc/cog/itr/wca/>; and Freedom House, Freedom in the World 2018: Congo-Brazzaville, note 96.

¹⁰² African Media Barometer: Republic of the Congo, 2013, available at: <https://library.fes.de/pdf-files/bueros/africa-media/10406.pdf>; and Freedom House, Freedom of the Press 2016: Congo (Brazzaville), available at: <https://freedomhouse.org/report/freedom-press/2016/congo-republic-brazzaville>.

¹⁰³ African Media Barometer: Republic of the Congo, *ibid.*, p. 107.

¹⁰⁴ IREX, Media Sustainability Index 2012: Republic of Congo, p. 88, available at: <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-africa-2012-republic-of-congo.pdf>; and Freedom House, Freedom of the Press 2016: Congo (Brazzaville), note 102.

¹⁰⁵ Constitution, Article 25. English translation available at: https://www.constituteproject.org/constitution/Congo_2015.pdf?lang=en.

¹⁰⁶ IREX, Media Sustainability Index 2012: Republic of Congo, note 104; and Freedom House, Freedom of the Press 2016: Congo (Brazzaville), note 102.

¹⁰⁷ US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary. Available at: <https://www.state.gov/wp-content/uploads/2019/03/Republic-of-the-Congo-2018.pdf>.

endangering peace, cohesion and national unity, manipulating public opinion, printing untrue or unverified information, inciting violence, disseminating false news or publishing seditious articles.¹⁰⁸

Internet and digital rights

The government has blocked the Internet and other telecommunications or there have been suspiciously timed outages.¹⁰⁹ The legal framework appears to provide insufficient protection against such interferences. For example, the 2016 block was apparently based on an order from the Ministry of Interior to the telecommunications regulator, which then ordered the two largest telecommunications providers to block communications during an election, all with an unclear legal basis.¹¹⁰ The telecommunications regulator, like the CSLC, does not have strong guarantees for its independence in the political context of the Congo. Its five-member board is appointed by the President and the Council of Ministers.¹¹¹

Right to information and secrecy laws

While the Congolese Constitution guarantees the right to information, no legislation exists to implement this right.¹¹² Since access to official information is not protected by law, the government frequently chooses to release information only to the State media rather than to private, independent media.¹¹³

Restrictions on freedom of assembly

Freedom of assembly is guaranteed by Article 27 of the Constitution.¹¹⁴ However, groups wishing to hold public assemblies must seek authorisation from the Ministry of Interior and Decentralisation and from local authorities for all demonstrations to be held in public venues. Public meetings must be declared ahead of time, and the law does not clearly articulate the circumstances under which authorities can restrict them, leaving overly broad discretion to authorities. Furthermore, participating in an unauthorised or banned public meeting or protest may result in fines or a prison sentence.¹¹⁵

¹⁰⁸ IREX, note 106, p. 88; Amnesty International, Congo 2017/2018: Annual report, available at: <https://www.amnesty.org/en/countries/africa/congo/report-congo-republic-of/>; Freedom House, Freedom of the Press 2016: Congo (Brazzaville), note 102; and Roy Greenslade, Four Congo Newspapers ‘Suspended’, The Guardian, 4 June 2013, available at: <https://www.theguardian.com/media/greenslade/2013/jun/04/press-freedom-congo-brazzaville>.

¹⁰⁹ Brett L. Carter, Something is Happening in Congo-Brazzaville, African Arguments, 20 June 2017, Available at: <https://africanarguments.org/2017/06/20/something-is-happening-in-congo-brazzaville/>.

¹¹⁰ Reuters, Congo Orders Telecoms Shutdown during Presidential Vote, 19 March 2016. Available at: <https://af.reuters.com/article/topNews/idAFKCN0WL0II>.

¹¹¹ Law 11-2009, Article 10. Available in French at: <https://www.arpce.cg/tf-com-lois>.

¹¹² Freedom House, Freedom in the World 2018: Congo-Brazzaville, note 96; and Constitution, note 105.

¹¹³ IREX, note 106, p. 88.

¹¹⁴ Constitution, note 105, Article 27.

¹¹⁵ US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary, note 107, p. 14; Freedom House, Freedom of the World 2018: Congo-Brazzaville, note 96; and Amnesty International, Congo: Political Opposition under Pressure, 2018, available at: <https://www.amnesty.org/download/Documents/AFR2286552018ENGLISH.PDF>.

In practice, authorities have denied protests related to human rights and other sensitive matters. Assembly participants have been detained, charged and/or subjected to violence by government forces.¹¹⁶ For example, in 2018, security forces arrested 23 members of a youth activist movement for “association with criminals and participation in an unauthorised demonstration”.¹¹⁷ Other protestors have been charged with inciting disorder.¹¹⁸

National security

A number of charges have been brought against political opponents or activists under questionable circumstances which were justified on the basis of national security. These include charges of undermining the internal security of the State and rebellion. As the current version of the Penal Code is not available online, it is not clear if these charges are based on overly broad provisions or if this reflects general problems with the criminal justice system.¹¹⁹

Some legal rules governing communications technology may facilitate surveillance. For example, network operators and electronic communications operators must store certain data from electronic communications “for the purposes of defence and security, the fight against paedophilia and terrorism”. Authorised government agents may have access to this data without any apparent independent oversight, although there are limitations on the scope of data that may be accessed.¹²⁰ In practice, the government has reportedly conducted surveillance on the digital communications of private individuals without legal authority.¹²¹ This surveillance has included interception of emails, texts and other means of communications.¹²²

Whistleblower, witness and other protection systems for those at risk

Congo does not have a whistleblower protection regime.

Democratic Republic of the Congo

Freedom of association: non-profit registration requirements and restrictions on advocacy

¹¹⁶ Amnesty International, Congo 2017/2018: Annual report, note 108; US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary, note 107, p. 14; and Freedom House, Freedom of the World 2018: Congo-Brazzaville, note 96.

¹¹⁷ US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary, note 107, p. 14.

¹¹⁸ Freedom House, Freedom of the World 2018: Congo-Brazzaville, note 96; Amnesty International, Congo: Political Opposition under Pressure, 2018, note 108, p. 10.

¹¹⁹ Civicus, Activists Arbitrarily Arrested and Break-in at Human Rights NGO, 26 March 2018, available at: <https://monitor.civicus.org/newsfeed/2018/03/26/activists-arbitrarily-arrested-break-in-human-rights-NGO/>; and TV5Monde, Prisonniers Politiques au Congo-Brazzaville, 28 June 2017, available at: <https://information.tv5monde.com/afrique/prisonniers-politiques-au-congo-brazzaville-ou-en-est-177646>.

¹²⁰ Law 9-2009, Article 130. Available in French at: <https://www.arpce.cg/tf-com-lois>.

¹²¹ Freedom House, Freedom of the World 2018: Congo-Brazzaville, note 96; US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary, note 107.

¹²² US State Department, Republic of the Congo 2018 Human Rights Report: Executive Summary, note 107.

Pursuant to Decree-law No 004/2001, non-profit organisations are required to register with the Minister of Justice. In order to register, domestic organisations are required to notify the minister in charge of the sector in which they work. Within one year, the Minister of Justice may grant legal personality, following approval by the relevant ministry.¹²³

There are several barriers to registration. The organisation must provide extensive documentation, including a list of all staff members, declarations signed by all staff members, articles of association, certificates of good conduct and morals for all staff members, and a statement regarding anticipated resources.¹²⁴ In addition, the organisation will only be registered if it is “driven by humanitarian concerns” and defines the specific areas of proposed intervention in its articles of association, which must fall within the national development framework.¹²⁵ Finally, the articles of association cannot include any provisions which are against “the law, morality or public order”.¹²⁶ These requirements provide public authorities with undue discretion and limit the activity of NGOs.

NGOs are monitored by the ministry with which they register, and are required to work with those ministers and to inform the Minister of Planning about their projects.¹²⁷

NGOs have certain responsibilities, including to “conform to the government’s stance on development”.¹²⁸ While there are no legal restrictions on criticising the government or promoting opposition views, in practice critics of the government are often targeted. For example, in 2015, the civil society organisation LUCHA was suspended for operating in “total illegality” after it had protested against government massacres.¹²⁹

In 2017 and 2018, Parliament was considering an NGO bill that would have introduced new administrative restrictions on civil society and the ability of organisations to engage in political activities. It would have banned NGOs which cause political unrest or discredit political institutions, giving problematically broad powers to authorities to decide which organisations they deem to fall into these categories.¹³⁰ The bill does not appear to be moving forward at the moment.

Funding restrictions, financial report requirements and special tax requirements

¹²³ Decree-law 004/2001, Articles 60 and 63. Available at:

<http://www.leganet.cd/Legislation/Droit%20Public/loi0042001.20.07.2001.asbl.htm>.

¹²⁴ *Ibid.*, Article 4.

¹²⁵ *Ibid.*, Article 36.

¹²⁶ *Ibid.*, Article 7.

¹²⁷ *Ibid.*, Articles 44 and 45.

¹²⁸ *Ibid.*, Article 41.

¹²⁹ ICNL, Civic Freedom Monitor: Democratic Republic of the Congo (DRC), 3 August 2019. Available at:

http://www.icnl.org/research/monitor/congo_drc.html.

¹³⁰ See OHCHR, Democratic Republic of Congo: UN Experts Urge Review of Draft NGO Law, 4 June 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23170&LangID=E>; and RFI, DRC: NGO Draft Law Worries UN Experts, 6 June 2018, available at: <http://www.rfi.fr/afrique/20180606-rdc-projet-loi-encadrer-ong-inquiete-experts-onu-nyaletsossi-voule>.

There are no legal restrictions on NGOs receiving funding. Approximately 75% of organisations obtain foreign funding.¹³¹ Registered NGOs are eligible for tax exemptions and relief from import duties.¹³²

The draft NGO bill that was proposed in 2018 would have imposed restrictions on both domestic and foreign funding.¹³³

Media regulation

The primary media regulatory body is the Higher Audio-Visual and Communication Council (CSAC). Its mandate includes guaranteeing freedom of the press and ensuring compliance with relevant codes of ethics. Media outlets – whether print, radio, television or online – must register with CSAC, submitting their authorisation documents for a “compliance check”.¹³⁴ CSAC is also responsible for monitoring published and broadcast content. If CSAC identifies a violation of standards, it may decide on its own discretion to suspend the media outlet for up to three months. CSAC also has the power to suspend or suppress particular programmes, stations and media outlets.¹³⁵

The 2011 law which established CSAC provides that it should be an “independent and autonomous” public institution.¹³⁶ It comprises fifteen members selected by a mix of government, professional, industry and other entities, with government entities selecting a minority of the members.¹³⁷ The process should, in theory, protect CSAC from political interference but in practice the Council has struggled to remain independent of the Ministry of Information. When the Council was first established, there were instances of the President interfering in the appointments process and the Ministry of Information has directly shut down radio and TV stations without consulting CSAC.¹³⁸

Content restrictions

The 1996 Press Law includes an array of press offences, many which represent overbroad content prohibitions. Some of the more troubling ones include a general prohibition on sharing anything that is contrary to public order or good morals, or giving offence to the Head of State.¹³⁹ The law

¹³¹ ICNL, Civic Freedom Monitor: Democratic Republic of the Congo (DRC), note 129.

¹³² Decree-law 004/2001, note 123, Article 39.

¹³³ RFI, RDC: Un Projet de Loi pour Encadrer les ONGO Inquiète des Experts de l’ONU, 6 June 2018. Available at: <http://www.rfi.fr/afrique/20180606-rdc-projet-loi-encadrer-ong-inquiete-experts-onu-nyaletsossi-voile>.

¹³⁴ Organic Law 11/001, Articles 8 and 17; and CSAC’s Rules of Procedure, Article 116 <https://www.leganet.cd/Legislation/Droit%20administratif/Media/REGLEMENTLoi.2011.htm>.

¹³⁵ Organic Law 11/001, *ibid.*, Articles 45 and 59.

¹³⁶ *Ibid.*, Article 2.

¹³⁷ *Ibid.*, Article 24.

¹³⁸ Internews, Democratic Republic of Congo: Media and Telecoms Landscape Guide, December 2012, p. 21, https://internews.org/sites/default/files/resources/drc_guide_-_final_051212_20.12.12.pdf; and African Media Barometer, DRC 2012, p. 101, available at: <http://library.fes.de/pdf-files/bueros/afrika-media/09426.pdf>.

¹³⁹ Law 96-002 of 22 June 1996, Articles 77 and 84. Available in French at: https://www.droitcongolais.info/files/7.35.5.-Loi-du-22-juin-1996_Liberte-de-presse_modalite-de-l-exercice.pdf.

establishing the CSAC also provides that freedom of the press is subject to respect for “public order, good morals, and the rights of others”, and that “depravation of manners” is forbidden.¹⁴⁰

The Penal Code also includes several content prohibitions, including criminal penalties for defamation. Outrages against members of the Political Bureau, National Assembly, government or Constitution Court are also prohibited, as is insult to the national emblem. It is also an offence to spread false information that is likely to “alarm, worry or excite the population against the authorities”.¹⁴¹ This applies even if the accused did not intend to cause unrest. It is also a crime to attempt to “undermine the integrity of the State”.¹⁴²

Internet and digital rights

The law grants the government broad powers over telecommunications which enable government shutdowns, slowdowns and blocking of websites. The government has the power to prohibit the use of telecommunication installations for national security or “any other reason”. When the suppression is justified on the basis of “national security”, all ISPs and service operators are required to apply it.¹⁴³ This provision has allowed for significant abuse; the DRC has frequently cut Internet and cell phone services and blocked social media sites to restrict communication between protestors. Most recently, this occurred in December 2018, when elections were held and all primary telecommunications were shut down the following day, ostensibly to prevent the spread of “fictitious results”.¹⁴⁴

Privacy rights are guaranteed in the Constitution. However, the Telecommunications Law provides for privacy to be restricted when this is in the “public interest”. This is not defined further, providing potentially large scope to limit privacy.¹⁴⁵ For further discussion on surveillance powers, see the national security section, below.

Right to information and secrecy laws

The right to information is guaranteed in article 24 of the DRC’s Constitution but the country does not have a designated access to information law to implement this. A draft law proposed in 2014 has not yet been passed.¹⁴⁶

¹⁴⁰ Organic Law 11/001, note 134.

¹⁴¹ Penal Code, Articles 74, 136, 138 and 199(2). Available in French at: <https://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>.

¹⁴² Penal Code, note 141, Articles 195, 196 and 199(3).

¹⁴³ Law 013/2002 on Telecommunications, Article 46. Available at: <http://www.droit-afrique.com/upload/doc/rdc/RDC-Loi-2002-13-cadre-telecom.pdf>.

¹⁴⁴ OHCHR, UN Expert Urges DRC to Restore Internet Services, 7 January 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24057&LangID=E>; and Freedom House, Freedom in the World 2018: Democratic Republic of the Congo, available at: <https://freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa>.

¹⁴⁵ Law 013/2002, note 143, Article 52.

¹⁴⁶ Reporters without Borders, Congolese Journalists Need Protective Laws, 9 October 2018, available at: <https://rsf.org/en/reports/congolese-journalists-need-protective-laws-rsf-and-jed-tell-un-council>; and Freedom House, Freedom in the World 2019: Democratic Republic of the Congo, note 144.

The Penal Code imposes a prison sentence of two to ten years for any individual who, without intent of treason or espionage, divulges and brings to the public attention information that “must be kept secret in the interests of national defence” or knowledge of which could lead to the discovery of a defence secret.¹⁴⁷ No public interest defence is provided for.

Restrictions on freedom of assembly

Prior authorisation is required for public demonstrations. Organisations must submit a letter requesting authorisation, describing the nature of the demonstration and the route that will be taken.¹⁴⁸ There does not appear to be exception for spontaneous protests. The government must provide a response within three to five days,¹⁴⁹ which is too long, and the law provides no recourse for organisers who are denied authorisation.

Organisers of a demonstration are required to ensure the peaceful nature of the demonstration. In addition, any person who organises a demonstration without authorisation, or despite being refused authorisation, may be fined and/or imprisoned.¹⁵⁰

In practice, demonstrations are often held, but demonstrations focusing on sensitive issues are frequently forbidden and demonstrations have been refused due to their content being “provocative” or “subversive” or posing a threat to the ruling party’s power. Despite these limits, demonstrations are often held but authorities frequently arrest and use excessive and deadly force against protestors.¹⁵¹

National security

Some provisions of the Press Law and the Penal Code provides for overly broad justifications for limiting rights on national security grounds. The Press Law provides that during wartime it is treason to incite forces to serve a foreign power, knowingly participate in a demoralisation of the population with the goal of harming national defence or directly or indirectly deliver information which should be secret in the interests of national defence to a foreign power.¹⁵² This last provision, in particular, could cover merely publishing material that authorities believe may harm national security. War is also not defined for the purposes of this provision and could be read expansively given internal conflicts in some regions of the DRC over the years.

The Penal Code prohibits distributing foreign propaganda with foreign origin that harms the national interest. It also prohibits directly or indirectly receiving any donations or other support from foreign people or organisations which could undermine the integrity or independence of the

¹⁴⁷ Penal Code, note 141, Article 187.

¹⁴⁸ Decree-Law 196 of 29 January 1999, Article 3. Available in French at: <http://www.icnl.org/research/library/files/Democratic%20Republic%20of%20the%20Congo/decree.pdf>.

¹⁴⁹ *Ibid.*, Article 6.

¹⁵⁰ *Ibid.*, Articles 9 and 10.

¹⁵¹ ICNL, Civic Freedom Monitor: Democratic Republic of the Congo (DRC), note 129; and Freedom House, Freedom in the World 2018: Democratic Republic of the Congo, available at: <https://freedomhouse.org/report/freedom-world/2018/congo-democratic-republic-kinshasa>.

¹⁵² Law 96-002, note 139, Article 78.

DRC or shake the faith of citizens in the institutions of the State.¹⁵³ These provisions could conceivably prohibit a variety of publications, support or funds of foreign origin, beyond that which is supporting crimes such as rebellion or treason.

Surveillance powers are another area of concern. While interception of communications is prohibited in the absence of prior authorisation from the Attorney General, warrants are available where the “necessities of information motivated by the need to uncover the ultimate truth in a judicial affair may allow the Attorney General of the Republic to prescribe interception”.¹⁵⁴ “Ultimate truth” is not defined and, consequently, warrants under this rule may be available in a broad range of situations. Interception can also be authorised in exceptional circumstances to protect the vague notions of “essential elements of scientific, economic and cultural potential”, as well as to prevent “criminality and organised hooliganism”.¹⁵⁵

Surveillance powers are strengthened by Law 14/2002, which establishes the regulatory body for telecommunications and grants the power to government to “conduct site visits, conduct investigations and studies, and collect all necessary data” from telecommunication service providers.¹⁵⁶ A 2015 ministerial order states that telecommunication companies must protect their subscribers’ privacy, but the language is vague and provides for exceptions for national security. These rules give the authorities the power to infringe on individuals’ privacy without authorisation from the Attorney General.¹⁵⁷

Whistleblower, witness and other protection systems for those at risk

There is no whistleblower protection regime for whistleblowers in the DRC.

Ethiopia

Freedom of association: non-profit registration requirements and restrictions on advocacy

Ethiopia recently passed into law new legislation regarding non-profit organisations, which critics assess as being a significant improvement for civil society in the country. Registration is no longer mandatory for associations.¹⁵⁸ Associations that choose to register officially must register with the Civil Societies Organisations Agency in a fairly standard application process. An application may only be rejected for specific enumerated reasons and any denial may be appealed to an oversight board or the courts. The CSO Agency itself is accountable to the federal Attorney General, with

¹⁵³ Penal Code, note 141, Articles 209 and 210.

¹⁵⁴ Law 013/2002, note 143, Articles 54 and 55.

¹⁵⁵ *Ibid.*, Article 59.

¹⁵⁶ Law 14/2002 of 16 October 2002, Article 4. Available in French at:

<http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/LOI.014.16.10.2002.htm>.

¹⁵⁷ Ministerial Order, n°25/CAB/VPM/MIN/ INTERSEC/024/2015, n°003/ CAB/VPM/PTNTIC/ 2015, n°MDNAC-RCAB/009/2015, n°004/CAB/MIN/ J&DH/2015, n°CAB/MIN.FINANCES/2015/0144, n°008/CAB/MIN/CM/LMO/2015, 19 May 2015. Available at:

<http://www.leganet.cd/Legislation/Droit%20economique/telecommunication/AIM.19.05.2015.html>.

¹⁵⁸ ICNL, Civic Freedom Monitor: Ethiopia, 5 April 2019. Available at:

<http://www.icnl.org/research/monitor/ethiopia.html>; Proclamation 1113/2019, Article 19(1), t.

11 board members drawn from a mix of government, civil society and other actors (such as representatives of disability and women and youth associations), with the government representatives in the minority.¹⁵⁹

Less positively, the Agency retains fairly expansive powers to investigate an organisation's activities and to suspend or dissolve non-profit organisations for grave violations of law, subject to procedural protections. While the grounds for refusing registration to an organisation are generally narrow, one exception is if the aim or rules of the organisation are contrary to the law or public morals, which is left to authorities to interpret.¹⁶⁰

Funding restrictions, financial report requirements and special tax requirements

Positively, Ethiopia's new law replaces a highly restrictive regime which designated organisations receiving more than 10% of their funding from foreign sources as foreign agents.¹⁶¹ The law still has some restrictions on how organisations may manage their internal finances. All non-profits must get written approval from the CSO Agency in order to open a bank account; it is unclear from the law what happens if the Agency denies such a request or what the ground for denial might be.¹⁶² Furthermore, non-profits can only use a maximum of 20% of their total income for administrative costs, which is defined to include a wide range of costs, including but not limited to: salaries and benefits of administrative employees, office rent, bank service fees and utilities, among other things. Any non-profit the annual flow of funds of which exceeds Birr 200,000 (approximately 7,000 USD) must undergo an annual audit, the costs of which are considered "administrative expenses" for the purpose of the 20% cap. The Agency can provide exemptions from this audit requirement, but there are no details regarding what the exemptions are or what the process is for obtaining one.¹⁶³

Media regulation

Ethiopia is currently in the process of reforming some of its media laws. A government working group is developing a new Mass Media Proclamation which would replace the current 2008 Mass Media Proclamation and the 2007 Broadcasting Service Proclamation. A draft has been the subject of an initial round of stakeholder consultations. So far, it appears that these reforms would be a key step towards formalising in law a freer media environment.¹⁶⁴ In the meantime, in practice 2019 saw important openings in the media environment in Ethiopia, with bans on a number of media outlets being lifted and criminal charges against some outlets dropped.¹⁶⁵

¹⁵⁹ Proclamation 1113/2019, *ibid.*, Articles 4, 8 and 57-59.

¹⁶⁰ *Ibid.*, Articles 59, 77 and 78.

¹⁶¹ Godfrey Musila, note 62, p. 9.

¹⁶² Proclamation 1113/2019, note 158, Article 75.

¹⁶³ *Ibid.*, Articles 63 and 72.

¹⁶⁴ Kaleeb Girma, Ethiopia; Bill to Relax Media Investment Law, Addis Fortune, AllAfrica, 27 July 2019, available at: <https://allafrica.com/stories/201907300749.html>; and Muthoki Mumo, Under Abiy, Ethiopia's Media have More Freedom but Challenges Remain, CPJ, 29 April 2019, available at: <https://cpj.org/blog/2019/04/ethiopia-abiy-ahmed-press-freedom-reform.php>.

¹⁶⁵ Freedom House, Freedom in the World: Ethiopia, 2019. Available at: <https://freedomhouse.org/report/freedom-world/2019/ethiopia>.

Currently, under the Mass Media Proclamation, all publishers of periodicals, meaning regularly printed material aimed at the public, must register with the Ministry of Information. The Mass Media Proclamation allows the Ministry to refuse to issue a certificate of registration and, while the law requires written notification of the grounds for refusal within 30 days, it provides for no limits on the grounds for a refusal.¹⁶⁶ The Proclamation does not specify whether and how registration may be withdrawn, presumably leaving this to the discretion of the Ministry. It also expands the scope of criminal liability for offences committed through the mass media and associated prosecutorial powers, such as permitting joint criminal or civil liability for a media outlet and the responsible person. Prosecutors also have the power to impound any print publication deemed to be a threat to public order or national security although a court order is needed outside of cases of “extreme emergency”.¹⁶⁷

Under the current Broadcasting Service Proclamation, the key broadcasting regulatory agency is the Ethiopia Broadcasting Authority. Its board members are appointed by the government upon recommendation of the Minister of Information.¹⁶⁸ While ostensibly an autonomous agency, the Authority is accountable to the Ministry of Information, from which it also gets its budget. The Authority has the power to regulate broadcasting including issuing, suspending and cancelling broadcasting licences.¹⁶⁹

Content restrictions

The Criminal Code criminalises defamation and calumny, and even a showing of the truthfulness of the statement is insufficient, by itself, to constitute a defence.¹⁷⁰ Insulting behaviour and outrage, meaning offending someone’s honour, is also a crime. For all three crimes, insulting a public servant in the discharge of that person’s duty is considered an aggravating circumstance.¹⁷¹ Other provisions of the Criminal Code prohibit abusing, insulting, defaming or slandering the State, as well as destroying or insulting an officially recognised national emblem with malicious or contemptuous intent.¹⁷²

The Mass Media Proclamation also provides for prosecutions of media outlets or journalists for defamation or false accusations against legislative, executive or judicial authorities. It permits prosecutions even where a private party is not injured, effectively allowing prosecutions even in the absence of a victim. The Mass Media Proclamation also permits courts to impose much steeper fines than the Criminal Code in cases of defamation through the mass media.¹⁷³ More positively, it appears that the government is considering the decriminalisation of defamation as part of its reform of the Mass Media Proclamation.¹⁷⁴

¹⁶⁶ Proclamation 590/2008, Articles 2(3) and 9. Available at: <https://www.rti-rating.org/wp-content/uploads/Ethiopia.pdf>.

¹⁶⁷ *Ibid.*, Articles 41 and 42.

¹⁶⁸ Proclamation 533/2007, Article 9. Available at: <http://aceproject.org/ero-en/regions/africa/ET/ethiopia-broadcasting-service-proclamation-no-533/view>.

¹⁶⁹ *Ibid.*, Articles 4 and 7(2).

¹⁷⁰ Criminal Code, Articles 613 and 614. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>.

¹⁷¹ Criminal Code, note 170, Articles 615 and 618.

¹⁷² *Ibid.*, Article 244.

¹⁷³ Proclamation 590/2008, note 166, Articles 41(2) and 43(7).

¹⁷⁴ Kaleeb Girma, Ethiopia; Bill to Relax Media Investment Law, note 164.

A controversial law criminalising hate speech and false information is currently under consideration. The law seeks to respond to a legitimate problem of hate speech, especially ethnically based hate speech, which does fuel conflicts in Ethiopia.¹⁷⁵ However, the most recently circulated draft reportedly lacks clear definitions of elements of the crime of hate speech. It also makes it a crime to distribute unverified false information that is likely to provoke conflict, which could conceivably be used to target legitimate commentary or impose criminal penalties for mere journalistic errors.¹⁷⁶ Given the aggressiveness with which prior laws have been used to target journalists, some freedom of expression advocates are concerned that the hate speech law will also be misused in practice.¹⁷⁷

Internet and digital rights

Ethiopia enacted a Computer Crime Proclamation in 2016 which includes a number of proper cybercrimes, such as hacking, but also introduces some crimes which inappropriately restrict freedom of expression. This includes causing fear by repeatedly sending information about someone through the computer system, which is overly broad and not sufficiently tailored to target behaviour such as cyber-stalking or cyber-bullying.¹⁷⁸ Another provision prohibits the intentional dissemination of information which “incites violence, chaos or conflict among people”, which is again overly vague and has an insufficiently precise intent requirement, since it only requires intent in relation to the act of disseminating information. Finally, the Proclamation also introduces a crime of defamation which, when committed through a computer, attracts a steeper penalty than defamation under the Criminal Code.¹⁷⁹

Ethiopia enacted a new telecommunications regulatory regime in 2019 which repeals a number of prior laws, ends the government monopoly over telecommunications service provision and introduces a new telecommunications regulatory body.¹⁸⁰ In the past, government regulatory control over the telecommunications infrastructure allowed it to engage in network/Internet shutdowns relatively easily.¹⁸¹ The reforms will likely somewhat constrain this power but some concerns remain. For example, earlier drafts of the law (the final law has not yet been published)

¹⁷⁵ Felix Horne, Tackling Hate Speech in Ethiopia, Human Rights Watch, 3 December 2018. Available at: <https://www.hrw.org/news/2018/12/03/tackling-hate-speech-ethiopia>.

¹⁷⁶ Fisseha Tekle, OPED Ethiopia: Fragile New-Found Press Freedom must be Buttressed in Law and Practice, Amnesty International, 3 May 2019, available at: <https://www.amnesty.org/en/latest/news/2019/05/oped-ethiopia-fragile-new-found-press-freedom-must-be-buttressed-in-law-and-practice/>; and Halefom H. Abraha, The Problems with Ethiopia’s Proposed Hate Speech and Misinformation Law, LSE, 4 June 2019, available at: <https://blogs.lse.ac.uk/mediapolicyproject/2019/06/04/the-problems-with-ethiopias-proposed-hate-speech-and-misinformation-law/> (linking to and describing an Amharic version of the draft law).

¹⁷⁷ Elias Gebreselassie, Journalists Cautiously Celebrate Press Freedom in Ethiopia, Al-Jazeera, 3 May 2019. Available at: <https://www.aljazeera.com/indepth/features/journalists-cautiously-celebrate-press-freedom-ethiopia-190502220108387.html>.

¹⁷⁸ Proclamation 958/2016, Article 13(2). Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103967/126636/F1922468791/ETH103967.pdf>.

¹⁷⁹ *Ibid.*, Articles 13(3) and 14.

¹⁸⁰ Dawit Endeshaw, Ethiopia Parliament to Approve Telecoms Liberalisation Law, Reuters, 7 June 2019. Available at: <https://www.reuters.com/article/ethiopia-telecoms/update-1-ethiopia-parliament-to-approve-telecoms-liberalisation-law-idUSL8N23E25Q>.

¹⁸¹ Freedom House: Freedom House, Freedom of the Net 2017: Ethiopia, note 165.

provided for the Board of Directors of the telecommunications regulator to be appointed by the Prime Minister, which would limit its independence.¹⁸²

Right to information and secrecy laws

Ethiopia’s access to information law is fairly robust, with a ranking of 23rd out of the 128 countries currently assessed on the RTI Rating, meaning that it is one of the more progressive such laws on the continent. However, it is undermined by overly broad exceptions, including the lack of a harm test for exceptions.¹⁸³ Furthermore, in practice, little has been done to implement the law, thereby undermining the public’s access to information.¹⁸⁴

Ethiopia’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	5	83%
2. Scope	30	25	83%
3. Requesting Procedures	30	19	63%
4. Exceptions and Refusals	30	18	60%
5. Appeals	30	25	83%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	14	88%
Total score	150	112	75%

Restrictions on freedom of assembly

Any organisers of a peaceful demonstration or public political meetings must provide written notice to authorities 48 hours prior to the event.¹⁸⁵ The local municipal or administrative office must respond within 12 hours, informing the organisers of any issues regarding the time and place of the planned demonstration or public political meeting. Officials have broad discretion to determine that the event cannot be held at a certain time or place if they are of the opinion that “in order to maintain peace and security” an alternate time or location is preferable. However, authorities are not empowered to refuse a permit outright.¹⁸⁶ In practice, over the years, officials have frequently restricted the time and place of assemblies on artificial pretexts. There have also been instances where hotels and conference centres cancelled reservations for opposition political meetings because of concerns about government reprisals.¹⁸⁷

Some provisions in the Criminal Code criminalise peaceful protest. The crime of “seditious demonstrations” includes uttering seditious remarks or displaying seditious images in any public place or meeting, without defining or explaining what qualifies as seditious. Similarly, “rioting”

¹⁸² Draft Proclamation on the Regulation of Communications Services, Article 8. Available at: <https://addisstandard.com/wp-content/uploads/2019/02/Draft-Communication-Serv-Proclamation-.pdf>.

¹⁸³ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

¹⁸⁴ Freedom House, Freedom of the Press 2016; Ethiopia. Available at: <https://freedomhouse.org/report/freedom-press/2016/ethiopia>.

¹⁸⁵ Proclamation 3/1991, Article 4. Available at: <https://www.abysinnialaw.com/uploads/e3.pdf>.

¹⁸⁶ *Ibid.*, Article 6.

¹⁸⁷ ICNL, Civic Freedom Monitor: Ethiopia, 5 April 2019, note 158.

includes merely participating in an unlawful assembly during which violence occurs, even if the person does not personally engage in violence.¹⁸⁸

National security

In the past, the 2009 anti-terrorism law was regularly used as a basis for bringing charges against journalists, human rights defenders and opposition politicians.¹⁸⁹ The definition of terrorist acts includes causing “serious interference or disruption of any public service” with the intent to destabilise the fundamental political, constitutional or economic and social institutions of the country. These are vague concepts which could conceivably cover peaceful protests that disrupt traffic, for example. The penalty for such an act ranges from 15 years’ imprisonment to the death penalty.¹⁹⁰ The law also punishes with 10-20 years’ imprisonment the act of “encouragement of terrorism” which includes publishing statements which are “likely to be understood” by some members of the public as a direct or indirect encouragement to instigate or prepare an act of terrorism.¹⁹¹ This is again highly subjective. Positively, the government is reportedly reviewing the anti-terrorism law, although questionable arrests of journalists under the law have been made even after Ethiopia began introducing reforms in 2018.¹⁹²

The grounds for declaring a state of emergency under the Constitution are relatively constrained, requiring an invasion, natural disaster or “breakdown of law and order”, as well as a declaration by the Council of Ministers which has been approved by the House of Peoples’ Representatives.¹⁹³ However, there is no requirement that derogations from fundamental human rights during such an emergency are constrained to what is strictly necessary given the situation. Furthermore, in practice the government appears to have relied on states of emergency in situations which questionably rise to the level of a breakdown of law and order, as required by the Constitution.¹⁹⁴ While Ethiopia has lifted the most recent state of emergency, in the past states of emergencies included granting broad powers to limit human rights, including banning all protests, limiting dissemination of certain publications and permitting detentions without charge.¹⁹⁵

Whistleblower, witness and other protection systems for those at risk

¹⁸⁸ Criminal Code, Articles 487 and 488. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>.

¹⁸⁹ OHCHR, UN Experts Urge Ethiopia to Stop Using Anti-Terrorism Legislation to Curb Human Rights, 18 September 2014. Available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15056&LangID=E>.

¹⁹⁰ Proclamation 652/2009, Article 3. Available at: <https://www.refworld.org/docid/4ba799d32.html>.

¹⁹¹ *Ibid.*, Article 4.

¹⁹² Amnesty International, Ethiopia: Release Journalists Arrested on Unsubstantiated Terrorism Charges, 4 October 2019, available at: <https://www.amnesty.org/en/latest/news/2019/10/ethiopia-release-journalists-arrested-on-unsubstantiated-terrorism-charges/>; and Freedom House, Freedom in the World 2019: Ethiopia, note 165.

¹⁹³ Constitution, Article 93. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/et/et007en.pdf>.

¹⁹⁴ Human Rights Watch, Ethiopia: New State of Emergency Risks Renewed Abuses, 23 February 2018. Available at: <https://www.hrw.org/news/2018/02/23/ethiopia-new-state-emergency-risks-renewed-abuses>.

¹⁹⁵ CIVICUS, Joint Letter on Recent Arrests of Journalists and Human Rights Defenders in Ethiopia, APC, April 2018, available at: <https://www.apc.org/en/pubs/civicus-joint-letter-recent-arrests-journalists-and-human-rights-defenders-ethiopia>; and Human Rights Watch, Ethiopia: New State of Emergency Risks Renewed Abuses, *ibid.*.

Ethiopia has a law designed to protect witnesses of a criminal offence.¹⁹⁶ However, the law is very narrow in scope. Despite including “whistleblowers” in the title of the law, it only applies to witnesses providing information in relation to certain criminal proceedings. It does not apply where disclosures do not lead to major investigations or prosecutions and it lacks key protections, such as from workplace reprisals.¹⁹⁷ It also only applies to criminal cases involving a minimum potential punishment of ten years’ imprisonment.¹⁹⁸

Kenya

Freedom of association: non-profit registration requirements and restrictions on advocacy

Kenya passed a comparatively progressive NGO law in 2013 called the Public Benefits Organisations (PBO) Act. However, the government has refused to implement the law despite court orders requiring it to do so and in practice is still applying the more restrictive Non-Governmental Organizations Coordination Act.¹⁹⁹ Under that law, the regulatory body is the NGO Coordination Board. The Board’s chairman is appointed by the President and its other members are appointed by cabinet members, limiting its independence, although a minority of members are supposed to be appointed on the recommendations of a council which represents NGOs.²⁰⁰

Under the NGO Coordination Act, NGOs must register. The Board can refuse an application for registration on vague grounds, such as not being “in the national interest”, and no explanation is required for a denial. The Board is not obligated to respond within any fixed time period.²⁰¹ The Board may also require that certain terms and conditions are included in an NGO’s certificate of registration and violating these terms and conditions may be a basis for cancellation of the certificate of registration.²⁰²

Funding restrictions, financial reporting requirements and special tax requirements

Currently, there are no notable funding restrictions on NGOs in Kenya. The confusion over the state of the law as between the NGO Coordination Act and the PBO Act creates some ambiguity as to the relevant tax exemption regime but both regimes allow for some form of tax exemption, although in practice tax benefits are not always easy to obtain.²⁰³ There have also been attempts to deregister human rights and governance NGOs or freeze their accounts on questionable allegations of failing to meet financial or anti-money laundering requirements.²⁰⁴

¹⁹⁶ Proclamation 699/2010. Available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89590&p_country=ETH&p_count=141.

¹⁹⁷ PPLAAF, Ethiopia, available at: <https://www.pplAAF.org/country/ethiopia.html>; Proclamation 699/2010, *ibid*.

¹⁹⁸ *Ibid.*, Article 3.

¹⁹⁹ ICNL, Civic Freedom Monitor: Kenya, 5 February 2019. Available at:

<http://www.icnl.org/research/monitor/kenya.html>.

²⁰⁰ Non-Governmental Organizations Co-Ordination Act, No. 19 of 1990, section 4. Available at:

<http://pckamunya.co.ke/wp-content/uploads/2018/07/Non-Governmental-Organizations-Co-ordination-Act.pdf>.

²⁰¹ *Ibid.*, sections 10 and 14.

²⁰² *Ibid.*, sections 12 and 16; and ICNL, Civic Freedom Monitor: Kenya, note 199.

²⁰³ Council on Foundations, Nonprofit Law in Kenya, June 2019. Available at:

<https://www.cof.org/content/nonprofit-law-kenya>.

²⁰⁴ Godfrey Musila, note 62.

There have been attempts in Kenya, notably in 2013 and 2017, to introduce restrictions on NGOs' access to foreign funding, such as a 15% cap on foreign funding. These proposals have been abandoned due to opposition from civil society and others. However, this may be an area where continued monitoring is appropriate, given the ongoing rhetoric regarding alleged foreign influence on NGOs.²⁰⁵

Media regulation

The Media Council of Kenya (MCK) is responsible for handling media complaints and issuing press cards. The Council has some protections for its independence. Almost all of its members are nominated by a selection panel made up of various constituent and professional groups such as the Kenya Union of Journalists, Law Society of Kenya and Media Owners Association. While they are still ultimately appointed by the Cabinet Secretary, he or she can only reject a nomination if the person does not meet the qualification requirements. Procedural protections are in place regarding the removal of Council members.²⁰⁶ The Media Council has a complaints committee which is selected in the same manner as the Media Council.

In 2013, an appellate body was created to handle appeals from decisions of the Council on media misconduct. This body, the Communications and Multimedia Appeals Tribunal, does not have strong protections for its independence. It is under the authority of the Communication Authority (described below) and while appointments are made by a selection committee along the lines of the one for the Media Council, the Cabinet Secretary has greater discretion to refuse nominations and has greater powers to remove members. The Tribunal can also impose significantly heavier fines than the Complaints Committee.²⁰⁷ A court decision reportedly places some constraints on the appointments process but, generally, concerns remain about the role and independence of this body.²⁰⁸ The lack of clarity about the relationship between the various bodies is also a challenge; for example, for example, there have been conflicts between the Council and the Complaints Committee about budget issues and the extent to which the Committee is independent of the Council.²⁰⁹

The Communication Authority of Kenya is the main broadcast media regulator. The members of the Board were formerly nominated by a selection panel comprised of various representative groups and appointed by the President or the Cabinet Secretary, but a 2018 amendment eliminated

²⁰⁵ *Ibid.*; and African Democracy Forum, Kenyan CSOs, NGOs to Fight Proposed Foreign Funding Restrictions, available at: <http://www.africademocracyforum.org/en/blog/kenyan-csos-ngos-fight-proposed-foreign-funding-restrictions>.

²⁰⁶ Media Council Act, No. 45 of 2013, sections 7 and 14. Available at: <https://mediacouncil.or.ke/en/mck/images/media-act-2013.pdf>.

²⁰⁷ The Kenyan Information and Communications (Amendment) Act, No. 41A of 2013, section 102. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2013/KenyaInformationandCommunications_Amendment_Act2013.pdf.

²⁰⁸ Freedom House, Freedom of the Press 2017: Kenya. Available at: <https://freedomhouse.org/report/freedom-press/2017/kenya>.

²⁰⁹ Geoffrey Mosoku, Wars with Media Council of Kenya Jolts Complaints Team's Work, 5 March 2017. Available at: <https://www.standardmedia.co.ke/article/2001231566/wars-with-media-council-of-kenya-jolts-complaints-team-s-work>.

the role of the selection panel, leaving appointments with the Cabinet Secretary and limiting the Board's independence.²¹⁰ This change was facing a legal challenge at the time of writing.²¹¹

Content restrictions

The Kenyan courts have been fairly active in striking down content restrictions which breach free speech guarantees. For example, they determined that the criminal defamation provision of the Penal Code was unconstitutional, as well as another provision which made it a crime to undermine the authority of a public officer.²¹² Similarly, courts struck down overly broad amendments to the Information and Communications Act, such as a ban on sharing obscene material.²¹³ However, some problematic content restrictions remain. For example, an article of the Penal Code prohibits “alarming publications”, defined as false statements or rumours likely to cause fear and alarm or to disturb the public peace.²¹⁴

Some aspects of the media regulatory environment allow for broad content restrictions. A provision of the Penal Code empowers the government to prohibit publications to protect public order, health or morals and, although it introduces some procedural protections, no guidance is given on how to interpret “public order, health or morals”.²¹⁵ Similarly, the 2013 Media Council Act establishes a statutory Code of Conduct for the media, enforced by the complaint system described in the previous section. The Code contains a number of aspirational elements, such as “all sides of the story shall be reported, wherever possible” and that journalists shall “seek to understand the diversity of their community”, as well as ambiguous phrases, such as that journalists “shall stick to the issues” and that news shall not be written in a manner which is likely to “inflame the passions” or “aggravate the tension” between communities.²¹⁶ Such phrases permit wide discretion to sanction media outlets.

The question of hate speech is particularly delicate in Kenya due to the role of hate speech in the post-election violence in 2007, after which Kenya enacted the National Cohesion and Integration Act, which prohibits hate speech and establishes a National Cohesion and Integration Commission. The Commission is responsible for addressing hate speech and ethnic divisions through a range of measures, including through investigating hate speech.²¹⁷

²¹⁰ The Kenyan Information and Communications (Amendment) Act, No. 41A of 2013, note 207, section 6; The Statute Law (Miscellaneous Amendments) Act, 2018 (amending section 6), available at: <http://kenyalaw.org/kl/fileadmin/pdfdownloads/AmendmentActs/2018/StatuteLawMiscellaneousNo18of2018.pdf>.

²¹¹ Annette Wambulwa, Appointed CA Board Barred from Duty, *The Star*, 27 July 2019. Available at: <https://www.the-star.co.ke/news/2019-07-27-appointed-ca-board-barred-from-duty/>.

²¹² High Court of Kenya at Nairobi, Petition No. 397 of 2016, Judgment, available at: <http://kenyalaw.org/caselaw/cases/view/130781/>; and High Court of Kenya at Nairobi, Petition No. 174 of 2016, available at: <http://kenyalaw.org/caselaw/cases/view/135467/>.

²¹³ Otsieno Namwaya, Courts Strike Down ‘Repressive’ Laws, Human Rights Watch, 2 August 2019. Available at: <https://www.hrw.org/news/2019/08/02/courts-strike-down-repressive-laws>.

²¹⁴ Penal Code, section 66. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf>.

²¹⁵ *Ibid.*, section 53.

²¹⁶ Second Schedule to the Media Council Act, 2013, sections 2(2), 2(14), 12(2) and 14(2). Available at: <https://mediacouncil.or.ke/en/mck/images/media-act-2013.pdf>.

²¹⁷ National Cohesion and Integration Act, No. 12 of 2008, section 25. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalCohesionandIntegrationAct_No12of2008.pdf.

The overall legal framework contains several provisions which sanction hate speech. The Penal Code defines as subversive speech which is “intended or calculated to promote feelings of hatred or enmity between different races or communities in Kenya”.²¹⁸ It also has a more general prohibition on incitement to violence, which it defines to include making statements which imply that it is desirable to do an act which is calculated to bring death or physical injury to “any person or to any class, community or body of persons”, with the burden of proof lying on the person who makes such a statement.²¹⁹ The National Cohesion and Integration Act prohibits statements which are “intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race”.²²⁰ The existence of multiple definitions, some of which are broader than the international standard of speech which incites discrimination, hostility or violence, creates a risk of selective application of hate speech laws. In practice, some critics allege that Kenya has failed to prosecute prominent perpetrators of hate speech while selectively applying the laws to government critics or journalists.²²¹

Internet and digital rights

Generally, Kenyans enjoy unrestricted access to the Internet.²²² However, there have been a number of efforts recently to restrict online speech. The 2018 Computer Misuse and Cybercrimes Act seeks to impose lengthy prison terms for publication of “false” or “fictitious” information that results in “panic” or is “likely to discredit the reputation of a person”.²²³ However, courts have suspended implementation of the Act pending the outcome of a constitutional challenge.²²⁴

Similarly, a controversial bill was introduced in Parliament in 2019 which would require all those who collect, edit and present news on social media or the Internet to register and would require Facebook and WhatsApp group administrators to register with the Communications Authority. If administrators or social media users allow prohibited content on their platforms, they may face prison sentences of up to one year or a fine.²²⁵

Right to information and secrecy laws

²¹⁸ Penal Code, note 214, section 77(3)(e).

²¹⁹ *Ibid.*, section 96.

²²⁰ National Cohesion and Integration Act of 2008, No. 12 of 2008, note 217, section 62.

²²¹ Human Rights Watch, Not Worth the Risk: Threats to Free Expression Ahead of Kenya’s 2017 Elections, 30 May 2017. Available at: <https://www.hrw.org/report/2017/05/30/not-worth-risk/threats-free-expression-ahead-kenyas-2017-elections>.

²²² Freedom House, Freedom of the Net 2018: Kenya. Available at: <https://freedomhouse.org/report/freedom-net/2018/kenya>.

²²³ The Computer Misuse and Cybercrimes Act, 2018, sections 22 and 23. Available at: <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf>.

²²⁴ Bloggers Association of Kenya, An Update of our Case against the Computer Misuse and Cybercrimes Act, 8 August 2019, available at: <https://www.blog.bake.co.ke/2019/08/08/an-update-of-our-case-against-the-computer-misuse-and-cybercrimes-act/>; Lolyne Onger, Proposed Bill to Require Registration of Blogs and Clearance of WhatsApp and Facebook Admins by CA, Internet Freedom Kenya, 24 September 2019, available at: <https://www.ifree.co.ke/2019/09/proposed-bill-to-require-registration-of-blogs-and-clearance-of-whatsapp-and-facebook-admins-by-ca/>.

²²⁵ Demas Kiprono, Proposed Bill on Social Media Regulation Unnecessary, The Star (Kenya), 25 September 2019. Available at: <https://www.the-star.co.ke/opinion/2019-09-25-proposed-bill-on-social-media-regulation-unnecessary/>.

Kenya enacted a right to information law in 2016. The law is relatively strong, ranking in 20th place out of the 128 countries currently assessed on the RTI Rating. It covers a broad scope of information and establishes an independent oversight body.²²⁶ It also constrains the Official Secrets Act, which had been relied upon to deny access to government documents, by amending the latter so that offences under the it are subject to the law relating to access to information.²²⁷ Less positively, however, the right to information law does not generally establish that it overrides other laws, including those providing for the classification of government information, and it has an overly broad exception to protect national security.²²⁸

Kenya's RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	4	67%
2. Scope	30	29	97%
3. Requesting Procedures	30	19	63%
4. Exceptions and Refusals	30	19	63%
5. Appeals	30	24	80%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	12	75%
Total score	150	113	75%

Restrictions on freedom of assembly

Freedom of assembly is still regulated by the 1950 Public Order Act, which requires prior notice of at least three days before public meetings or assemblies. The wording of the Act implies, without directly stating, that authorities should only require that a meeting be held at an alternate time or location when another meeting is already scheduled for that time and place. However, because authorities are not required to respond within any fixed period of time, in practice it could be challenging to appeal any refusal. Furthermore, police officers of sufficient rank are empowered to stop or prevent any public meeting or procession that does not follow the notice procedures or where there “is clear, present or imminent danger of a breach of the peace or public order”. Another major restriction is that proposed assemblies may only be held between 6:00 am and 6:00 pm.²²⁹

In practice, authorities have use public security as a justification for prohibiting assemblies, imposing blanket bans on protests in several major cities in 2017. There have also been issues regarding the disproportionate use of force by security forces.²³⁰ Some other trends suggest a

²²⁶ RTI Rating, Kenya. Available at: <https://www.rti-rating.org/country-data/Kenya/>.

²²⁷ Official Secrets Act, 1970, section 3(8), as amended by Act 31 of 2016. Available at: <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/O/Official%20Secrets%20Act%20Cap.%20187%20-%20No.%2011%20of%201968/docs/OfficialSecretsAct11of1968.pdf>.

²²⁸ Access to Information Act, 2016, section 6. Available at: <https://www.rti-rating.org/wp-content/uploads/Kenya.pdf>; and Freedom House, Freedom of the Press 2017: Kenya, note 208.

²²⁹ The Public Order Act, section 5. Available at: <http://www.icnl.org/research/library/files/Kenya/PublicOrderActCap56.pdf>.

²³⁰ Article 19, Kenya: Ban on Protests Must be Lifted, 16 October 2017. Available at: <https://www.article19.org/resources/kenya-ban-on-protests-must-be-lifted/>.

worsening environment for freedom of assembly. A July 2019 court decision could allow for liability to be imposed on organisers for crimes or damages occurring an assembly, as well as other restrictions on freedom of assembly. A proposed amendment to the Public Order Act would introduce similar measures.²³¹

National security

In 2014, Kenya passed the Security Laws (Amendment) Act, which amended a host of other laws. The High Court declared several of these amendments to be unconstitutional, finding that some provisions inappropriately infringed on freedom of expression. However, several provisions remain in place, most notably some which provide for expanded surveillance powers. While a warrant is still necessary before intelligence officers may monitor communications, procedural safeguards and the requirement to consider proportionality of the surveillance measures are weaker than under the prior legal regime.²³²

Some aspects of Kenya's counterterrorism regime are rights restrictive. The 2012 Prevention of Terrorism Act defines a terrorist act as, among other things, one which prejudices national security or public safety and is carried out with the aim of destabilising the "religious, political, constitutional, economic or social institutions of a country".²³³ This could potentially be interpreted quite broadly. In addition, the Act permits certain rights to be limited for counterterrorism purposes, including the right to privacy, the right to freedom of expression and the of media and certain rights of an arrested person.²³⁴ While this is subject to the Constitution, which limits the circumstances under which rights may be restricted, the blanket authorisation to limit rights in the Prevention of Terrorism Act invites abuse.²³⁵ In practice, rights violations such as extrajudicial killings, enforced disappearances and civil society organisations having their accounts frozen have been linked to counterterrorism efforts.²³⁶ Generally, accountability for abuses by security forces has been a challenge, both in the counterterrorism context and in other circumstances, such as in responses to election-related protests.²³⁷

Whistleblower protection and other protections for threatened activists

²³¹ Amnesty International, Memorandum on the Public Order (Amendment) Bill, 2019, 8 May 2019, available at: <https://www.amnestykenya.org/wp-content/uploads/2019/05/2019-May-AIK-Memorandum-on-Public-Order-Act-Amendments.pdf>; and Reuben Githinji, Ruling to Pay for Protest Damage Denounced, 12 August 2019, available at: <https://www.the-star.co.ke/counties/eastern/2019-08-12-ruling-to-pay-for-protest-damage-denounced/>.

²³² Security Laws (Amendment) Act, 2014, available at: <https://www.article19.org/resources/kenya-high-court-ruling-security-amendment-act-victory-free-speech/>; and Article 19, Kenya: High Court Ruling on Security Amendment Act a Victory for Free Speech, 26 February 2015, available at: <https://www.article19.org/resources/kenya-high-court-ruling-security-amendment-act-victory-free-speech/>.

²³³ Prevention of Terrorism Act, 2012, section 2(1). Available at: <http://www.icnl.org/research/library/files/Kenya/PreventionofTerrorism2012.pdf>.

²³⁴ Prevention of Terrorism Act, 2012, note 233, section 35.

²³⁵ Constitution, 2010, Article 24. Available at: https://www.constituteproject.org/constitution/Kenya_2010.pdf.

²³⁶ Freedom House, Kenya's Antiterrorism Strategy Should Prioritise Human Rights, November 2018. Available at: <https://freedomhouse.org/report/special-reports/kenyas-antiterrorism-strategy-should-prioritize-human-rights-rule-law>.

²³⁷ Human Rights Watch, Submission to UN Human Rights Commission Review of Kenya, 25 July 2019. Available at: <https://www.hrw.org/news/2019/07/25/submission-un-human-rights-commission-review-kenya>.

A Whistleblower Protection Bill is currently pending in Parliament.²³⁸ In the meantime, however, only limited protections are in place. The Anti-Corruption and Economic Crimes Act provides for “protection of informers”, including a prohibition on disciplinary retaliations against those who assist in an anti-corruption investigation.²³⁹ The Bribery Act also provides that whistleblowers, informants and witnesses in a complaint or case of bribery shall be protected against harassment. The Act imposes penalties on those who harass or engage in employment retaliation against such people and establishes that whistleblowers and witnesses are also entitled to protection from the Witness Protection Agency.²⁴⁰ No comprehensive system of whistleblower protection exists, however, and protection is lacking for whistleblowers who do not fall within the scope of these laws.

Liberia

Freedom of association: non-profit registration requirements and restrictions on advocacy

NGO registration occurs by filing articles of incorporation with the appropriate governmental bodies.²⁴¹ One must first register with the Liberia Business Registry. NGOs must then submit their articles of incorporation and other information, particularly financial information such as sources of funding and an annual budget, to the NGO Coordination Unit within the Ministry of Finance and Development Planning. The NGO Coordination Unit conducts a background check and makes a recommendation to the Ministry of Finance and Development Planning on whether or not to accredit the organisation.²⁴²

Accreditation must be renewed annually.²⁴³ This effectively operates as a financial reporting requirement, given that budgets and other financial information are submitted as part of the accreditation renewal process. However, requiring an annual accreditation renewal could create a backdoor for denying status to NGOs which are controversial or critical of the government. This concern is compounded by the fact that much of the current accreditation process is governed by regulations and policy documents, rather than encoded in statutory law.²⁴⁴ In practice, however, it appears that legal requirements are not strictly enforced and NGOs generally operate freely, with the primary challenge being delays in processing applications because of under-funding of and limited staff at the NGO Unit.²⁴⁵

²³⁸ Whistleblower Protection Bill, 2017. Available at: https://dokeza.mzalendo.com/other_docs/whistleblower-protection-bill-2018/.

²³⁹ Anti-Corruption and Economic Crimes Act, Article 65. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98809/117654/F-1718951145/KEN98809.pdf>.

²⁴⁰ Bribery Act, Article 21. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103993/126666/F1787821193/KEN103993.pdf>.

²⁴¹ Associations Law, Article 21.3. Available at: <http://www.liberlii.org/lr/legis/codes/alt5lcolr456/>.

²⁴² AML/CFT Circular for NGOs/NPOS, sections 4.1 and 4.3. Available at: https://www.fiuliberia.gov.lr/httpdocs/NGO_Circular.pdf.

²⁴³ *Ibid.*, section 4.2.

²⁴⁴ A draft of the 2018 version of the NGO policy is available at: <https://nabc.nl/uploads/content/files/Zero%20Draft-National%20NGO%20POLICY%202018%282%29.doc>.

²⁴⁵ USAID, 2017 CSO Sustainability Index, December 2018, p. 114. Available at: <https://www.usaid.gov/sites/default/files/documents/1866/2017-CSO-Sustainability-Index-for-Sub-Saharan-Africa.pdf>.

Funding restrictions, financial report requirements and special tax requirements

As noted above, the accreditation process including financial reporting requirements, such as annual reports and bank statements. Once accredited, NGOs will qualify for tax exemption.²⁴⁶

NGOs must also have an Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) programme in place according to a Joint Circular issued in December 2018. An organisation must provide AML/CFT training for all staff members, submit the training material and the meeting times to the Financial Intelligence Unit, appoint compliance officers and establish regular internal and external audits. The Circular also requires quarterly submission of financial records and bank statements to the NGO Unit, as well as a full list of activities and projects on which funds are spent.²⁴⁷ While some of the Circular's requirements are relatively standard financial transparency measures, some of them are unnecessarily burdensome. For example, it is not clear why quarterly reports are needed in addition to annual ones and it may not be realistic for smaller NGOs to put in place the full AML/CFT compliance system. The consequences of failing to meet these requirements are also not fully clear from the Circular.

Media regulation

The regulatory landscape for the media in Liberia is somewhat patchwork. A bill to establish an independent broadcast regulator has been pending since 2008.²⁴⁸ In the meantime, the primary relevant laws are the Telecommunications Act of 2007, which establishes a Telecommunications Authority to govern technical aspects of broadcasting, and the People's Redemption Council Decree No. 46, enacted in 1981 under the post-coup military government, which created and empowered the current Ministry of Information.²⁴⁹

Technically, Decree No. 46 requires journalists to register and obtain a licence from the Ministry of Information, who is also empowered to suspend these licences for violations of the Decree or related regulations.²⁵⁰ However, when the Ministry of Information attempted to enforce this provision in 2014, there was significant backlash from the media community, particularly the media professional body, the Press Union of Liberia (PUL).²⁵¹ The Ministry of Information and the PUL subsequently signed a Memorandum agreeing that the PUL would register individual journalists and share the records of registered journalists with the Ministry.²⁵² To obtain PUL

²⁴⁶ *Ibid.*, p. 114 (describing an amendment to the Revenue Code).

²⁴⁷ AML/CFT Circular for NGOs/NPOS, note 242, sections 5.1 and 6.5.

²⁴⁸ Independent Broadcasting Regulatory Bill. Available at:

<http://www.pul.org.lr/doc/Draft%20Broadcast%20Bill.pdf>.

²⁴⁹ Telecommunications Act 2007, available at:

https://www.wto.org/english/thewto_e/acc_e/lbr_e/WTACCLBR15_LEG_38.pdf; and People's Redemption Council Decree No. 46, available at:

[http://www.pul.org.lr/doc/PRC%20Decree%20-%2046%20Creating%20the%20Ministry%20of%20Information%20\(1\).pdf](http://www.pul.org.lr/doc/PRC%20Decree%20-%2046%20Creating%20the%20Ministry%20of%20Information%20(1).pdf).

²⁵⁰ People's Redemption Council Decree No. 46, note 249, Chapter 31.8(d).

²⁵¹ Daily Observer (Liberia), PUL, MICAT Pen MOU on Media Registration, 24 October 2014. Available at: <https://www.liberianobserver.com/news/pul-micat-pen-mou-on-media-registration-press-union-still-registers-journalist/>.

²⁵² Memorandum of Understanding on Media Regulation 2014, para. 1.4. Available at: <http://www.pul.org.lr/doc/PUL-MICAT%20-2014a.pdf>.

membership, an individual must hold a degree in journalism or mass communication and have two years of experience.²⁵³

Under the Memorandum, the Ministry of Information continues to be responsible for registering all media outlets, for which they must submit a business registration certificate, the address for an office space and the names of at least two editors who are accredited with the PUL.²⁵⁴ While the more independent Telecommunications Authority is responsible for spectrum allocation, the Ministry of Information appears to enjoy continued discretion over licensing as a result of Decree No. 46 and the lack of a clear legal framework. For example, the Ministry suspended all media licences issued between January and June of 2018, ostensibly to allow for a review of technical irregularities in the licensing process. This was widely seen as a deliberate attempt to target certain critical media outlets that had been registered during this time.²⁵⁵

Content restrictions

Positively, in February 2019, Liberia passed a law amending the Penal Code to remove three provisions which had been used to restrict press freedom in the past, namely the crimes of criminal libel against the President, sedition and criminal malevolence (meaning accusing an official of a crime with the intent of injuring that person's reputation).²⁵⁶

While there are no criminal penalties for defamation, there have been instances of abusive uses of civil defamation lawsuits, including against journalists reporting on bribery and corruption. The lack of a cap on damages in civil defamation lawsuits has resulted in judges awarding disproportionately high damages to plaintiffs who have brought defamation claims against the press.²⁵⁷ There has also been some rhetoric from the President, despite his signing of the law decriminalising libel against the President, indicating that his government would bring lawsuits against those who insult the President or are "constantly inciting the people."²⁵⁸

Internet and digital rights

Generally, there are no notable legal restrictions specific to online speech and the government does not typically interfere with access to the Internet.²⁵⁹ A notable exception to this occurred in June 2019, when government officials ordered ISPs to restrict access to certain social media platforms

²⁵³ Constitution of the Press Union of Liberia, Article 4(A). Available at: <http://www.pul.org.lr/doc/PUL%20Cont.pdf>.

²⁵⁴ Memorandum of Understanding on Media Regulation 2014, note 252, paras. 1.1-1.2.

²⁵⁵ Center for Media Studies and Peace Building, Government of Liberia Suspends Operating Licences of Media Outlets, June 2019. Available at: <https://cemespliberia.org/publication/government-liberia-suspends-operating-licenses-media-outlets/>.

²⁵⁶ Kamara Abdullah Kamara Act of Press Freedom, 2019. Available at: <https://www.emansion.gov.lr/doc/KAK%20Law%20of%20Press%20Freedom.pdf>.

²⁵⁷ Freedom House, Freedom of the Press 2016: Liberia, available at: <https://freedomhouse.org/report/freedom-press/2016/liberia>; and CIVICUS, Access to Social Media Blocked on Day of Protest, June 2019, available at: <https://monitor.civicus.org/country/liberia/>.

²⁵⁸ Alaskai Moore Johnson, Liberia: George Weah Threatens Anyone Who 'Insults' President, Front Page Africa, 6 June 2019. Available at: <https://frontpageafricaonline.com/front-slider/liberia-george-weah-threatens-anyone-who-insults-president/>.

²⁵⁹ Freedom House, Freedom of the Press 2016: Liberia, note 257.

ahead of planned anti-corruption protests.²⁶⁰ The legal basis for this was not entirely clear but may suggest broader problems with the scope of authority of the Ministry of Information, described in the section on media regulation, given that the Minister of Information was citing publicly security concerns as justification for the blockings.²⁶¹

Right to information and secrecy laws

Liberia’s right to information law is very strong, ranking ninth out of the 128 countries currently assessed on the RTI Rating.²⁶² However, implementation has remained a challenge since the law was enacted in 2010, due to factors such as information officers not having been appointed, abusive use of exceptions and a general lack of awareness about the right in Liberia.²⁶³

Liberia’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	5	83%
2. Scope	30	30	100%
3. Requesting Procedures	30	19	63%
4. Exceptions and Refusals	30	27	90%
5. Appeals	30	20	67%
6. Sanctions and Protections	8	7	86%
7. Promotional Measures	16	16	100%
Total score	150	124	83%

Restrictions on freedom of assembly

The Liberia National Police Act outlines the notification process for holding public meetings or demonstrations. The local Crown Attorney must be notified at least seven days in advance of a planned public gathering. If the Attorney General or the local police believe the event may lead to violence or is likely to endanger public order, a request can be filed to the Minister of Justice to cancel or reschedule the event.²⁶⁴ In practice, there are very few barriers to receiving a permit from the Minister of Justice and gatherings and protests are unrestricted by the police force.²⁶⁵ There have been some instances of disproportionate use of force by police, of harassment and

²⁶⁰ Center for Media Studies and Peace Building, CEMESP Condemns Internet Shutdown, June 2019. Available at: <https://cemespliberia.org/publication/cemesp-condemns-internet-shutdown/>.

²⁶¹ Robin Dopoe, Internet Shutdown on June 7 Cost Liberia over US \$100K, 10 June 2019. Available at: <https://www.liberianobserver.com/news/internet-shutdown-on-june-7-cost-liberia-over-us100k/>.

²⁶² RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

²⁶³ Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his Mission to Liberia, 19 June 2018, U.N. Doc. A/HRC/38/35/Add.3, paras. 51 and 52.

²⁶⁴ Liberia National Police Act, section 22.86. Available at: <http://moj.gov.lr/data/uploads/downloads/police-act.pdf>.

²⁶⁵ U.S. State Department, Liberia 2018 Human Rights Report, available at: <https://www.state.gov/wp-content/uploads/2019/03/Liberia-2018.pdf>; and Freedom House, Freedom in the World 2019: Liberia, available at: <https://freedomhouse.org/report/freedom-world/2019/liberia>.

intimidation of people involved in land rights protests and of aggressive rhetoric towards protestors by public figures.²⁶⁶

National security

There have been some questionable applications of the crime of “terroristic threats”, such as the arrest of a radio talk show host who challenged the President’s son to a fight.²⁶⁷ The Penal Code defines a “terroristic threat” as a threat to commit a crime of violence with intent to terrorise another or to cause serious public inconvenience, or with reckless disregard for the risk of causing such terror or inconvenience.²⁶⁸ This is a reasonably restrained definition, but the possibility of the lower standard of “reckless disregard” with the somewhat ambiguous phrase “serious public inconvenience” may open the door for abuse of this provision.

In 2014, the government closed a newspaper allegedly on national security grounds and because of the state of emergency that had been imposed by the Ebola crisis. However, the Liberian Supreme Court found that this was not proper because the newspaper was closed without a court order and after the state of emergency had ended.²⁶⁹ Liberia has not imposed another state of emergency since the Ebola state of emergency was lifted in 2014.²⁷⁰

Whistleblower, witness and other protection systems for those at risk

There is no official whistleblower protection legislation in Liberia and a proposed whistleblower protection law remains stalled in the legislature.²⁷¹ In the meantime, a series of Executive Orders have occasionally offered some protection for whistleblowers, most recently in 2014. Since Executive Orders expire in one year unless ratified by the legislature, it appears that no such protection is currently in force.²⁷²

²⁶⁶ Rights and Resources, Liberian Land Rights Defenders on the Run after Threats from Police, 11 April 2016, available at: <https://rightsandresources.org/en/blog/press-release-liberian-land-rights-defenders-run-threats-police/#.XcnqrDNKi00>; and Liberia National Police Faces Increasing Criticisms for Manhandling Protesting Students, 17 October 2019, available at: <https://frontpageafricaonline.com/news/liberia-national-police-faces-increasing-criticisms-for-manhandling-protesting-students/>.

²⁶⁷ Daily Observer (Liberia), Radio Talk Show Host Costa Jailed, 24 March 2014, available at: <https://www.liberianobserver.com/news/radio-talk-show-host-costa-jailed/>; and News 95.7, Liberia: Popular Radio Talk Show Host Charged with Terrorism, 23 March 2014, available at: <https://www.news957.com/world/2014/03/23/liberia-popular-radio-talk-show-host-charged-with-terrorism-for-threatening-presidents-son/>.

²⁶⁸ Penal Code, section 14.24. Available at: <http://www.icla.up.ac.za/images/un/use-of-force/africa/Liberia/Penal%20Code%20Liberia%201978.pdf>.

²⁶⁹ *Press Union of Liberia v. Government of Liberia*, as described by Global Freedom of Expression at Columbia University. Available at: <https://globalfreedomofexpression.columbia.edu/cases/press-union-of-liberia-v-government-of-liberia/>.

²⁷⁰ ICCPR Implementation Liberia, Report of Civil Society Organizations in Reply to the List of Issues, March 2018, p. 9. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LBR/INT_CCPR_CSS_LBR_30532_E.pdf.

²⁷¹ Independent Reporting Mechanism: Liberia End-of-Term Report 2015-2017, IRM Staff, p. 18. Available at: https://www.opengovpartnership.org/wp-content/uploads/2018/07/Liberia_End-of-Term_IRM-Report_2015-2017.pdf.

²⁷² Executive Order No. 62 of 2014, available at: <https://www.emansion.gov.lr/doc/EO-63-Protection-Whistleblower.pdf>; and Library of Congress, Liberia: Temporary Ban on Domestic Violence, 31 January 2018,

Madagascar

Freedom of association: non-profit registration requirements and restrictions on advocacy

“Associations” and “NGOs” are treated separately under Malagasy law. NGOs are subject to a more complex registration process and have additional reporting requirements, but also have access to additional tax benefits.²⁷³

Associations only need to issue a declaration to obtain legal personality. This involves submitting a request, after which they are issued with a receipt, and then the declaration must be published in the Official Gazette within two months of the request.²⁷⁴

NGOs must also be declared in a similar manner as associations. However, NGOs must also submit an application for authorisation. The request is transferred to the relevant regional bipartite committee, which is made up of government and NGO representatives. The committee must review the request and provide a decision on authorisation within one month.²⁷⁵ If granted, the order of authorisation is published in the Official Gazette and listed in the department’s register.²⁷⁶ NGOs are then required, on an annual basis, to submit a report of their activities and a detailed operation plan for the following year to the bipartite council or regional committee, to the government representative in the applicable department or region, and to the ministry in charge of NGOs.²⁷⁷

Associations may be dissolved by an order of the Ministry of the Interior if their activities constitute a threat to public order or security, good morals or national unity.²⁷⁸ For NGOs, authorisation may be withdrawn by an order of the head of the relevant department after a decision of the bipartite committee if there are serious irregularities in the management of the organisation’s projects or programs, when the organisation’s activities do not correspond with its stated objectives or when the organisation’s activities jeopardise public order, security or national unity.²⁷⁹

Funding restrictions, financial report requirements and special tax requirements

available at: <https://www.loc.gov/law/foreign-news/article/liberia-temporary-ban-on-domestic-violence-including-female-genital-mutilation/> (describing the 1974 Supreme Court ruling establishing that Executive Orders lapse after one year).

²⁷³ For an overview, see the Embassy of France in Madagascar, *Le cadre juridique des associations et ONG a Madagascar*. Available at: <https://mg.ambafrance.org/Le-cadre-juridique-des>.

²⁷⁴ Ordinance No 60-133 of 1960, Article 5. Available at: <http://droit-afrique.com/upload/doc/madagascar/Madagascar-Ordonnance-1960-133-associations.pdf>.

²⁷⁵ Law 96-030 of 1997, Articles 8 and 9. Available at: <http://www.icnl.org/research/library/files/Madagascar/ngofre.pdf>.

²⁷⁶ *Ibid.*, Articles 11 and 12.

²⁷⁷ *Ibid.*, Article 17.

²⁷⁸ Ordinance No 60-133 of 1960, note 274, Articles 4(3) and 7.

²⁷⁹ Law 96-030 of 1997, note 275, Article 9.

As previously noted, NGOs enjoy tax benefits. They are not subjected to professional taxes and the corporate income tax for their non-profit activities and equipment may be partially or completely exempt from customs and excise taxes.²⁸⁰

Generally, associations and NGOs are not subject to notable funding restrictions. NGOs are required to submit annual financial reports to the bipartite committee, to the government representative in the applicable department or region, and to the ministry in charge of NGOs.²⁸¹

Media regulation

Currently, the media landscape is governed by the 2016 Media Communications Code. The 2016 Code is controversial and the government is reportedly already discussing legislation to replace or revise the Code.²⁸²

Under the Media Communications Code, the Order of Journalists of Madagascar (OJM) is responsible for issuing professional identity cards to journalists and acting as the “guardian of the rules of ethics and deontology of the profession of journalism”. The OJM has the authority to issue warnings and temporarily suspend or cancel the registration of any journalist who commits an enumerated content offence or violates specified duties and obligations.²⁸³ While the OJM is supposed to be a self-regulatory body, it is under the supervision of the State, raising some questions about its ability to act independently.²⁸⁴

The Media Communications Code also requires publications and press agencies to register with the National Authority for Regulation of Media Communication (ANRCM).²⁸⁵ ANRCM is established as an “independent administrative authority” the responsibilities of which include regulating the exercise of communication activities, determining and enforcing standards, arbitrating disputes, and “guaranteeing the pluralistic character of the expression of thought and opinion”.²⁸⁶ In accordance with the law, it consists of eleven members: five from different government ministries, one from the public media sector, three from private press outlets, one from the OJM and one magistrate from the Superior Court. The appointment of these people, as well as the organisation of ANRCM generally, is to be fixed via decree, leaving the ANRCM highly vulnerable to politicisation.²⁸⁷

²⁸⁰ *Ibid.*, Articles 19 and 20.

²⁸¹ *Ibid.*, Article 17.

²⁸² La Vérité, Communication médiatisée – Une nouvelle loi en chantier, 12 April 2019. Available at: <http://www.laverite.mg/politique/item/7680-communication-m%C3%A9diatis%C3%A9e-une-nouvelle-loi-en-chantier.html>.

²⁸³ Law 2016-029, Articles 57 and 59. Available at: http://www.mcrci-gov.mg/wp-content/uploads/2017/10/Loi-n%C2%B02016-029_fr.pdf.

²⁸⁴ As established by Decree 74-014 of 21 March 1974, discussed in PIDC, Étude sur le développement des medias a Madagascar, 2017, p. 26. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/Etudedevoloppementmedia_01.pdf.

²⁸⁵ Law 2016-029, note 283, Articles 82 and 83.

²⁸⁶ *Ibid.*, Article 52.

²⁸⁷ *Ibid.*, Article 52.

However, as of November 2018, the ANRCM existed only on paper and it is not clear whether it has been established since then.²⁸⁸ In the absence of the ANRCM, the previous regulatory structures remain in place.²⁸⁹ Pursuant to the previous law, Law No. 92-039, licensing of audiovisual broadcast organisations was the responsibility of the High Audiovisual Council.²⁹⁰ However, this Council never became operational, and was instead represented by a “provisional authority”, the Special Commission for Audiovisual Communications (CSCA).²⁹¹ Pursuant to Law No. 96-034 of 27 January 1997, the telecommunications sector is also regulated by the Malagasy Office for Telecommunications Studies and Regulation (OMERT).²⁹² Under this structure, licences were granted by CSCA in coordination with OMERT while the allocation of frequencies lacked a transparent regulatory system. The CSCA also lacked independence, as it fell under the Ministry of Communications, its members were officials of the Ministry and other ministries, and it was financially dependent on ministries. Unsurprisingly, these factors meant that the CSCA acted in a political manner. As a “provisional” body, the CSCA was also subject to fewer checks and balances, such as not being required to prepare annual reports (as the High Audiovisual Council would have been).²⁹³

Media concentration is a significant issue in Madagascar. The Media Communications Code, unlike the earlier 1992 law, does not contain anti-concentration provisions and even the 1992 law’s prohibition on a single person holding more than 25% of voting rights in a media company was reportedly not enforced.²⁹⁴

Content restrictions

The 2016 Media Communications Code establishes a number of media infractions. Some of these are insufficiently well defined and impose steep fines if violated, in many cases higher than the average journalist’s annual salary.²⁹⁵ Although, positively, the law does not impose prison terms for press violations, it does allow press offences to be prosecuted under the Penal Code.²⁹⁶

Article 20 of the Code prohibits infringing on a person’s privacy, including that of public figures in their public functions. This may include merely transmitting or publishing words spoken by someone else without consent. A public interest defence is only available when the disclosed

²⁸⁸ EEAS Europa, EU EOM Madagascar 2018: Preliminary Statement on the Elecotral Process of 7 November 2018. Available at: https://eeas.europa.eu/election-observation-missions/eom-madagascar-2018/53499/moe-ue-madagascar-2018-d%C3%A9claration-pr%C3%A9liminaire-sur-le-processus-%C3%A9lectoral-du-7-novembre-2018_fr.

²⁸⁹ Law 2016-029, note 283, Article 204.

²⁹⁰ Ordinance No.92-039 of 14 September 1992, Article 17. Available at: <http://droit-afrique.com/upload/doc/madagascar/Madagascar-Ordonnance-1992-39-communication-audiovisuelle.pdf>.

²⁹¹ The CSCA was established by Decree No.94-133 of 22 February 1994 (unavailable online), as discussed in PIDC, note 284, p. 34.

²⁹² Law No. 96-034 of 27 January 1997. Available at: <https://jwf-legal2.fr/gd/Lois-197.htm>. Information obtained from PIDC, “Étude sur le développement des medias a Madagascar”, 2017, p. 34. Available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Nairobi/Etudedevveloppementmedia_01.pdf.

²⁹³ PIDC, *ibid.*, pp. 34-36.

²⁹⁴ *Ibid.*, pp. 54 and 56.

²⁹⁵ US Department of State, Country Report on Human Rights Practices 2018 – Madagascar. Available at: <https://www.ecoi.net/en/document/2004168.html>.

²⁹⁶ Law 2016-029, note 283.

information constitutes a threat to public health or public morality.²⁹⁷ Article 30 prohibits the publication, dissemination or production by any means of false news, altered facts, or facts which have misled the public, disturbed the public peace or are likely to disturb the public peace.²⁹⁸

Article 23 of the same law prohibits the publication or allegation of incorrect facts that infringe on the honour of a person or the presumption of innocence, or which constitute defamation which results in a personal, direct harm to the person or institution. Prosecution can be commenced by the public prosecutor and not only at the request of a victim if the defamation has resulted in discrimination, hatred or violence against the person.²⁹⁹ The provision stipulates a much higher maximum fine for defamation against State officials, State institutions, State incorporated bodies, courts, tribunals or the armed forces.³⁰⁰ Similarly, Article 24 of the Law prohibits insult, defined as any offensive expression, term of contempt, or invective that does not contain factual imputations. As with defamation, an action can be commenced independently by the public prosecutor, without a request by the victim, if the offence has resulted in discrimination, hatred or violence.³⁰¹

The Penal Code, in comparison, does not include many problematical content prohibitions. However, the provisions on contempt for magistrates and other specified public figures are overly vague, as is a provision which penalises discrediting an act or decision of a court in a matter which is likely to undermine its authority or independence.³⁰²

Internet and digital rights

The 2014 Cybercrime Law introduces penalties for certain online content. This includes a prohibition on defamation of constitutional bodies, the Courts, the armed forces, government members or public officials, as well as insult generally if it occurs digitally.³⁰³ Although a 2016 amendment removed imprisonment as a penalty for defamation and insult, it still permits fines.³⁰⁴ Another provision of the Cybercrime Law penalises with up to five years' imprisonment and a fine the transmission of messages of a racist or xenophobic nature or those which seriously violate human dignity. Without further definition of these terms, or a more precise intent requirement, this provision could chill legitimate debate about the problem of racism or prohibit other legitimate speech.³⁰⁵

Right to information and secrecy laws

Madagascar does not have a right to information law.

²⁹⁷ *Ibid.*, Article 20.

²⁹⁸ *Ibid.*, Article 30.

²⁹⁹ *Ibid.*, Article 36.

³⁰⁰ *Ibid.*, Article 23.

³⁰¹ *Ibid.*, Articles 24 and 36.

³⁰² Penal Code, Articles 223, 224 and 226. Available at: <http://www.justice.mg/penal/>.

³⁰³ Law 2014-006, Article 20, available at: http://www.artec.mg/pdf/loi_2014-006.pdf; and PIDC, note 284, p. 48.

³⁰⁴ Law 2016-031, amending Article 20 of Law 2014-006. Available in French at: http://www.artec.mg/pdf/loi_2016-031.pdf.

³⁰⁵ Law 2014-006, note 303, Article 25.

Restrictions on freedom of assembly

Official authorisation from local municipalities and police prefectures is required for public demonstrations. In practice, authorisation has been denied to protestors affiliated with opposition groups and obtaining permits for protests from the police prefecture in the capital is particularly difficult.³⁰⁶ In addition, the government has occasionally enacted blanket bans on demonstrations ostensibly for security or public order reasons. For example, in April 2018 the government announced a permanent ban on political protests.³⁰⁷

National security

The involvement of the military in civilian policing, as well as the lack of an effective oversight mechanism for security forces, is an ongoing challenge given reports of abuses by security forces, such as extrajudicial executions. Although these abuses have primarily occurred in response to crimes such as cattle raiding, some have also occurred in the context of civic space, specifically in terms of responding to protests.³⁰⁸

Whistleblower, witness and other protection systems for those at risk

Madagascar lacks a comprehensive whistleblower protection law. However, the Anti-Corruption law provides some limited protection for the identity of whistleblowers, prohibits reprisals against whistleblowers and establishes a complaints system for whistleblowers who suffer reprisals.³⁰⁹

Malawi

Freedom of association: non-profit registration requirements and restrictions on advocacy

An organisation can register as a legal person with the Registrar General. However, to be recognised as an NGO, it must also register with both the NGO Board, a government entity, and the Council for Non-Governmental Organisations in Malawi (CONGOMA), an autonomous body established by statute.³¹⁰ To register with CONGOMA, an organisation must submit an application

³⁰⁶ U.S. Department of State, Country Report on Human Rights Practices 2018: Madagascar, available at: <https://www.ecoi.net/en/document/2004168.html>; and BTI, Madagascar Country Report, 2018, available at: <https://www.bti-project.org/en/reports/country-reports/detail/itc/mdg/ity/2018/itr/esa/>.

³⁰⁷ Amnesty International, Madagascar: The Right to Protest Should Not be Criminalized, 9 May 2018, available at: <https://www.amnesty.org/en/latest/news/2018/05/madagascar-the-right-to-protest-should-not-be-criminalized/>; and Freedom House, Freedom in the World 2019: Madagascar, available at: <https://freedomhouse.org/report/freedom-world/2019/madagascar>.

³⁰⁸ Policing Law, The Law on Police Use of Force: Madagascar, available at: <https://www.policinglaw.info/country/madagascar>; and Amnesty International, Madagascar: Take Decisive Steps to End Torture and Killings by Security Forces, 26 June 2019, available at: <https://www.amnesty.org/en/latest/news/2019/06/madagascar-take-decisive-steps-to-end-torture-and-killings-by-security-forces/>.

³⁰⁹ Law 2004-030, Articles 32-35. Available in French at: <http://www.droit-afrique.com/upload/doc/madagascar/Madagascar-Loi-2004-30-corruption.pdf>.

³¹⁰ ICNL, Civic Freedoms Monitor: Malawi, 14 June 2019, available at: <http://www.icnl.org/research/monitor/malawi.html>; and Transparency International, Malawi National Integrity

which includes a copy of their constitution, a letter of approval from the government and a certificate of agreement with the government.³¹¹ To register with the NGO Board, an organisation must submit an application which, among other things, includes a plan of their activities, a registration fee, a statement confirming that the group will not engage in partisan politics and a memorandum of understanding with the ministry responsible for the activities the group proposes to undertake.³¹²

Other features of NGO regulation can be burdensome. For example, annual fees must be paid to both bodies, which are not set by law but rather by the bodies themselves.³¹³ In 2018, the government increased annual NGO fees from around 68 USD to 340 USD. A court injunction halted these new fees but the NGO Board has reportedly refused to abide by the order and has continued to collect the higher fees.³¹⁴ The NGO Board is empowered to order the Registrar to cancel or suspend registration if an organisation ceases to function for the purposes for which it was constituted, fails or refuses to comply with the provisions of the NGO Act or engages in partisan politics.³¹⁵

A controversial proposed amendment to the NGO Act is pending. Currently, a court injunction prevents parliament from debating the Bill pending judicial review of the proposed amendments.³¹⁶ The amendments would impose harsher penalties for violating the legislation and place more burdensome restrictions on organisations. For examples they would increase the fines for non-compliance from USD 70 USD to 20,000.³¹⁷ They would also remove CONGOMA's role in NGO regulation and delegate those functions to the NGO Board.³¹⁸ The NGO Board would be appointed by the government, so the amendments would seriously undermine the authority of CONGOMA and essentially shift its functions to a strengthened and non-independent body.³¹⁹

Funding restrictions, financial report requirements and special tax requirements

Any registered NGO may engage in public interest activities and fundraising without restriction, as long as they submit an annual report of all sources and uses of funds.³²⁰

System Assessment, 2013, p. 211, available at:

https://www.transparency.org/whatwedo/publication/malawi_national_integrity_system_assessment_2013.

³¹¹ Constitution of the Council for Non-Governmental Organisations in Malawi, section 6. Available at:

<http://www.icnl.org/research/library/files/Malawi/congoma.pdf>.

³¹² Non-Governmental Organisations Act, 2000, section 20. Available at:

<http://www.icnl.org/research/library/files/Malawi/ngo.pdf>.

³¹³ *Ibid.*, section 20(3).

³¹⁴ Freedom House, Freedom in the World 2019 Report. Available at: <https://freedomhouse.org/report/freedom-world/2019/malawi>.

³¹⁵ Non-Governmental Organisations Act, 2000, note 312, section 23.

³¹⁶ Freedom House, Freedom in the World 2019 Report, note 314.

³¹⁷ Godfrey Musila, note 62, p. 14.

³¹⁸ Non-Governmental Organisations (Amendment) Bill, 2018, preamble and section 10. Available at:

<https://malawilii.org/system/files/2018%20NGO%20Amendment%20Bill.pdf>.

³¹⁹ Non-Governmental Organisations Act, 2000, note 312, section 7; and ICNL, Civic Freedoms Monitor: Malawi, note 310.

³²⁰ Non-Governmental Organisations Act, 2000, *ibid.*, sections 21, 22 and 33.

Under the Malawi Revenue Authority Act, the Minister of Finance may issue a tax waiver on goods and services for organisations.³²¹ However, such exemptions are difficult to obtain, partly because of a perception that NGOs are anti-government.³²² Organisations are required to remit all taxes on applicable activities, which can create a financial burden if they have to pay the money upfront and wait for reimbursement.³²³

The proposed amendments to the NGO Act would require all organisations to adhere to the Financial Crimes Act and its associated funding disclosure requirements.³²⁴ That Act requires the reporting of any large transactions and all domestic and international electronic fund transfers.³²⁵ The NGO Board would reserve the power to verify any information submitted and take any measures it deems necessary in case of failure to comply with the financial disclosure requirements.³²⁶

Media regulation

Print media is still governed by the colonial era Printed Publications Act, which requires all print media to register with and deposit copies of publications with the National Archives.³²⁷ The Act is not clear as to whether the registration may be refused, and although it establishes fines for non-compliance, it is also not clear as to whether a failure to register or meet deposit requirements may result in a publication being banned or suspended. In practice, however, there have been instances of the government relying on the Printed Publications Act to justify banning newspapers, although such instances date from several years ago.³²⁸

The authority which is responsible for regulating telecommunications is the Malawi Communications Regulatory Authority (MACRA). In 2016, a new Communications Act was adopted which changed the appointment process for members of MACRA's board, in an attempt to better preserve MACRA's independence. Now, instead of the President directly appointing board members, a majority of the members appointed by the President are subject to confirmation by the Public Appointments Committee of Parliament.³²⁹ It remains to be seen if this will result in a more independent Authority in the longer term; in the past, the Authority had refused to grant telecommunication licences to media outlets owned by political opposition groups.³³⁰

³²¹ Malawi Revenue Authority Act, section 16. Available at:

https://www.mra.mw/assets/upload/downloads/Malawi_Revenue_Authority_Act.pdf.

³²² ICNL, Civic Freedoms Monitor: Malawi, note 310.

³²³ European Union External Action, [EU Country Roadmap for Engagement with Civil Society 2014-2017, p. 3. Available at: https://eeas.europa.eu/sites/eeas/files/cso_roadmap_malawi.pdf](https://eeas.europa.eu/sites/eeas/files/cso_roadmap_malawi.pdf).

³²⁴ Non-Governmental Organisations (Amendment) Bill, 2018, note 318, section 9.

³²⁵ Financial Crimes Act, Article 33(1). Available at: <https://malawilii.org/mw/legislation/act/2017/14>.

³²⁶ Non-Governmental Organisations (Amendment) Bill, 2018, note 318, section 9.

³²⁷ Printed Publications Act, sections 4 and 5. Available at: <http://www.sdn.org.mw/ruleoflaw/archives/laws.html>.

³²⁸ CPJ, Malawi Government Bans Weekly Tabloid, 1 November 2010. Available at:

<https://cpj.org/2010/11/malawi-government-bans-weekly-tabloid.php>.

³²⁹ Communications Act, sections 7 and 9, available at: <http://www.macra.org.mw/wp-content/uploads/2014/07/Communications-Act-2016.pdf>; and MISA, MISA Malawi Monitors MBC for Signs of Presidential Interference, 23 July 2017, available at: <https://malawi.misa.org/2017/07/23/misa-malawi-monitoring-implementation-new-communications-law/>.

³³⁰ Transparency International, Malawi National Integrity System Assessment, p. 199, 2013. Available at: https://www.transparency.org/whatwedo/publication/malawi_national_integrity_system_assessment_2013.

In practice, recent controversies over government interference in media operations have centred on MACRA's decision in June 2019 to suspend call-in radio programmes, on the grounds that such programmes could trigger additional post-election violence, and a decision in 2018 to close a media group which were critical of the government on allegations of tax irregularities.³³¹

Content restrictions

The Penal Code contains several content restrictions which are not sufficiently clear to prevent abuse. Making statements with seditious intention, defined as an intention to bring a person into hatred or to excite disaffection against the President or government, is subject to a fine and imprisonment of up to five years.³³² Publishing false statements likely to cause alarm to the public is a crime unless it can be shown that steps were taken to verify the accuracy of the statements.³³³ A prohibition on obscene content or content which tends to corrupt morals does not further define what kind of material would be covered. Another provision provides for six months imprisonment for using insulting language. Finally, defamation, defined as any statement likely to injure the reputation of another by exposing the individual to contempt or ridicule, is criminal.³³⁴

The Protected Flag, Emblems and Names Act prohibits insulting, ridiculing or showing disrespect to the president or specified national symbols, such as the national flag. breach may result in imprisonment for two years.³³⁵

Internet and digital rights

The 2016 Electronic Transactions and Cybersecurity Act introduces a number of cybercrimes, including a prohibition on “offensive communications”, which are defined as wilful and repeated attempts to disturb the peace, quietness or privacy of another person with no legitimate communication purpose.³³⁶ This relies on highly subjective concepts and is open to misuse. In addition, the law contains a general provision stating that online communication may be restricted in order, among other things, to promote human dignity and pluralistic expression and protect public order or national security.³³⁷ The Act also permits restrictions of online communications in order to “facilitate technical restriction to conditional access to online communication”, which is very unclear but may provide a basis for Internet blocks or shutdowns.³³⁸ In practice, rather than

³³¹ Lameck Masina, Malawi Broadcasters, Media Freedom Group Criticize Call-In Shows Suspension, VOA, 10 June 2018, available at: <https://www.voanews.com/press-freedom/malawi-broadcasters-media-freedom-group-criticize-call-shows-suspension>; and Freedom House, Freedom in the World 2019: Malwai, , note 314.

³³² Penal Code, sections 50 and 51. Available at: <http://www.derechos.org/intlaw/doc/mwi2.html>.

³³³ *Ibid.*, section 60.

³³⁴ *Ibid.*, sections 179, 182 and 200-203.

³³⁵ Protected Flag, Emblems and Names Act, section 4. Available at: <https://crm.misa.org/upload/web/17-laws-of-malawi-protected-flag-emblems-and-names.pdf>.

³³⁶ Electronic Transactions and Cybersecurity Act, section 87. Available at: <https://malawilii.org/mw/legislation/act/2016/33>.

³³⁷ *Ibid.*, section 24.

³³⁸ *Ibid.*, section 24.

relying on the 2016 law, authorities have informally directed online newspapers or others to remove content which is critical of the government.³³⁹

Right to information and secrecy laws

Malawi’s Access to Information Act is reasonably strong, ranked 33 out of 128 countries assessed by the RTI Rating.³⁴⁰ Although adopted in 2017, it has yet to be effectively implemented in practice, partially due to a lack of funding for the designated implementation body and a failure to set up the structural framework needed to operationalise the Act.³⁴¹ While the Act is generally strong, applying to a wide scope of information and public authorities, and empowering an independent oversight body, a key weakness is that the oversight body does not have the authority to issue binding decisions. In addition, the Act does not override other laws.³⁴² This is particularly problematical as regards the Official Secrets Act, which establishes penalties for sharing information which might be harmful to an enemy, sharing secret information or even knowingly receiving secret information unless the recipient shows he or she did not desire to receive the information.³⁴³

Malawi’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	3	50%
2. Scope	30	27	90%
3. Requesting Procedures	30	15	50%
4. Exceptions and Refusals	30	18	60%
5. Appeals	30	21	70%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	14	88%
Total score	150	104	69%

Restrictions on freedom of assembly

Under the Police Act, an assembly is defined as a gathering of fifteen people in a public place that is held publicly to discuss, attack, criticise or promote the actions or failures of the government, government officials or a political party. Any organisation which wishes to hold such an assembly must appoint a convener to be responsible for the notification process.³⁴⁴ Notice must be given to the District Commissioner at least 48 hours in advance and contain the name of the organisation and the purpose of the meeting, the time and duration, the place, the number of participants and a

³³⁹ Freedom House, Freedom on the Net 2018: Malawi. Available at: <https://freedomhouse.org/report/freedom-net/2018/malawi>.

³⁴⁰ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

³⁴¹ ICNL, Civic Freedoms Monitor: Malawi, note 310.

³⁴² RTI Rating. Available at: <https://www.rti-rating.org/country-data/>.

³⁴³ Official Secrets Act, sections 3 and 4. Available at: https://malawilii.org/system/files/consolidatedlegislation/1401/official_secrets_act_pdf_68659.pdf.

³⁴⁴ Police Act, 2010, sections 92 and 94. Available at: https://www.policinglaw.info/assets/downloads/2010_Police_Act_of_Malawi-compressed.pdf.

copy of any petition or documentation intended to be handed out during the gathering.³⁴⁵ The District Commissioner then has the authority to prohibit the assembly or to impose conditions on it.³⁴⁶

The Penal Code provides for a number of offences relating to public gatherings and assemblies. It is an offence for three or more people to gather with the intent to commit an offence or to “carry out a common purpose” likely to cause fear there will be a breach of the public peace. Once a breach of the peace has begun, the gathering is considered a riot even if a crime has not occurred. Taking part in an unlawful assembly is punishable by imprisonment or up to one year and being a party to a riot is punishable by up to five years.³⁴⁷

National security

The Preservation of Public Security Act gives the government fairly expansive powers to place restrictions on certain fundamental rights via a notice published in the official gazette where the government believes doing so is necessary to preserve public security. Public security is defined by reference to a number of fairly generic concepts, such as suppression of disorder and crime, maintenance of the administration of justice, prevention of disobedience to the law and maintenance of supplies and services necessary to the life of the community.³⁴⁸ In such instances, the government may prohibit the dissemination of certain publications, restrict or prohibit assemblies and impose other restrictions including any measures which appear “to be strictly required by the exigencies of the situation”.³⁴⁹

Government surveillance is a potential concern. MACRA implemented an ICT regulatory system known as CIRMS in 2017. The Supreme Court of Appeal, in a 2014 ruling, noted that the system was a potential threat to freedom of expression and privacy, but allowed MACRA to proceed with its implementation provided it did not use it to monitor and intercept private communications.³⁵⁰ In practice, while MACRA states that the system is designed to monitor and improve the quality of mobile phone services, CIRMS remains controversial and it is widely believed that it allows MACRA to obtain data on phone calls and text messages without judicial oversight.³⁵¹

The Police Act was amended in 2010 to grant authorities the power to conduct searches without a court warrant. These discretionary powers have been used to harass founders of NGOs and activists.³⁵² Furthermore, the Penal Code allows the search of any building without a warrant if there is reason to believe it houses an unlawful society or any of their documentation.³⁵³

³⁴⁵ *Ibid.*, Article 96.

³⁴⁶ Transparency International, Malawi National Integrity System Assessment, note 330, p. 217.

³⁴⁷ Penal Code, note 332, sections 71-73.

³⁴⁸ Preservation of Public Security Act, Article 2. Available at:

https://www.policinglaw.info/assets/downloads/1960_Preservation_of_Public_Security_Act_of_Malawi.pdf.

³⁴⁹ *Ibid.*, Article 3(2).

³⁵⁰ Paradigm Initiative, Digital Rights in Africa: 2017, p. 32. Available at:

http://www.intgovforum.org/multilingual/es/system/files/filedepot/78/paradigmhq-digital_rights_in_africa_report_2017.pdf.

³⁵¹ Freedom House, Freedom on the Net 2018: Malawi. Available at: <https://freedomhouse.org/report/freedom-net/2018/malawi>.

³⁵² ICNL, Civic Freedoms Monitor: Malawi, note 310.

³⁵³ Penal Code, note 332, Article 68.

Whistleblower, witness and other protection systems for those at risk

Malawi does not have comprehensive whistleblower protection legislation but some partial protections are in place. The Corrupt Practices Act protects the confidentiality of informers who make a complaint about alleged or suspected corrupt practices and establishes sanctions for those who punish or victimise such whistleblowers.³⁵⁴ The Access to Information Act also protects whistleblowers against retaliation for certain disclosures made in the public interest.³⁵⁵

Mozambique

Freedom of association: non-profit registration requirements and restrictions on advocacy

To obtain legal personality, an association must register under the 1991 Law on Associations. Aspects of the process, such as providing identity documents and criminal records for the minimum ten founding members, have been criticised as being overly burdensome given that these documents are in practice challenging to obtain.³⁵⁶ Generally, however, the registration process is not very complex. A more serious concern is the discretion afforded to authorities to deny registration; authorities need only give a reasoned decision for refusing to register an organisation and the law does not provide a closed list of grounds for this.³⁵⁷ A Constitutional Court decision in 2017 partially constrained authorities' discretion to refuse registration, however, finding that a provision in the 1991 Law which banned organisations which violate the moral, social or economic order was an unconstitutional restriction on freedom of association.³⁵⁸

Generally, NGOs are not obligated to submit regular reports or undergo government audits. A judicial order is also required to deregister an association.³⁵⁹ In practice, at the provincial level, some governments have required the submission of activity reports and, while civil society is generally free to operate, some NGOs report having experienced surveillance during tense periods. In this respect, the 1991 Law may be overly ambiguous, enabling *ad hoc* approaches to NGO regulation by local officials.³⁶⁰ Organisations working on natural resource and environmental issues, in particular, have experienced harassment.³⁶¹

Funding restrictions, financial report requirements and special tax requirements

³⁵⁴ Corrupt Practices Act 2018, section 51A. Available at:

<http://www.eisourcebook.org/cms/Malawi%20Corrupt%20Practices%20Act.pdf>.

³⁵⁵ Access to Information Act, section 50. Available at: <https://www.rti-rating.org/wp-content/uploads/2018/09/Malawi-Access-to-Information-Act.Feb17.pdf>.

³⁵⁶ CIVICUS and Joint, Joint Submission to the UN Universal Periodic Review, 22 June 2015, para. 2.2. Available at: <http://www.civicus.org/images/UPR.NGOSubmissionOnMozambique.pdf>.

³⁵⁷ Law 8/91, Article 5(3). Available at:

<https://www.caicc.org.mz/images/stories/documentos/Lei%20das%20Associacoes.pdf>.

³⁵⁸ Godfrey Musila, note 62; for the provision found to be unconstitutional, see Article 1, <https://www.caicc.org.mz/images/stories/documentos/Lei%20das%20Associacoes.pdf>.

³⁵⁹ Law 8/91, note 357, Article 10.

³⁶⁰ Albino Francisco, Enabling Environment National Assessment of CSOs, Joint, May 2015, p. 27. Available at: https://www.civicus.org/images/EENA_Mozambique_English.pdf.

³⁶¹ CIVICUS and Joint, note 356.

There are no notable funding restrictions or financial reporting requirements.

Media regulation

All print and other media outlets must register under the 1991 Press Law and obtain a certificate from the Government Press Office (GABINFO). An application can only be rejected if the legal requirements are not met. The application must be renewed every two years but the renewal is supposed to be automatic and can only be revoked via judicial decision.³⁶² Registration may be suspended by GABINFO but the process must be submitted to the Public Prosecutor for judicial action, which may then result in the licence being cancelled.³⁶³

The Constitution and the Press Law establish the Supreme Mass Media Council (CSCS, by its Portuguese acronym) as the body responsible for guaranteeing freedom of the press, independence of the media, the exercise of broadcasting rights and the right of reply.³⁶⁴ While the Council is a government body, some mechanisms are in place to protect its independence. While a majority of the Council's members are appointed by the government, this is split between the President and the legislature, and there are protections against arbitrary removal of Council members.³⁶⁵ However, except for a responsibility to handle ethical complaints, the CSCS's powers are not well-defined and, in practice, it does not have a strong regulatory function as compared to GABINFO and other government bodies.³⁶⁶

Mozambique does not have a broadcasting law. The process of allocating frequencies is instead governed by an array of decrees. Since there is no independent broadcasting authority, the process is essentially controlled by the government.³⁶⁷

A key recent controversy is over a decree creating significantly increased hurdles for journalist accreditation and media licensing.³⁶⁸ The new fees, which would range from approximately USD 493 for a national freelance journalist to USD 49,050 for a new national television station, would be the highest on the African continent. After backlash, imposition of the new fees is reportedly on hold, although it appears that GABINFO still intends to collect them eventually.³⁶⁹

³⁶² Press Law, Articles 20 and 22. Available in Portuguese at:

https://www.caicc.org.mz/cd/leis/Files/Acesso%20a%20informacao/lei_de_imprensa.pdf. For an English language discussion of the law, see https://www.kas.de/c/document_library/get_file?uuid=ca3e5d52-e367-f74d-0a05-193211f54f75&groupId=252038.

³⁶³ Press Law, note 362, Article 23.

³⁶⁴ Constitution, Article 50(1). Translation available at:

[http://confinder.richmond.edu/admin/docs/Constitution_\(in_force_21_01_05\)\(English\)-Mozlegal.pdf](http://confinder.richmond.edu/admin/docs/Constitution_(in_force_21_01_05)(English)-Mozlegal.pdf).

³⁶⁵ Press Law, note 362, Articles 35, 38 and 39.

³⁶⁶ Freedom House, Freedom of the Press 2015: Mozambique. Available at:

<https://freedomhouse.org/report/freedom-press/2015/mozambique>.

³⁶⁷ The various decrees and the relevant process are summarised by UNESCO, Assessment of Media Development in Mozambique, 2011, pp. 65-66. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000216942>. Although the source is outdated, it appears that comprehensive broadcasting regulation is still pending.

³⁶⁸ Decree 40/2018. Available in Portuguese at:

https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk.technology.mozambique/files/files/Decreto_40-18_GabInfo_Texas.pdf.

³⁶⁹ CIVICUS, Monitor: Mozambique. Available at: <https://monitor.civicus.org/country/mozambique/>.

Content restrictions

Defamation and insult are still criminal and may be punished by up to one year's imprisonment. Notably, this covers public authorities or bodies such as the legislature, and not just individuals. Outrage to public morals is also punishable by up to three months' imprisonment when committed by public words and up to six months when published.³⁷⁰ The Penal Code also prohibits defamation, slander and insult of the Head of State and several other enumerated public officials, which may result in up to two years' imprisonment. Outrage to national symbols is also criminal.³⁷¹

The Press Law also contains some content restrictions, most notably a prohibition on defaming, threatening or insulting the President, members of government, magistrates and other public officials.³⁷²

Internet and digital rights

Mozambique has not enacted notable restrictions on freedom of expression that are specific to online speech, and it has a good record of not blocking the Internet, despite a trend by some neighbouring countries to block the Internet during elections or periods of turbulence.³⁷³ There are some reports of authorities monitoring online content for critical speech and intelligence agents infiltrating social media groups and monitoring the emails of civil society members.³⁷⁴

An exception to this is the provision of the Penal Code under the computer crimes part, which is described in the next section, as well as a prohibition on public incitement to a crime using electronic media, which could be more precise in articulating what exactly constitutes incitement to a crime.³⁷⁵

Right to information and secrecy laws

Mozambique enacted a right to information law in 2014 but it is a weak law, ranking 114 out of the 128 laws assessed on the RTI Rating. Reasons for the low score include the lack of an independent appeals body, the lack of a "public interest override", which would require disclosure when public interest concerns outweigh the reasons for keeping information confidential, the fact that the law does not override other competing laws and the fact that the law includes few measures to promote the right to information.³⁷⁶

³⁷⁰ Penal Code, Articles 229, 231, 232 and 241. Available at: <https://learningpartnership.org/sites/default/files/resources/pdfs/Mozambique-Penal-Code-2014-Portuguese.pdf>.

³⁷¹ *Ibid.*, Articles 387-388

³⁷² Press Law, note 362, Article 46.

³⁷³ Joseph Hanlon, Mozambique: Keeping the Internet Open for a Free Election, All Africa, 10 October 2019. Available at: <https://allafrica.com/stories/201910100488.html>.

³⁷⁴ U.S. Embassy in Mozambique, Mozambique 2018 Human Rights Report. Available at: <https://mz.usembassy.gov/mozambique-2018-human-rights-report/>.

³⁷⁵ Penal Code, note 370, Article 323.

³⁷⁶ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

Mozambique’s Penal Code includes prohibitions on sharing State secrets and violating the secrecy of the State. In a controversial case, a journalist who interviewed people fleeing internal violence was detained by the military, allegedly for violating Article 322 of the Penal Code, which prohibits making information available to unauthorised people which should be kept secret in the interests of national security.³⁷⁷

Mozambique’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	6	100%
2. Scope	30	17	57%
3. Requesting Procedures	30	16	53%
4. Exceptions and Refusals	30	9	30%
5. Appeals	30	5	17%
6. Sanctions and Protections	8	3	38%
7. Promotional Measures	16	4	25%
Total score	150	60	40%

Restrictions on freedom of assembly

The law protects the right to engage in peaceful assembly without obtaining prior authorisation. Prior notice four days before the event is required, however. This applies to any meeting or demonstration in a public place, although meetings in closed areas or relating to the internal structures of an organisation are exempted.³⁷⁸ In practice, however, this notification requirement has effectively functioned as an authorisation requirement, with some examples of demonstrations being “de-authorised” by local authorities. In at least one instance, an organisation was fined for holding an unauthorised protest despite having provided notification where it decided to hold the protest despite the opposition of the Provincial Governor.³⁷⁹

National security

A new terrorism law was passed in 2018. Although no version is available online, it reportedly contains a more expansive definition of terrorist acts, including incitement to terrorism, which is a common problem area with anti-terrorism laws and freedom of expression.³⁸⁰ Furthermore, in practice, there have been recent instances of the State imposing overly sweeping rights restrictions in response to internal security threats. This includes security forces barring media from visiting a

³⁷⁷ Penal Code, note 370, Article 322. See also: <https://www.hrw.org/news/2019/04/11/mozambique-joint-statement-civil-society-groups-calling-unconditional-and-immediate>.

³⁷⁸ Law 9/91 as amended by Law 7/2001. Described by Albino Francisco, note 360, p. 24.

³⁷⁹ CIVICUS and Joint, note 356, p. 6.

³⁸⁰ Parlamento Aprovou Lei de Repreensão, Jornal Noticias, 3 May 2018, available at: https://www.jornalnoticias.co.mz/index.php/capital/77061-acidente-no-luis-cabral-feridos-recebem-alta-hospitalar.html?fb_comment_id=2523988640951534_2524393610911037; and Breaking: Mozambican Government Approves Draft Counter-Terrorism Law, Club of Mozambique, 25 October 2017, available at: <https://clubofmozambique.com/news/mozambican-government-approves-draft-counter-terrorism-law/>.

region experiencing an Islamist insurgency, and arresting and intimidating journalists reporting on the fighting.³⁸¹

The 1991 Law on Crimes Against State Security treats defamation or insult of the President and other public figures as an offence against national security. The law also imposes penalties for instigating or conspiring to commit the crimes it describes.³⁸² Other aspects of this law could potentially restrict civil society, such as the offence of attempting to alter the Constitution or change the government unlawfully, which could potentially cover peaceful advocacy.³⁸³ In practice, however, the primary problematic provision appears to be the defamation provision, which has been used to bring charges against civil society members.³⁸⁴

Whistleblower, witness and other protection systems for those at risk

In 2012, as part of a broader package of anti-corruption laws, Mozambique passed a law establishing a range of protections for witnesses, victims and whistleblowers, including hiding their identity or, if needed, more dramatic measures such as relocation.³⁸⁵

Niger

Freedom of association: non-profit registration requirements and restrictions on advocacy

Prior to commencing operations, Nigerien non-profit organisations must be declared and then authorised in the relevant jurisdiction. To “declare” an association, one must submit documentation including information about the directors, copies of the statutes and minutes from the General Assembly. One copy of the application is sent to the Ministry of the Interior, one to the Prosecutor of the Public and one to the archives of the specific regional authority.³⁸⁶ The Minister of the Interior then decides whether to grant or refuse authorisation. Since the law does not indicate the grounds that would justify a refusal, this is presumably left up to the Minister’s discretion. Within 30 days of receipt of authorisation, an association is required to publish a statement of foundation in the official gazette.³⁸⁷ Anyone who participates in the creation or administration of a non-declared and/or non-authorized association can be punished by imprisonment and/or a fine.

³⁸¹ Human Rights Watch, Mozambique: Media Barred from Insurgent Region, 221 February 2019. Available at: <https://www.hrw.org/news/2019/02/21/mozambique-media-barred-insurgent-region>.

³⁸² Law 19/91, Articles 4, 6 and 22. Available in Portuguese at: http://www.vertic.org/media/National%20Legislation/Mozambique/MZ_Lei_Crimes_Contra_Seguranca_Estado.pdf

³⁸³ Law 19/91, note 382, Article 15.

³⁸⁴ Amnesty International, Mozambique: Arbitrary Arrest and Detention, Torture and Ill-Treatment, and Impunity for Police Killings, 2016. Available at: <https://www.amnesty.org/download/Documents/AFR4125872015ENGLISH.PDF>.

³⁸⁵ Law 15/2012, available in Portuguese at: https://www.caicc.org.mz/images/stories/documentos/lei_protecao_vitimas_denunciante_testemunhas.pdf; and Transparency International, Mozambique: Overview of Corruption and Anti-Corruption, 30 December 2016. Available at: https://www.transparency.org/files/content/corruptionqas/Country_Profile_Mozambique_2016.pdf.

³⁸⁶ Ordonnance 84-06 of 1984, Article 3. Available at: <http://droit-afrique.com/upload/doc/niger/Niger-Ordonnance-1984-06-associations.pdf>.

³⁸⁷ *Ibid.*, Articles 4 and 5.

The Ministry of the Interior may dissolve associations for violating the law or for engaging in activities which are not authorised in their statutes or which are contrary to public order.³⁸⁸ NGOs which have not undertaken development activities as specified in their statutes within two years of authorisation may similarly be dissolved.³⁸⁹

NGOs do not appear to face legal barriers to engaging in advocacy. In 2017, the Minister of Community Development announced plans for the creation of a new regulatory system which would impose additional supervision on NGOs but to date, this system does not appear to have been implemented.³⁹⁰ However, civil society representatives have faced arrest and detention in some situations. For example, a coordinator for the civil society organisation ROTAB, along with 10 other activists, was arrested after calling for government transparency.³⁹¹

Funding restrictions, financial reporting requirements, and special tax requirements

NGOs are required to sign a memorandum of understanding with the Minister of Finance outlining their fiscal and administrative plans.³⁹²

NGOs are exempt from customs, indirect taxes and charges (including VAT) and duties on certain items related to their activities.³⁹³

Media regulation

The High Communications Council (CSC, according to its French acronym) is meant to be an independent administrative agency falling under the Ministry of Communication, which is responsible for media regulation. It comprises 15 members, three appointed by State actors/organs and twelve elected by media and human rights organisations.³⁹⁴ The CSC has the authority to rule on complaints related to professional journalists' ethics. It can impose sanctions on private media organisations for breaches, including written warnings and temporary or permanent withdrawal of press cards.³⁹⁵ However, when dealing with public media organisations, it can only request the Minister of Communications to initiate disciplinary proceedings. Decisions of the CSC are administrative in nature and are subject to appeal before the courts.³⁹⁶

A 2018 law establishes the Regulatory Authority of Electronic Communications and Post (ARCEP, according to its French acronym) as the telecommunications regulator. ARCEP is

³⁸⁸ *Ibid.*, Articles 23 and 26.

³⁸⁹ Decree No. 92-292 of 1992, Article 6. Available at: <http://droit-afrique.com/upload/doc/niger/Niger-Decret-1992-292-ONG.pdf>.

³⁹⁰ Freedom House, Freedom of the World 2018: Niger. Available at: <https://freedomhouse.org/report/freedom-world/2018/niger>.

³⁹¹ Civicus, Submission to the UN Universal Periodic Review, 22 June 2015. Available at: <http://www.civicus.org/images/UPR.NGOSubmissionOnNiger.pdf>.

³⁹² Decree No. 92-292 of 1992, Article 19. Available at: <http://droit-afrique.com/upload/doc/niger/Niger-Decret-1992-292-ONG.pdf>.

³⁹³ *Ibid.*, Article 14.

³⁹⁴ Law 2012-34 of 2012, Article 4. Available at: http://www.csc-niger.ne/images/docs/Lois/Loi_CSC.pdf.

³⁹⁵ *Ibid.*, Articles 16 and 17.

³⁹⁶ *Ibid.*, Articles 19, 21 and 28.

responsible for ensuring compliance with laws related to electronic communication activities.³⁹⁷ Its deliberative body, CNRTP, is responsible for granting, renewing and withdrawing broadcast licences and deliberating on disputes (and, pursuant to that, imposing sanctions). Sanctions can include fines and total/partial suspensions of licences/authorisations.³⁹⁸ CNRTP comprises seven members, three appointed by the President, two by the President of the National Assembly and two by the President of the Economic, Social and Cultural Council.³⁹⁹ Since the President of the Economic, Social and Cultural Council is appointed by a decree from the Council of Ministers, the executive has undue influence over the CNRTP.⁴⁰⁰

Content restrictions

The Penal Code contains some troublesome content restrictions. Insult of public officials is a crime, as is insulting a magistrate or judge in relation to their official functions. Discrediting a court decision under conditions that are likely to undermine the authority or independence of the justice system is also a crime.⁴⁰¹ References to crimes of a racial, regional or religious character include overly broad elements, such as “regional propaganda” or expressions that are likely to turn people against one another.⁴⁰²

Under the Law on Freedom of the Press, journalists and other media professionals can be sanctioned for press offences in addition to Penal Code provisions. The former prohibits defamation, defined as any allegation of a fact that offends the honour of the person or body concerned. Offensive expressions, even where no specific fact is imputed, are considered to be insult, which is also prohibited. The penalties for defamation and insult against public officials and organs are much higher than for those against private individuals.⁴⁰³

While the 2010 Law “decriminalised” media offences by replacing prison sentences with fines, authorities have continued to threaten journalists with prison sentences by charging them with offences under the Penal Code.⁴⁰⁴

Internet and digital rights

The National Assembly is currently considering a draft Cybercrime Law which would have a significant impact on civil society activity online. The Law would essentially re-criminalise

³⁹⁷ Law 2018-47 of 2018, Articles 1 and 2. Available at: <https://www.arcep.ne/textes-de-l-arcep-lois-et-ordonnances.php?sid=99>.

³⁹⁸ *Ibid.*, Articles 13 and 23.

³⁹⁹ *Ibid.*, Article 18.

⁴⁰⁰ AICESIS, Economic, Social and Cultural Council. Available at: <http://www.aicesis.org/database/organization/75/print/>.

⁴⁰¹ Penal Code, Articles 169, 170 and 171. Available at: http://www.vertic.org/media/National%20Legislation/Niger/NE_Code_Penal.pdf.

⁴⁰² *Ibid.*, Article 102.

⁴⁰³ Ordonnance 2010-35 of 2010, Articles 49-53. Available at: http://www.csc-niger.ne/images/docs/Lois/Ordonnance_libert_presse.pdf.

⁴⁰⁴ Reporters Without Borders, Niger: Press Freedom in Decline, 2019, available at: <https://rsf.org/en/niger>; and Freedom House, Freedom of the Press 2016: Niger, available at: <https://freedomhouse.org/report/freedom-press/2016/niger>.

defamation and insult when done through electronic communications. It also criminalises the sharing of false news which would undermine public order or impact human dignity. The law also prohibits racist, regionalist, ethnic, religious or xenophobic speech. This is worded in very general terms and does not include a clear intent requirement.⁴⁰⁵

The government has blocked access to the Internet in the past. In 2015, social networks and SMS messages were shut down during protests and communal violence.⁴⁰⁶ In 2016, shutdowns occurred again for three days during the presidential election.⁴⁰⁷

Right to information and secrecy laws

Niger enacted a right to information law in 2011. The law is of middling quality, ranking 86th out of the 128 countries assessed on the RTI rating. While the law is broad in terms of the information it covers, it fails to establish a clear general right to access government held information. Another key weakness is that the law only places limited responsibilities on authorities to put in place measures to promote the right to information. More positively, the law establishes a reasonably strong appeals mechanism.⁴⁰⁸

Niger's RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	0	0%
2. Scope	30	19	63%
3. Requesting Procedures	30	13	43%
4. Exceptions and Refusals	30	13	43%
5. Appeals	30	17	56%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	6	38%
Total score	150	74	49%

Restrictions on freedom of assembly

Freedom of assembly is guaranteed by the Nigerien Constitution.⁴⁰⁹ In practice, however, the freedom is not regularly respected. Authorities have often refused to authorise or prohibited public assemblies, citing security concerns,⁴¹⁰ sometimes even when prior authorisation had already been given by the courts.⁴¹¹ In 2017, the government announced a prohibition on public protests on

⁴⁰⁵ Draft Law against Cybercrime, 2019. Available at: <https://www.actuniger.com/politique/15250-loi-contre-la-cybercriminalite-ce-que-dit-le-texte-integralite-du-texte-adopte-par-l-assemblee-nationale.html>.

⁴⁰⁶ Freedom House, Freedom of the Press 2016: Niger, note 404.

⁴⁰⁷ Reporters Without Borders, Niger: Press Freedom in Decline, 2019, note 404.

⁴⁰⁸ RTI Rating, Niger. Available at: <https://www.rti-rating.org/country-data/Niger/>.

⁴⁰⁹ Constitution of Niger, 2010. English translation available at: https://www.constituteproject.org/constitution/Niger_2010.pdf.

⁴¹⁰ Freedom House, Freedom of the World, 2018: Niger, note 390.

⁴¹¹ UN Human Rights Committee, Concluding Observations on the Second Periodic Review of Niger, 16 May 2019, UN Doc. CCPR/C/NER/CO/2. Available at:

business days. When demonstrations do occur, police have used excessive force to break them up.⁴¹²

National security

A 2011 amendment to the Penal Code added a definition of “terrorist act” that applies to anyone who disrupts the normal functioning of public services. In practice, authorities have relied on this provision, along with other amendments to the counter-terrorism legislation which restrict due process rights, to justify numerous arrests of journalists, human rights defenders and members of the opposition.⁴¹³

Other provisions of the Penal Code relating to national security have also been leveraged against civil society. For example, one activist was charged with “organising a conspiracy to overthrow a constitutional order” following a Facebook post criticising the government’s response to Boko Haram.⁴¹⁴ Another human rights defender was charged with “undermining national defence”.⁴¹⁵ While such prosecutions are partly enabled by imprecise language in the Penal Code, they often reflect highly questionable applications of the relevant law.

Whistleblower, witness and other protection systems for those at risk

Niger does have a legal framework protecting whistleblowers.

Nigeria

Freedom of association: non-profit registration requirements and restrictions on advocacy

NGOs are regulated under the Companies and Allied Matters Act of 2004 (“CAMA”). An organisation may be incorporated as a company limited by guarantee if it is formed to promote commerce, art, science, religion, culture, charity or similar objects. Founders must submit an application to the Corporate Affairs Commission. The Commission must register the company unless the application is incomplete or the objects of the organisation are illegal. Once the Commission has approved the application, it must then be approved by the Attorney General.⁴¹⁶

In practice, registration can come with long delays due to inefficient administrative procedures and communications between the attorney general and the commission.⁴¹⁷ Many groups focused on human rights violations or harmful policy decisions by government officials have difficulty

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiL0RwcBBs1ztIRWANO4YSLyvwxA9SSILrXVhMnkEZsyKkZLq1tZR3djICjCcwqo7B9%2Bhfw4WiNEZ0D12xQ8qYJiuFiOEjCz99Ix7XHLXU>.

⁴¹² Freedom House, Freedom of the World, 2018: Niger, note 390; and UN Human Rights Committee, *ibid*.

⁴¹³ *Ibid*.

⁴¹⁴ Civicus, Monitor: Niger, 10 August 2016. Available at: <https://monitor.civicus.org/newsfeed/2016/08/10/activist-sentenced-facebook-post-niger/>.

⁴¹⁵ Civicus, Submission to the UN Universal Periodic Review, note 391.

⁴¹⁶ Companies and Allied Matters Act, sections 26, 27 and 36. Available at: <https://resolutionlawng.com/wp-content/uploads/2018/07/Companies-and-Allied-Matters-Act.pdf>.

⁴¹⁷ ICNL, Civic Freedoms Monitor: Nigeria. Available at: <http://www.icnl.org/research/monitor/nigeria.html>.

registering. Organisations with the words “human rights” or “rights” in their names have routinely been refused legal status unless their name is changed.⁴¹⁸

Under the Criminal Code, an unlawful society is one the purpose of which is to subvert the government, incite to acts of violence or intimidation, interfere with the law or disturb the peace.⁴¹⁹ Managing such a society is punishable by seven years’ imprisonment and being a member or attending a meeting is punishable by three years. In addition, the President and the Council of Ministers have the discretion to declare any society dangerous to the good government of Nigeria and therefore unlawful.⁴²⁰

Various legislative reforms have been proposed to amend this registration procedure. The NGO Regulatory Commission (Establishment) Bill, for example, would establish a Commission to register NGOs. The Commission would consist of ministers and members appointed by the president. Certificates issued by the Commission would only be valid for 24 months and registration could be denied if the Commission deems that this is not in the best interests of the nation. Furthermore, all groups would need to register projects with the Commission and obtain approval from the relevant minister.⁴²¹

Funding restrictions, financial reporting requirements, and special tax requirements

In order to receive donations, an organisation must register under CAMA. All bodies which are incorporated under CAMA must keep financial records indicating all of their transactions and the uses to which any funds were put. An annual financial report and audit must be submitted to the Commission.⁴²² Under the Companies Income Tax Act, organisations must also submit an annual financial report and an audit to the Tax Commission.⁴²³ The profits of a charitable company are exempt from taxation.⁴²⁴

NGOs are subjected to the Money Laundering Prohibition Act. All organisations must register with the Special Control Unit Against Money Laundering (SCUML), submit reports on all transactions above USD 1,000 within 24 hours and keep financial records for five years. Cross-border transactions are deemed high risk, requiring prior permission from SCUML. Furthermore, domestic and foreign donations may not come from anonymous sources.⁴²⁵

⁴¹⁸ ICNL, Nigeria Philanthropy Law Report 2017, p. 10. Available at:

<http://www.icnl.org/news/Nigeria%20Philanthropy%20Law%20Report.pdf>.

⁴¹⁹ Criminal Code, section 62(2). Available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54f975004>.

⁴²⁰ *Ibid.*, sections 62-65.

⁴²¹ Non-Governmental Organisations Regulatory (Establishment) Commission Bill, sections 2, 14-15 and 26-27. Available at: https://media.premiumtimesng.com/wp-content/files/2017/09/watermarked_NGO-Bill-Copy.pdf.

⁴²² Companies and Allied Matters Act, note 416, sections 331, 357 and 370.

⁴²³ Companies Income Tax (Amendment) Act, section 13. Available at:

<https://placng.org/new/laws/COMPANIES%20INCOME%20TAX%20AMENDMENT%20ACT,%202007.pdf>.

⁴²⁴ Companies Income Tax Act, section 23. Available at:

<http://www.orandconsultants.com/Downloads/Companies%20Income%20Tax.pdf>.

⁴²⁵ Designation of Non-Financial Institutions and Other Related Matters Regulations 2013, sections 2, 4, 9, 10 and 15(3). Available at: https://www.glogconsult.com/uploads/8/6/1/5/8615560/scuml_regulations.pdf.

Several proposed bills would impose new financial restrictions on NGOs. The NGO Regulation Bill, which was actively under consideration in 2019, would create a Commission to regulate donations and funds given to organisations. Groups would need to register with the Commission and disclose the source, amount and purpose of all funding received.⁴²⁶ An organisation would have to obtain permission before accepting foreign funding, which the Commission could deny if it believes the funding would compromise national sovereignty, negatively impact diplomatic foreign relationships or religious harmony or pose a risk of money laundering.⁴²⁷ Members of civil society see this as an unnecessary duplication of the anti-money laundering legislation and an attempt arbitrarily to control NGO activities.⁴²⁸

The Improved Aid Bill was tabled in 2016 and is waiting to be debated. The Bill would impose additional restrictions on donations to NGOs. Under the Bill, all donors must align their delivery of monetary aid with Nigeria's national development strategies and must register with the National Planning Commission. The donor would have to inform the Commission of the details of any project and would be prohibited from engaging in activities that undermine the economy. NGOs would have to report donations to the Commission within seven days.⁴²⁹

Media regulation

The broadcast regulator is the National Broadcast Commission (NBC). All 11 members of the Commission are appointed by the president on the recommendation of the relevant minister. The president may also remove any commissioner if he or she is satisfied that doing so is in the public interest.⁴³⁰ The NBC considers applications for licences and makes recommendations to the president, through the minister, for the grant of such licences. It is also responsible for developing a National Broadcasting Code and setting standards for broadcasting content. The NBC also imposes sanctions, including revoking licences for serious breaches of Broadcasting Code.⁴³¹

The telecommunications regulatory body is the National Communications Commission. Like the NBC, is not independent of government since all of the members of its governing board are appointed by the president.⁴³²

The Nigerian Press Council, a statutory body, originally had significant powers over journalists and the printed press. However, a court decision ruled significant parts of the Council's founding law to be unconstitutional, effectively preventing the Council from exercising the most speech restrictive functions. In 2018, the Nigerian Press Council Bill, which would re-introduce many of

⁴²⁶ NGO Regulation Bill, section 3. Available at: http://placng.org/situation_room/sr/wp-content/uploads/2014/07/HB-520.pdf.

⁴²⁷ The NGO Regulation Bill, sections 2 and 5. Available at: http://placng.org/situation_room/sr/wp-content/uploads/2014/07/HB-520.pdf.

⁴²⁸ ICNL, Civic Freedoms Monitor: Nigeria, note 417.

⁴²⁹ Improved Aid Effectiveness, Accountability and Co-operation for Donor, Recipient, and Related Matters Bill, sections 2, 4 and 6. Available at: <http://www.placbillstrack.org/upload/HB451.pdf>.

⁴³⁰ National Broadcasting Commission Act, sections 3 and 4. Available at: <https://nlipw.com/national-broadcasting-commission-act/>.

⁴³¹ *Ibid.*, section 2 and Third Schedule.

⁴³² National Communications Commission Act, sections 5 and 7. Available at: http://www.commonlii.org/ng/legis/num_act/ncca364/.

the provisions found to be unconstitutional, was introduced in the legislature. Under the new Bill, a Press Council with members appointed by the minister would have sanctioning powers over the press. The Bill has been highly controversial and, at the moment, appears to have stalled in the legislature.⁴³³

Content restrictions

The Criminal Code contains a number of provisions which restrict freedom of expression. Publishing rumours or reports that are likely to cause fear or disturb public peace is punishable by three years' imprisonment.⁴³⁴ Publishing pictorial representations of a person in a manner which is likely to provoke or bring into disaffection any section of the community is punishable by three months' imprisonment.⁴³⁵ Publishing obscene articles, defined as anything that corrupts people, is punishable by three years' imprisonment.⁴³⁶

Defamation is a criminal offence. Positively, the Criminal Code establishes that certain kinds of defamatory speech are completely or partially protected, such as speech which involves certain public figures or constitutes fair comment on certain enumerated public interest subjects.⁴³⁷ However, criminal penalties for defamation are inappropriate and these provisions have been used abusively in practice.⁴³⁸ Government officials accused of corruption have also been known to retaliate with civil defamation suits.⁴³⁹

The National Broadcasting Code contains numerous content restrictions and generally reads like a list of aspirational or ethical norms. For example, it prohibits broadcasters from disseminating programmes which treat crime in a frivolous manner or that portray cruelty or greed as desirable values.⁴⁴⁰ This is problematic given the enforcement powers that are vested in the NBC for violations of the Code, although these rules are considered to be less serious offences which are subject to milder sanction, while more serious sanctions, such as immediate suspension of broadcasting services or licences, may only be imposed for more serious offences. However, some of the more serious offences are also problematically vague, such as transmitting programmes that cause general social disorder or political and social upheaval, transmitting divisive materials that may threaten the indivisibility of the State, failing to reflect the sensibilities of the diverse cultures

⁴³³ Nigerian Press Council Act, available at: http://www.presscouncil.gov.ng/wp-content/uploads/2012/12/npc_law.pdf; Kingsley Obiejesi, Press Council Bill 2018: Why Stakeholders are Protesting, ICIR, 26 July 2018, available at: <https://www.icirnigeria.org/press-council-bill-2018-why-stakeholders-are-protesting/>; and Freedom House, Freedom of the Press 2015: Nigeria, available at: <https://freedomhouse.org/report/freedom-press/2015/nigeria>.

⁴³⁴ Criminal Code, note 419, section 59.

⁴³⁵ *Ibid.*, section 88(A).

⁴³⁶ *Ibid.*, section 233(c) and (d).

⁴³⁷ *Ibid.*, sections 373-377.

⁴³⁸ Freedom House, Freedom of the Press 2015: Nigeria, note 433.

⁴³⁹ Front Line Defenders, UPR Submission – Nigeria 2018, 1 April 2018. Available at: <https://www.frontlinedefenders.org/en/statement-report/upr-submission-nigeria-2018>.

⁴⁴⁰ Nigeria Broadcasting Code, 6th Edition, Draft. Available at: <https://www.nta.ng/wp-content/uploads/2019/09/1494416213-NBC-Code-6TH-EDITION.pdf>. Although this version is marked as a draft, it appears to accord with the version currently in force.

of Nigeria, broadcasting content that is repugnant to public feelings or transmitting content that is detrimental to national security.⁴⁴¹

A controversial Hate Speech Bill is reportedly pending in the Senate. Critics have said that the Bill would significantly restrict free speech because of insufficiently narrow definitions of hate speech and the imposition of disproportionate penalties, including the death penalty, if hate speech results in a person's death.⁴⁴² The Minister of Information and Culture issued a statement that until the Bill is passed, hate speech will be prosecuted as a terrorist offence under the 2011 terrorism legislation.⁴⁴³

Internet and digital rights

A Cybercrimes Law was passed in 2015. It contains an expansive definition of “cyberstalking”, which includes sending a message via a computer network that is offensive, obscene or menacing, or that the sender knows to be false and sends with the purpose of causing annoyance, inconvenience, insult or ill will to someone. It also covers intentionally sending a communication which contains a threat to harm the reputation of another person.⁴⁴⁴ In practice, the implementation of the Cybercrime law has led to arbitrary arrests of journalists, bloggers and other online activists. One blogger, for example, was arrested on cyberstalking charges for alleging government corruption on his blog.⁴⁴⁵

A Digital Rights and Freedoms Bill, which would introduce safeguards for freedom of speech online and protect against Internet shutdowns, was passed by the Senate in 2019, but the President has refused to sign it.⁴⁴⁶ A controversial Social Media Bill is still pending in the Senate which would focus on hate speech, fake news and false accusations on online platforms.⁴⁴⁷

⁴⁴¹ *Ibid.*, sections 3.0.2.1, 3.9.2, 5.4.6, 10.6.1.

⁴⁴² Sahara Reporters, Drop Hate Speech Bill, International Press Centre Advises Nigeria Senate, 4 March 2018, available at: <http://saharareporters.com/2018/03/04/drop-hate-speech-bill-international-press-centre-advises-nigeria-senate>; and Punch, That Outrageous Hate Speech Bill, March 2018, available at: <https://punchng.com/that-outrageous-hate-speech-bill/>.

⁴⁴³ Nigeria Declares Hate Speech as an Act of Terrorism, The Guardian (Nigeria), February 2018. Available at: <https://guardian.ng/news/nigeria-declares-hate-speech-as-act-of-terrorism/>.

⁴⁴⁴ CyberCrimes (Prohibition, Prevention, Etc.) Act 2015, section 24. Available at: [https://web.archive.org/web/20170318142011/https://cert.gov.ng/images/uploads/CyberCrime_\(Prohibition.Prevention,etc\)_Act,_2015.pdf](https://web.archive.org/web/20170318142011/https://cert.gov.ng/images/uploads/CyberCrime_(Prohibition.Prevention,etc)_Act,_2015.pdf).

⁴⁴⁵ Freedom House, Freedom on the Net 2018: Nigeria, available at: <https://freedomhouse.org/report/freedom-net/2018/nigeria>; and UPR Submission – Nigeria 2018, Front Line Defenders, note 439, para. 20.

⁴⁴⁶ Freedom House, *ibid.*; and Nigeria's President Refused to Sign its Digital Rights Bill, Techpoint Africa, March 2019, available at: <https://techpoint.africa/2019/03/27/nigerian-president-declines-digital-rights-bill-assent/>.

⁴⁴⁷ Bill to Regulate Social media use by Nigerians Passes First Reading, ITEDGE News, June 2018, available at: <https://itedgenews.ng/2018/06/27/bill-regulate-social-media-use-nigerians-passes-first-reading/>; and MFWA, MFWA Calls on Nigerian Authorities to Respect Free Expression Online, June 2018, available at: <http://www.mfwa.org/country-highlights/mfwa-calls-on-nigerian-authorities-to-respect-free-expression-online/>.

The National Communications Commission has the ability to order ISPs to block websites.⁴⁴⁸ Although the NCC is generally regarded as an independent body, a series of orders blocking websites in 2017 raised concerns about politicisation, given that many of the blocking orders targeted reporting on the Biafra secession movement.⁴⁴⁹ ISPs must also retain all Internet information of customers for 12 months, including the content of messages and traffic data, and submit it to the NCC when ordered to do so.⁴⁵⁰

Right to information and secrecy laws

A Freedom of Information Act was signed into law in 2011. The law is of middling quality, ranking 62nd out of the 128 right to information law assessed on the RTI Rating. The Act's strengths include a broad scope in terms of the information and public authorities covered by the Act, as well as a strong set of promotional measures. However, a major weakness of the Act is that it does not create an independent appeals or oversight body.⁴⁵¹

Positively, the Freedom of Information Act overrides competing secrecy legislation. This is key because the Official Secrets Act is broad in terms of the grounds on which information may be classified as secret, and both the Official Secrets Act and the Criminal Code prohibit the communication of material which is classified as secret.⁴⁵² However, in practice, the government has been criticised for maintaining a culture of secrecy and misusing the Official Secrets Act to deny information requests.⁴⁵³

Nigeria's RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	3	50%
2. Scope	30	29	97%
3. Requesting Procedures	30	12	40%
4. Exceptions and Refusals	30	22	73%
5. Appeals	30	4	13%
6. Sanctions and Protections	8	7	88%
7. Promotional Measures	16	11	69%
Total score	150	88	59%

Restrictions on freedom of assembly

⁴⁴⁸ Nigerian Communications Commission, Guidelines for the Provision of Internet Service, section 12. Available at: <https://www.ncc.gov.ng/docman-main/legal-regulatory/guidelines/62-guidelines-for-the-provision-of-internet-service/file>.

⁴⁴⁹ Paradigm Initiative, 2018 Status of Internet Freedom in Nigeria, p. 19. Available at: <https://ooni.torproject.org/documents/nigeria-report.pdf>.

⁴⁵⁰ Nigerian Communications Commission, Guidelines for the Provision of Internet Service, note 448, section 6(c).

⁴⁵¹ RTI Rating, Nigeria. <https://www.rti-rating.org/country-data/Nigeria/>.

⁴⁵² Official Secrets Act, sections 1 and 9, available at: <https://nlipw.com/official-secrets-act/>; and Criminal Code, note 419, section 97.

⁴⁵³ Freedom of the Press 2017, Freedom House Report. Available at: <https://freedomhouse.org/report/freedom-press/2017/nigeria>.

The Public Order Act is the main legislation governing the right to assemble. The law applies to both assemblies, defined as a meeting of five or more people, and public meetings, defined as an assembly which members of the public are permitted to attend.⁴⁵⁴ Organisers must submit an application for a licence at least 48 hours in advance, which is to be issued as long as the Governor does not suspect the event will breach the peace. Meeting without a licence or acting in violation of a condition which has been imposed on the meeting is punishable by up to six months' imprisonment.⁴⁵⁵ A 2007 Court of Appeal decision struck down a number of provisions in the Act as impermissible restrictions on the right to assemble; however, the legislation has not been formally amended and it is still being enforced.⁴⁵⁶

The Criminal Code makes it a crime to participate in an unlawful assembly. An unlawful assembly is defined as three or more people assembling to carry out a common purpose that causes people in the neighbourhood to fear the peace will be disturbed.⁴⁵⁷ If the peace is disturbed, the assembly is considered to be a riot. Participating in an unlawful assembly is punishable by one year's imprisonment and in a riot by three years.⁴⁵⁸ Refusing to disperse when ordered to do so by a police officer carries a five-year sentence.⁴⁵⁹

In practice, authorities have used force to break up peaceful assemblies or have refused licences for events they deem to be controversial or critical of the government.⁴⁶⁰ Clashes between the authorities and protestors have previously resulted in violence and deaths, resulting in governors issuing state-wide protest bans.⁴⁶¹ The Criminal Code protects police from civil or criminal liability for injuries or deaths that occur while dispersing protestors "if any person makes resistance".⁴⁶²

National security

The ongoing Boko Haram insurgency in Northern Nigeria, along with violence and separatist movements elsewhere in the country, make national security a particularly sensitive issue in the country. Civil society organisations which have criticised security forces, such as Amnesty International, have experienced government backlashes and harassment.⁴⁶³ Abuses have been reported by armed forces, such as arbitrary detention, torture and extra-judicial executions.⁴⁶⁴ In terms of civil society space, an increasing concern is actions by the State Security Service (also

⁴⁵⁴ Public Order Act 1979, section 12. Available at: <http://www.icnl.org/research/library/files/Nigeria/order.pdf>.

⁴⁵⁵ *Ibid.*, sections 1(2) and 3.

⁴⁵⁶ ICNL, Civic Freedoms Monitor: Nigeria, note 417.

⁴⁵⁷ Criminal Code, note 419, section 69.

⁴⁵⁸ *Ibid.*, sections 70 and 71.

⁴⁵⁹ *Ibid.*, section 74.

⁴⁶⁰ Freedom House, Freedom in the World 2019: Nigeria. Available at: <https://freedomhouse.org/report/freedom-world/2019/nigeria>.

⁴⁶¹ Civic Freedoms Monitor: Nigeria, ICNL. Available at: <http://www.icnl.org/research/monitor/nigeria.html>.

⁴⁶² Criminal Code, note 419, section 71.

⁴⁶³ Amnesty International, Nigeria: Threats from the Military Won't Deter us from Defending Human Rights, June 2018. Available at: <https://www.amnesty.org/en/latest/news/2018/06/nigeria-threats-from-the-military-wont-deter-us-from-defending-human-rights/>.

⁴⁶⁴ Amnesty International, Nigeria 2017/2018. Available at: <https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria>.

known as the Department of State Security) against journalists and activists, such as detention without charge and arresting social media users, by alleging that they posted inciteful material.⁴⁶⁵

One reason for these problems is that the law establishing the State Security Service and the intelligence agencies permit the President to issue instruments governing the composition and structure of the agencies and their advisory councils, or regarding “other matters concerning or incidental to any of the matters mentioned in this Act” as the President sees fit.⁴⁶⁶ This has, in practice, resulted in a significant expansions of the powers allocated to these bodies. A general lack of accountability mechanisms and transparency requirements governing the security sector has also allowed for the exercise of questionable legal powers to continue unchecked.⁴⁶⁷

Government surveillance powers are a further concern. Aspects of the Terrorism Prevention Act and the Cybercrime Law contain ambiguous language which may facilitate surveillance. While judicial oversight is required, the exact procedure for such oversight is not clearly articulated and the laws lack important protections, such as a requirement that any surveillance be necessary and proportionate. In practice, the government appears to be working to expand its surveillance powers, and has made a budget allocation to obtain and operationalise surveillance technology.⁴⁶⁸

The definitions of sedition and seditious publications in the Penal Code are also problematically broad. Seditious intent, for example, includes intent to bring the President or government into hatred, raise discontent among citizens or promote ill will among different classes of people.⁴⁶⁹ Publishing seditious material or uttering seditious words is punishable by two years’ imprisonment, with jail time increasing for each repeat offence.⁴⁷⁰

The Vigilante Group of Nigeria Bill was being debated as of 2018 and still appears to be under consideration in the legislature. The Bill would create a statutory Vigilante Group which would be response for maintaining law and order in social gatherings, responding to citizen complaints and playing an intelligence-gathering role.⁴⁷¹

Whistleblower, witness and other protection systems for those at risk

There is no legislation in place which specifically protects whistleblowers. In the absence of legislation, the Ministry of Finance created a whistleblower protection policy in 2016. The policy created an online portal to report information on violations of financial regulations,

⁴⁶⁵ Human Rights Watch, Nigeria: Activist’s Detention Sign of Growing Intolerance, 7 August 2019. Available at: <https://www.hrw.org/news/2019/08/07/nigeria-activists-detention-sign-growing-intolerance>.

⁴⁶⁶ National Security Agencies Act, section 6. Available at: <http://r2knigeria.org/index.php/legislation/law-that-limits-access/national-security-agencies-act>.

⁴⁶⁷ International Security Sector Advisory Team, Nigeria SSR Background Note, 23 February 2018. Available at: <https://issat.dcaf.ch/Learn/Resource-Library2/Country-Profiles/Nigeria-SSR-Background-Note#management>.

⁴⁶⁸ Privacy International and Paradigm Initiative, The Right to Privacy in Nigeria, March 2018, p. 7, available at: https://privacyinternational.org/sites/default/files/2018-05/UPR_The%20Right%20to%20Privacy_Nigeria.pdf; and Freedom House, Freedom on the Net 2018: Nigeria, note 445.

⁴⁶⁹ Criminal Code, note 419, section 50(2).

⁴⁷⁰ *Ibid.*, section 51.

⁴⁷¹ Vigilante Group of Nigeria (Establishment) Bill, section 4. Available at: <https://web.archive.org/web/20180222160945/nass.gov.ng/document/download/8449>.

mismanagement of public funds, fraud and financial malpractice. Information may be submitted anonymously and informants are offered protection to the extent of the law if they choose to identify themselves.⁴⁷² However, the policy is generally seen as ineffective and it is handicapped by the lack of any protection being enshrined in legislation.⁴⁷³

Rwanda

Freedom of association: non-profit registration requirements and restrictions on advocacy

Rwandan NGOs are subject to a relatively restrictive registration regime. Domestic public-interest organisations are required to register with the Rwanda Governance Board (RGB) within two years of commencing operations.⁴⁷⁴ After obtaining a temporary certificate of registration, which is valid for twelve months, a national NGO must then apply for legal personality after nine months. The application must include, among other things, a letter of collaboration from the mayor of the relevant district and an action plan for the fiscal year. Grounds for refusing registration, in addition to non-fulfilment of the registration requirements, include evidence that the organisation “intends to jeopardize security, public order, health, morals or human rights”.⁴⁷⁵

Once an NGO is registered and granted legal personality, renewal is not required. However, RGP has significant supervision powers over national NGOs to ensure that they perform their responsibilities. If it determines that an NGO has not complied with its mission, it will issue a warning letter. If the NGO does not “cease to be wrongful” within one month, RGP will suspend the NGO’s registration for one to six months. If, during the temporary suspension period, the NGO does not “rectify its operation”, the RGB may suspend it indefinitely.⁴⁷⁶ This supervision power, combined with the registration requirement of district collaboration letters, suggests that partnerships between NGOs and the government are *de facto* compulsory, even though the law simply states that NGOs “may” enter into partnerships with the Government.⁴⁷⁷

⁴⁷² Federal Government of Nigeria, Federal Ministry of Finance, FMF – Whistle Blowing Frequently Asked Questions. Available at:

<http://whistle.finance.gov.ng/catalogs/masterpage/MOFWhistle/assets/FMF%20WHISTLEBLOWING%20FREQUENTLY%20ASKED%20QUESTIONS.pdf>.

⁴⁷³ Peter Nkanga, Despite Gains, Nigeria’s Whistleblower Policy Not Enough to Fight Corruption, Premium Times, 24 December 2018. Available at: <https://www.premiumtimesng.com/features-and-interviews/302641-feature-despite-gains-nigerias-whistleblowing-policy-not-enough-to-fight-corruption.html>.

⁴⁷⁴ Law 04/2012, Article 16. Available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/98241/116827/F-169221275/RWA-98241.pdf>.

⁴⁷⁵ *Ibid.*, Articles 20 and 24; Law 05/2012, Article 9, available at:

http://www.rgb.rw/fileadmin/Key_documents/Law-RGS-Gazette/LAW_No_052012_OF_17022012_GOVERNING_THE_ORGANISATION_AND_FUNCTIONING_OF_INTERNATIONAL_NON_GOVERNMENTAL_ORGANISATIONS.pdf.; and ICNL, Research Monitor: Rwanda, 9 July 2019, available at: <http://www.icnl.org/research/monitor/rwanda.html>.

⁴⁷⁶ *Ibid.*, Articles 30-33.

⁴⁷⁷ *Ibid.*, Article 37; and Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mission to Rwanda, 16 September 2014, U.N. Doc. A/HRC/26/29/Add.2, para. 58, available at: <https://undocs.org/A/HRC/26/29/Add.2>.

International NGOs face additional requirements, most notably a mandatory registration renewal every five years.⁴⁷⁸ The registration renewal requires the submission of a budget and demonstrated sources of funding for the registration period. Thus, it is rare for international NGOs to obtain registration for the full five years, because most NGOs will not be able to show sources of funding that far in advance. As a result, most international NGOs re-register on an annual basis.⁴⁷⁹

Funding restrictions, financial reporting requirements, and special tax requirements

National NGOs qualify for tax exemptions once they obtain legal personality, but there are no tax incentives for donors.⁴⁸⁰ There are no notable restrictions on access to funding, such as restrictions on foreign funding, although State-controlled media has used rhetoric to paint NGOs receiving foreign funding as vehicles for a foreign agenda.⁴⁸¹

Media regulation

Rwanda enacted a new media law in 2013. The reform empowered the media self-regulatory body the Rwanda Media Commission (RMC) to oversee journalist conduct, instead of a statutory authority, as had been the case previously.⁴⁸² While journalists are still required to register, the RMC now oversees the registration process instead of a government body.⁴⁸³

The Rwanda Utilities Regulatory Authority (RURA), the other main regulatory body, is a non-independent government body, being supervised by the Prime Minister's Office and having its regulatory board and Director General appointed by Presidential Order.⁴⁸⁴ RURA is responsible for regulating audio and audio-visual media and the Internet. This creates some ambiguity as to the respective roles of RURA and RMC regarding content regulation.⁴⁸⁵ A memorandum of understanding between RURA and RMC reportedly prioritises RMC as the primary content regulator, but in practice this is an area of tension. For example, in 2015, the former head of RMC fled Rwanda, purportedly due to threats following his opposition to a draft Prime Minister's Order that would have transferred significant power from the RMC to RURA, and because of RMC's objections to RURA's suspension of BBC broadcasts.⁴⁸⁶ RMC and RURA are also supposed to share responsibility over broadcast licensing, although RURA has the clearer role here, being the

⁴⁷⁸ Law 05/2012, note 475, Article 11.

⁴⁷⁹ Report of the Special Rapporteur, note 477, para. 51.

⁴⁸⁰ Law 04/2012, note 474, Article 28; <http://www.icnl.org/research/monitor/rwanda.html>.

⁴⁸¹ Report of the Special Rapporteur, note 477, para. 70.

⁴⁸² DW Akademie, Rwanda Media Commission: Promoting Free, Responsible and Accountable Media. Available at: <http://akademie.dw.com/ibt/var/app/wp381P/2230/index.php/rwanda-vas-y-promoting-media-reform/2684-2/>.

⁴⁸³ Law No. 02/2013, Article 3. Available at: <https://www.ilo.org/dyn/natlex/docs/SERIAL/92983/108547/F943654600/RWA-92983.pdf>.

⁴⁸⁴ Law No 09/2013, Articles 11, 16 and 32. Available at: http://www.moh.gov.rw/fileadmin/templates/HLaws/Tobacco_control_law.pdf.

⁴⁸⁵ *Ibid.*, Article 4

⁴⁸⁶ Sue Valentine, Hopes of Independent Press in Rwanda Fade as Head of Media Body Flees, CPJ, 8 July 2015, available at: <https://cpj.org/blog/2015/07/hopes-of-independent-press-in-rwanda-fade-as-head-phi>; and RSF, Rwanda's Media Self-Regulator Subjected to Intimidation Campaign, 7 November 2014, available at: <https://rsf.org/en/news/rwandas-media-self-regulator-subjected-intimidation-campaign>.

primary body responsible for licensing media outlets. In practice, RURA issues broadcasting licences on the recommendation of RMC.⁴⁸⁷

However, State television, radio and print media continue to dominate the media market.⁴⁸⁸

Content restrictions

While defamation was decriminalised in the 2018 Penal Code, public insult, defined to include statements which deliberately and directly hurt another person, is still an offence.⁴⁸⁹ Other provisions protect the reputation of public figures, including prohibitions on defamation or insult of the president and on humiliation of national authorities and public servants.⁴⁹⁰ It is also an offence for any person to “discredit an act or a decision of judicial organs, in a manner likely to cause contempt or lack of independence of the judicial organ”.⁴⁹¹

Other criminal offences that may impact freedom of expression include the offence of “secretly listening to conversations, taking photos or disclosing them.” Since this lacks a public interest defence, it may disproportionately impact journalists.⁴⁹² A prohibition on spreading false information with intent to cause a hostile international opinion against Rwanda or that is likely to cause public disaffection against the government is also problematical.⁴⁹³ Instigating divisions, defined as any speech, writing or other act which divides people or causes civil unrest on the basis of discrimination, may result in five to seven years’ imprisonment.⁴⁹⁴

The current Penal Code criminalises direct and indirect incitement to genocide.⁴⁹⁵ The latter could be problematical, particularly when considered in light of a 2018 law targeting genocide ideology. Some crimes under the 2018 law are either problematically ambiguous or risk silencing legitimate discussions about national history, such as prohibitions on minimising the gravity of genocide, distorting the facts of genocide or claiming that there was a double genocide in Rwanda.⁴⁹⁶ While Rwanda’s history makes genocide denial particularly serious, watchdog groups have alleged that such laws have been applied in a politicised manner, and the current legal framework facilitates such misuse.⁴⁹⁷

Internet and digital rights

⁴⁸⁷ CPJ, Legacy of Rwanda Genocide includes Media Restrictions, Self-Censorship, 2014. Available at:

<https://cpj.org/reports/NEWRwanda2014-english.pdf>.

⁴⁸⁸ BBC, Rwanda Profile – Media, 29 July 2019. Available at: <https://www.bbc.com/news/world-africa-14093244>.

⁴⁸⁹ Law 68/2018, Article 161. Available at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107716/132753/F1381465960/RWA-107716.pdf>.

⁴⁹⁰ *Ibid.*, Articles 223 and 236.

⁴⁹¹ *Ibid.*, Article 262.

⁴⁹² *Ibid.*, Article 156.

⁴⁹³ *Ibid.*, Articles 156 and 194.

⁴⁹⁴ *Ibid.*, Article 164.

⁴⁹⁵ *Ibid.*, Article 93.

⁴⁹⁶ Law 59/2018, Article 5. Available at:

<https://rwandalii.africanlii.org/sites/default/files/gazette/OG%2Bno%2BSpecial%2Bof%2B25%2B09%2B2018.pdf>.

⁴⁹⁷ Al Jazeera, Rwandan Opposition Leader Among 2,100 Released from Prison, 15 September 2018. Available at: <https://www.aljazeera.com/news/2018/09/rwandan-opposition-leader-2100-released-prison-180915094047528.html>.

A cybercrime law passed in 2018 restricts online speech, creating the offences of transmitting an indecent message and publishing rumours that may cause someone to lose credibility or that incite fear among the population.⁴⁹⁸

The Information and Communication Technology Ministry has the authority to order suspensions or interruptions of electronic communications or network operations. The grounds for doing this are vague, including a general reference to public safety, public health and national security concerns.⁴⁹⁹ In addition, many editors of online news sites report receiving demands from authorities to delete critical content. Many independent news outlets are blocked or filtered online, and there is little transparency regarding the government’s decisions and no right to appeal.⁵⁰⁰

Right to information and secrecy laws

Rwanda’s Law Relating to Access to Information is relatively average, ranked at 66th out of the 128 countries currently assessed on the RTI rating. Its biggest strength is its scope, as everyone has the right to file requests for information and this right applies to all types of documents and as wide range of public authorities. Less positively, the oversight body has few powers and cannot make binding decisions.⁵⁰¹

Rwanda’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	30	100%
3. Requesting Procedures	30	18	60%
4. Exceptions and Refusals	30	21	70%
5. Appeals	30	10	33%
6. Sanctions and Protections	8	1	13%
7. Promotional Measures	16	3	19%
Total score	150	85	57%

Restrictions on freedom of assembly

Rwanda’s Constitution protects freedom of assembly but permits a law to establish a prior authorisation regime for assemblies in public spaces. The law regulating assemblies requires a

⁴⁹⁸ Law 60/2018, note 489, Articles 38 and 39.

⁴⁹⁹ Law 24/2016, Articles 22 and 126. Available at: http://197.243.22.137/rircgov/fileadmin/user_upload/Laws2/LAWS%20PUBLISHED/RWA%20LAWS%20PUBLISHED%20IN%202016/RWA%202016%20%20%20%20LAW%20N0%2024-2016%20%20%20INFORMATION%20AND%20COMMUNICATION%20TECHNOLOGY%20%20%20%20-%20OOG%20N0%2026%20%20OF%2027%20%20JUNE%20-2016.pdf.

⁵⁰⁰ Freedom House, Freedom on the Net 2018: Rwanda. Available at: <https://freedomhouse.org/report/freedom-net/2018/rwanda>.

⁵⁰¹ RTI Rating, Rwanda. Available at: <https://www.rti-rating.org/country-data/Rwanda/>.

prior notice requirement of 30 days (if sent by mail) or six days (if delivered in person) for public assemblies whether in open or closed venues. Authorisation must be obtained, however, for assemblies held at open air venues, on public roads or in a public space.⁵⁰² Penalties for holding an unauthorised demonstration include imprisonment of between eight days and six months, and/or a fine. If the demonstration “threatened security, public order, or health”, the penalty increases to between six months and a year and/or a fine.⁵⁰³ In practice, assemblies which criticise the government have been denied authorisation.⁵⁰⁴

National security

Some criminal offences which address security threats are overly expansive and could restrict peaceful civil society activity. For example, provisions criminalising membership in a seditious group or providing “accommodation, sanctuary, meeting venues or any other help” to seditious gangs are problematic given the lack of a clear definition for what constitutes a seditious group.⁵⁰⁵ Similar problems arise with the terrorism legislation, which defines “complicity in terrorism” as merely being often in the company of the members of a terrorist group.⁵⁰⁶ Under the new cybercrime law, merely using a website of a terrorist group is an offence.⁵⁰⁷

In 2013, the Rwandan government passed a law requiring communication service providers to “ensure that systems are technically capable of supporting interceptions at all times”.⁵⁰⁸ While a warrant is required for legal interception, the warrant is from the public prosecutor, not from an independent judicial authority.⁵⁰⁹ In addition, the legal framework lacks a requirement that surveillance be strictly necessary. In practice, surveillance appears to be pervasive. Government representatives are embedded within telecommunication companies in order to conduct surveillance, and public authorities are known to monitor social media discussions closely.⁵¹⁰

Rwandan security forces have been implicated in significant abuses, including the widespread practice of using unofficial military detention centres, where torture, ill-treatment and arbitrary detention are reported to have taken place. These detention centres do not appear to have any legal authority for their creation.⁵¹¹

Whistleblower, witness and other protection systems for those at risk

⁵⁰² Law 33/1991 as described by Report of the Special Rapporteur, note 477, para. 15.

⁵⁰³ Law 68/2018, note 489, Article 225.

⁵⁰⁴ Report of the Special Rapporteur, note 477, para. 21.

⁵⁰⁵ Law 68/2018, note 489, Articles 208-210.

⁵⁰⁶ Law 45/2008, Article 22. Available at: <https://www.refworld.org/docid/4a3f86af2.html>.

⁵⁰⁷ Law 60/2018, note 489, Article 39.

⁵⁰⁸ Law 60/2013, Article 7. Available at:

http://www.ombudsman.gov.rw/IMG/pdf/24_itegeko_rigena_igenzura_ry_itumanaho_no_60-2013.pdf.

⁵⁰⁹ *Ibid.*, Article 9; Freedom House, Freedom on the Net 2018: Rwanda, available at:

<https://freedomhouse.org/report/freedom-net/2018/rwanda>.

⁵¹⁰ Freedom House, Freedom on the Net 2018: Rwanda, available at: <https://freedomhouse.org/report/freedom-net/2018/rwanda>.

⁵¹¹ Human Rights Watch, ‘We Will Force You to Confess’: Torture and Unlawful Military Detention in Rwanda, 10 October 2017. Available at: <https://www.hrw.org/report/2017/10/10/we-will-force-you-confess/torture-and-unlawful-military-detention-rwanda>.

Rwanda revised its whistleblower law in 2017 to create more detailed protection procedures and to provide better recourse in case of retaliation. While the law provides key protections, it also contains some disincentives to whistleblowing. For example, it imposes penalties of one to three years' imprisonment and a fine for whistleblowers who provide false information or provide "information in the interest of a person he/she seeks to protect or with the intent to defame and dishonour an individual or an entity subject to whistle blowing".⁵¹²

Rwanda has a "Victim and Witness Support Unit" which was established in 2006 in response to the killings of genocide survivors who participated in genocide trials. The unit falls under the National Public Prosecution Authority and is tasked with investigating allegations of threats to victims/witnesses and managing witness protection, victim protection and safe houses.⁵¹³

Sierra Leone

Freedom of association: non-profit registration requirements and restrictions on advocacy

The NGO regulatory environment in Sierra Leone is fairly restrictive due to NGO Policy Regulations adopted in 2009. Under the Policy, to register, an NGO must submit an application to the NGO Unit, which is located in the finance ministry. The NGO Unit then conducts field or office visits to verify the application and holds an interview with the NGO. Once approved, the NGO must sign an agreement with the government before beginning operations.⁵¹⁴

While a reason must be given for rejecting an application, and NGOs have an opportunity to correct any deficiencies, some of the eligibility criteria are phrased language which gives authorities broad discretion. For example, NGOs must have a clear mission statement which conforms to government development policies and promotes "the well-being and welfare of Sierra Leoneans". They must also show "evidence/commitment to access funds to support its programmes" and "a clearly delineated administrative structure and transparent account system".⁵¹⁵

NGO registration must be renewed every two years; renewal is not automatic and must be accompanied by the submission of additional documents and an assessment from the finance ministry of the transparency and accountability of the NGO.⁵¹⁶ In addition, every project an NGO wishes to implement must be discussed with the finance ministry before being implemented. This means submitting information about the estimated costs and personnel needed for the project, an implementation strategy and approval from the relevant line ministry.⁵¹⁷

⁵¹² Law 44bis/2017, Articles 5 and 15. Available at: http://www.ombudsman.gov.rw/IMG/pdf/8_itegeko_no_44bis-2017_rirengera_abatanga_amakuru_ku_byaha_ku_bikorwa_cyangwa_imyitwarire_binyuranyije_n_amategeko.pdf; James Karuhanga, New Whistleblowers Law in the Offing, 11 April 2017, available at: <https://www.newtimes.co.rw/section/read/210495>.

⁵¹³ REDRESS, Testifying to Genocide: Victim and Witness Protection in Rwanda, October 2012, p. 15. Available at: <https://www.refworld.org/pdfid/50a3a9002.pdf>.

⁵¹⁴ NGO Policy Regulations 2009, paras. 2.2.5 and 2.3.2.1. Available at: <http://www.icnl.org/research/library/files/Sierra%20Leone/NGORegulations.pdf>.

⁵¹⁵ *Ibid.*, para. 2.2.1.

⁵¹⁶ *Ibid.*, para. 2.3.2.2.

⁵¹⁷ *Ibid.*, para. 2.5.

The NGO Unit has significant supervisory powers over NGOs, being responsible for monitoring and evaluating all NGO programmes, ensuring good communication with the sectoral ministry for any programme and ensuring full participation of the community which benefits from any project. The Unit may request an update on a project at any time and may conduct site visits without giving the NGO any prior notice.⁵¹⁸ In addition, NGO registration may be suspended or cancelled by the finance ministry upon the recommendation of the NGO Supervisory Committee, which is comprised primarily of representatives of various government ministries. This must be based on a closed list of grounds, but some of the grounds are not very precise, such as an NGO pursuing activities which are not included in its stated objectives or failing to promote the capacity of Sierra Leone in its operations.⁵¹⁹

Sierra Leone has been revising its NGO Policy since 2015, with the most recent version having been introduced in December 2018. Despite this being controversial, the government appears to be proceeding to implement this version. The new policy enhances a number of the obligations present in the 2009 policy. For example, it requires NGOs to sign a Service Level Agreement with the relevant Sector Ministry before beginning operations and sets registration fees at around USD 200 (although empowering authorities to change the fees). The policy also provides that a second rejection of an application for registration is not subject to appeal. Renewal processes require additional documents, including an audit and a certificate of compliance from the relevant sector ministry. NGOs are also required to organise trainings for staff for purposes of registration renewals and are subject to a lengthy list of requirements designed to guarantee local staffing.⁵²⁰

Some organisations may be able to register as not-for-profit companies, instead of NGOs. These are subject to a different legal regime which avoids many of the above-mentioned requirements.⁵²¹

Funding restrictions, financial reporting requirements, and special tax requirements

Under the 2009 policy, NGOs must disclose detailed information about all donor funding of projects, including information about the donors, although there are generally no restrictions on the source of funds. Problematically, any assets transferred to “build the capacity” of a local NGO must be sent through the NGO self-regulatory body and the finance ministry before they are transferred to the NGO.⁵²²

The 2018 NGO Policy includes a requirement that a minimum of 70% of all donor funds must be go to the target beneficiaries, while only the remaining 30% may be for administrative costs and consultancies. It also requires more detailed reporting on donations.⁵²³

⁵¹⁸ *Ibid.*, para. 2.6.1.

⁵¹⁹ *Ibid.*, para. 2.13.4.

⁵²⁰ A copy of this policy is not available online, but it is described in detail at: https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_SLE_22.02.2018.pdf.

⁵²¹ ICNL, Civic Freedom Monitor: Sierra Leone, 12 July 2019. Available at: <http://www.icnl.org/research/monitor/sierraleone.html>.

⁵²² NGO Policy Regulations 2009, note 514, para. 2.7.

⁵²³ As quoted in Letter from the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, 22 February 2018. Available at: https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_SLE_22.02.2018.pdf.

Media regulation

The primary media regulatory body is the Independent Media Commission. The Commission compiles a Code of Practice and monitors its implementation, including by hearing complaints and issuing fines. It is also responsible for maintaining a register of newspapers, magazines and other media outlets. Registration is mandatory but the Commission can only refuse registration on technical grounds or for violating the Act establishing the Commission. However, it can suspend or cancel registration following a second or subsequent contravention of the Code of Practice.⁵²⁴ The Commission also handles broadcast licensing, although approval from the National Telecommunications Commission is also necessary.⁵²⁵ Broadcasting licences may also be suspended after a second violation of the Code of Practice.⁵²⁶

The Independent Media Commission is appointed by the President but he or she is supposed to act on the advice of the Sierra Leone Association of Journalists and Parliament must approve appointments.⁵²⁷ It appears that historically the Commission has been largely independent. However, there have been a number of occasions where the Commission has issued fines to or suspended media outlets which are critical of the government in a seemingly politicised manner.⁵²⁸

Content restrictions

The law imposing the most serious content restrictions is the 1965 Public Order Act. The Act penalises with a fine and/or three months' imprisonment insulting another person, which includes acts such as using threatening language to the annoyance of a person or sending threatening or offensive messages. It also criminalises the malicious publication of defamatory content, subject to a fine and/or two years' imprisonment, or three years if the person knows the matter to be false.⁵²⁹

The Public Order Act also prohibits seditious libel which is defined as doing any act with seditious intent, uttering seditious words or publishing and distributing seditious publications. Seditious publications/seditious intent cover anything which brings into hatred or contempt certain specified government leaders, excites citizens to change any law by unlawful means, brings the administration of justice into contempt, raises discontent among citizens or promotes feelings of ill-will and hostility between different tribes, nationalities or religious faiths.⁵³⁰

⁵²⁴ Independent Media Commission Act, 2000, sections 8, 27 and 34. Available at: <https://sierralii.org/sl/legislation/act/2000/12>.

⁵²⁵ Telecommunications Act, 2006, available at: <http://www.sierra-leone.org/Laws/2006-9s.pdf>; and IREX, Media Sustainability Index 2012: Sierra Leone, available at: <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-africa-2012-sierra-leone.pdf>.

⁵²⁶ Independent Media Commission Act, note 524, section 21.

⁵²⁷ *Ibid.*, section 4.

⁵²⁸ Freedom House, Freedom of the Press 2016: Sierra Leone. Available at: <https://freedomhouse.org/report/freedom-press/2016/sierra-leone>.

⁵²⁹ Public Order Act, 1965, sections 2, 3, 26 and 27. Available at: <http://www.sierra-leone.org/Laws/1965-46s.pdf>.

⁵³⁰ *Ibid.*, sections 33-37.

Under the same law, publishing a false statement, rumour or report which is likely to cause fear or disturb the public peace may result in a fine and/or one year's imprisonment. The sentence is increased if the false statement is calculated to bring a public official into disrepute or is likely to injure the reputation of Sierra Leone or the government. These penalties apply even if the person did not know that a statement was false, unless the person can show he took reasonable measures to verify its accuracy.⁵³¹

Internet and digital rights

Currently, Sierra Leone does not have any designated cybercrime legislation but it is reportedly developing a cybersecurity law which would also address cybercrime. Some sources have indicated that the government is interested in introducing restrictions on social media use, possibly through the vehicle of this law, although a draft of the law is not yet available.⁵³²

It appears that Sierra Leone shut down the Internet during the 2018 elections, although the National Telecommunications Commission denied that it had ordered such a shutdown, blaming it on a service disruption.⁵³³ The Telecommunications Act does not clearly empower the Commission to order an Internet shutdown.⁵³⁴

Right to information and secrecy laws

Sierra Leone's 2013 Right to Access Information Act is a strong law, ranked at 11th out of the 128 countries currently assessed on the RTI Rating. In particular, the law's scope is broad in terms of both the public authorities and information it covers and it contains an extensive list of promotional obligations for public authorities. Weaknesses of the law include its failure to override conflicting secrecy laws and some overbroad exceptions.⁵³⁵

Sierra Leone's RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	0	0%
2. Scope	30	29	97%
3. Requesting Procedures	30	25	83%
4. Exceptions and Refusals	30	18	60%

⁵³¹ *Ibid.*, section 32.

⁵³² Council of Europe, CLACY+: Sierra Leone Works on the First National Legislation on Cybercrime, 14 December 2018, available at: <https://www.coe.int/en/web/cybercrime/-/glacy-sierra-leone-works-on-the-first-national-legislation-on-cybercrime-and-electronic-evidence>; and Peter Clotey, Sierra Leone Expresses Concern about Social Media Misuse, Voice of America, 2 February 2017, available at: <https://www.voanews.com/africa/sierra-leone-expresses-concern-about-social-media-misuse>.

⁵³³ Olusegun Ogundeji, Internet Shutdown as Sierra Leone Votes, IT Web Africa, 3 April 2018, available at: <http://www.itwebafrica.com/telecommunications/891-sierra-leone/243740-internet-shutdown-as-sierra-leone-votes>; and Paradigm Initiative, Paradigm Initiative Condemns Internet Shutdown in Sierra Leone, 31 March 2018, available at: <http://paradigmhq.org/paradigm-initiative-condemns-internet-shutdown-in-sierra-leone/>.

⁵³⁴ Telecommunications Act, 2006, note 525, amended by Telecommunications (Amendment) Act, 2009, available at: <https://sierralii.org/sl/legislation/act/2009/8>.

⁵³⁵ RTI Rating, Sierra Leone. Available at: <https://www.rti-rating.org/country-data/Sierra%20Leone/>.

5. Appeals	30	28	93%
6. Sanctions and Protections	8	7	88%
7. Promotional Measures	16	15	94%
Total score	150	122	81%

Restrictions on freedom of assembly

The Public Order Act also regulates assemblies. It requires anyone who wishes to organise a procession to notify the Commissioner of the Police beforehand. The Commissioner may disallow the assembly or impose conditions on it if he or she is of the opinion that doing so is necessary to protect the interests of defence, public order, public safety or public morality.⁵³⁶

Similarly, any person who intends to hold a public meeting must first notify the Paramount Chief of the Chiefdom in the locality where the meeting is to be held. The Paramount Chief may similarly disallow the meeting or place conditions on it, again in the interests of defence, public order, public safety or public morality.⁵³⁷

In practice, authorities have relied on ambiguities in the law to deny requests to hold peaceful protests. Excessive use of force against protestors, including lethal force, has been a recurring concern over the last decade, as has impunity for police officers who are implicated in using disproportionate force against peaceful protestors.⁵³⁸

National security

The primary concern in this area is the use of the seditious libel provision in the Public Order Act, described above under Content Restrictions. Otherwise, concerns over abuse of power are primarily centred on the police force rather than security agencies, although armed forces may be brought in to assist police under a Military Aid to Civil Power policy and there have been some instances of the use of force against civilians.⁵³⁹ The Constitution permits the use of deadly force in defence of property; police use of force when responding to land conflicts and land disputes has been a serious concern for civil society working on natural resource issues.⁵⁴⁰

Whistleblower, witness and other protection systems for those at risk

While Sierra Leone does not have stand-alone comprehensive whistleblower rules, the Freedom of Information Act protects individuals who make public interest disclosures from employment or

⁵³⁶ Public Order Act, note 529, section 17.

⁵³⁷ *Ibid.*, section 24.

⁵³⁸ Amnesty International, A Force for Good? Restrictions on Peaceful Assembly and Impunity for Excessive Use of Force by the Sierra Leone Police, 2018. Available at: <https://www.amnesty.org/download/Documents/AFR5185902018ENGLISH.PDF>.

⁵³⁹ U.S. Department of State, 2016 Country Reports on Human Rights Practices – Sierra Leone, 3 March 2017. Available at: <https://www.refworld.org/docid/58ec89d0a.html>.

⁵⁴⁰ Constitution, Article 16(2), available at: <http://www.sierra-leone.org/Laws/constitution1991.pdf>; The Law on Police Use of Force Worldwide: Sierra Leone, available at: <https://www.policinglaw.info/country/sierra-leone>; and Human Rights Watch, Whose Development? Human Rights Abuses in Sierra Leone’s Mining Boom, 2014, available at: https://www.hrw.org/sites/default/files/reports/sierraleone0214_ForUpload.pdf.

other forms of retaliation.⁵⁴¹ In addition, the Anti-Corruption Commission Act, particularly following 2019 amendments, establishes protection for individuals who serve as informants and witnesses in relation to corruption, including protections for their anonymity or additional protections ordered by a judge. Protections are also extended to those who assist the Anti-Corruption Commission.⁵⁴² While these are important protections, it would be better to have a more comprehensive whistleblower law in place.

Uganda

Freedom of association: non-profit registration requirements and restrictions on advocacy

The body responsible for regulation of NGOs is the NGO Bureau, which is located in the Ministry of Internal Affairs and whose directors are appointed by the minister with the approval of the cabinet. The NGO Bureau has significant authority over NGOs.⁵⁴³

Registration with the Bureau is mandatory for all NGOs.⁵⁴⁴ Registration requires submitting a detailed application to the Bureau, including information such as about the governance structure, sources of funding and the prescribed fee, a statement of compliance with local staffing requirements and a recommendation from the applicable district-level NGO Monitoring Committee and from the responsible ministry or government agency.⁵⁴⁵ While registration should be refused only on limited grounds, one of these is compliance with the law of Uganda and the requirements of the NGO Act, which have some ambiguous provisions, such as that NGOs must be nonpartisan, must not engage in activities which are prejudicial to the interests of Uganda, the dignity of the people to the security and laws of Uganda.⁵⁴⁶

Once registered, an organisation must obtain an operations permit from the NGO Bureau. The application for this permit includes information on the operations, staffing and geographic coverage of the organisation, as well as a fee. The Bureau issues an operations permit for a period not exceeding five years; this permit must be renewed once it expires. Renewal requires submitting a copy of audited accounts, fees, an annual report, a work plan and a budget.⁵⁴⁷

The Bureau has the power to warn, suspend, publicise misconduct, blacklist or revoke an organisation's permit.⁵⁴⁸ It may also designate inspectors who have the powers to access the premises of an organisation, confiscate incriminating documents, conduct interviews and

⁵⁴¹ Right to Access Information Act, 2013, section 50. Available at: <https://www.rti-rating.org/wp-content/uploads/Sierra-Leone.pdf>.

⁵⁴² Anti-Corruption Act, 2008, sections 81-85. Available at: <http://ilo.org/dyn/natlex/docs/ELECTRONIC/80084/86345/F1403850332/SLE80084.pdf>.

⁵⁴³ Non-Governmental Organisations Act, 2015, section 9. Available at: <http://www.icnl.org/research/library/files/Uganda/ugandangoact.pdf>.

⁵⁴⁴ *Ibid.*, section 29.

⁵⁴⁵ Non-Governmental Organisations Regulations, 2017, regulation 4. Available at: <http://www.icnl.org/research/library/files/Uganda/ngoreg2017.pdf>.

⁵⁴⁶ *Ibid.*, regulations 30 and 44.

⁵⁴⁷ *Ibid.*, regulations 7 and 12.

⁵⁴⁸ Non-Governmental Organisations Act, note 543, section 7.

recommend an interim closure to the Bureau.⁵⁴⁹ In practice, NGOs are subject to other forms of oversight as well. In 2019, the Ugandan police issued a circular informing NGOs that the intelligence directorate was conducting security assessments and requiring them to provide information about their operations. The Financial Intelligence Authority has also requested information about financial transactions of NGOs in a manner that appears to target those engaged in governance and human rights work.⁵⁵⁰

NGOs are also required to submit annual returns, including audited accounts, an annual report, minutes of the general assembly and fees. Before operating in any district, an NGO must obtain approval from the relevant district NGO Monitoring Committee and the district local government. A memorandum of understanding must be signed with the local government.⁵⁵¹

Funding restrictions, financial reporting requirements, and special tax requirements

While there are no notable restrictions on sources of funding, NGOs must annually submit information on the source of their funds, the funds received and estimated income and expenditures. Information on sources of funding is also required for registration applications.⁵⁵² In addition, the Financial Intelligence Authority announced in 2018 that NGOs must report funding sources to it to enable screening for money laundering. The minister of finance has also made comments indicating that a policy was in development that would require NGO to channel funds through the national budget, although this has not yet been put into practice.⁵⁵³

Media regulation

The Media Council is a statutory body which is responsible for media regulation. Although a number of members of the Council represent the public and various professional associations, and are nominated by some of these associations, ultimately the minister of information appoints most of the members of the Media Council.⁵⁵⁴ Many members of the media consider the Council not to be independent and, in 2006, set up a competing Independent Media Council which operates as a self-regulatory body.⁵⁵⁵

Journalists must register and obtain a practising certificate, renewable annually, from the Media Council. Registered journalists are subject to the Code of Ethics contained in in the Press and Journalist Act.⁵⁵⁶ The Council's Disciplinary Committee hears complaints regarding journalists

⁵⁴⁹ Non-Governmental Organisations Regulations, note 545, regulation 34.

⁵⁵⁰ ICNL, Civic Freedom Monitor: Uganda, 20 August 2019. Available at: <http://www.icnl.org/research/monitor/uganda.html>.

⁵⁵¹ Non-Governmental Organisations Regulations, note 545, regulations 30, 41 and 42.

⁵⁵² *Ibid.*, regulations 4 and 31.

⁵⁵³ ICNL, Civic Freedom Monitor: Uganda, note 550.

⁵⁵⁴ Press and Journalist Act, section 8. Available at: <https://ulii.org/ug/legislation/consolidated-act/105>.

⁵⁵⁵ Goretti Linda Nassanga and Willian Tayeebwa, Assessment of Media Development in Uganda based on UNESCO Media Development Indicators, UNESCO, p. 37. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000265542>.

⁵⁵⁶ Press and Journalist Act, 1995, note 554, sections 26, 27 and Schedule 3.

and may require an apology, suspend the practising certificate of a journalist for up to three months or require media organisations to pay compensation.⁵⁵⁷

Under the Communications Act, the broadcast/telecommunications regulator is the Uganda Communications Commission. All of the members of the Commission's Board are appointed by the minister of information with the approval of the cabinet and, while the Commission is supposed to operate independently, it must comply with any policy guidelines from the minister regarding the performance of its functions.⁵⁵⁸ Furthermore, pursuant to a 2017 amendment, the minister may enact regulations under the Communications Act without the approval of parliament, which had previously been required.⁵⁵⁹

Content restrictions

Uganda's Penal Code still includes some inappropriate content restrictions, although the Constitutional Court struck down provisions which prohibited fake news and sedition.⁵⁶⁰ Libel is a misdemeanour under the Penal Code, as is defamation of "foreign princes" or foreign dignitaries or ambassadors. Writing or uttering words with an intent to wound religious feelings is also a misdemeanour, defined in a manner that covers a much broader range of speech than simply religious-based hate speech. Similarly, a prohibition on "promoting sectarianism" is not sufficiently targeted to hate speech. Instead, it covers expression which is likely to degrade, expose to hatred, raise discontent among, create alienation of or promote ill will against any group or person on account of religion, tribe or ethnic or regional origin. Such acts may be punished with five years' imprisonment. Finally, the crime of "incitement to violence" penalises not just direct incitement to violence but also statements which imply or indicate that violent acts may be desirable.⁵⁶¹ In practice, these provisions have been used on questionably grounds to target critical voices.⁵⁶²

Internet and digital rights

The 2011 Computer Misuse Act establishes legitimate cybercrimes but also some offences which inappropriately restrict online speech. "Offensive communication", meaning wilful and repeated use of electronic communication to disturb the peace, quiet or right of privacy of another person is a misdemeanour, which is subject to a fine and/or one year's imprisonment. Similarly, cyber harassment, which may result in a fine and/or three years' imprisonment, means using a computer to making an obscene, lewd or indecent suggestion or proposal.⁵⁶³ Charges based on these offences

⁵⁵⁷ *Ibid.*, section 33.

⁵⁵⁸ Uganda Communications Act, sections 7-9. Available at: <https://www.ug-cert.ug/files/downloads/UCC%20Act%202013.pdf>.

⁵⁵⁹ Uganda Communications (Amendment) Act, 2017. Available at: <https://www.parliament.go.ug/documents/1266/acts-2017>.

⁵⁶⁰ Goretti Linda Nassanga and Willian Tayeebwa, note 555, p. 39.

⁵⁶¹ Penal Code, sections 41, 51, 53, 122, 179 and 180. Available at: <https://ulii.org/ug/legislation/consolidated-act/120>.

⁵⁶² HRNJ Uganda, Media Legal Environment. Available at: https://hrnjuganda.org/?page_id=1080.

⁵⁶³ Computer Misuse Act, sections 24 and 25. Available at: <https://ulii.org/ug/legislation/act/2015/2-6>.

have been brought against journalists and, in a prominent case, an academic was charged with cyber harassment for a Facebook post about the president that contained a profanity.⁵⁶⁴

Recent measures taken by the Uganda Communications Commission suggest an attempt to exert greater control over online content. In 2018, the Commission announced that online data communications service platforms, including news platforms and publishers, must register and pay an annual fee. Only 14 sites reportedly complied by the stated deadline but the Commission has continued to attempt to implement the requirement and in 2019 extended it to “influencers” on social media.⁵⁶⁵

In 2018, Uganda also introduced a social media tax which has been very controversial and resulted in significant drops in social media use within Uganda.⁵⁶⁶

Right to information and secrecy laws

Uganda’s 2005 Access to Information Act, which is ranked 48th out of the 128 countries currently assessed on the RTI Rating, recognises clearly the right to information and establishes clear procedures for making requests for information. However, there is no internal appeal against decisions not to disclose information or an appeal to an independent administrative oversight body.⁵⁶⁷

In addition, while the Access to Information Act provides that the Act shall not detract from any other law giving the right of access, it does not clearly override competing laws which restrict the right to access information.⁵⁶⁸ These include the Official Secrets Act, which prohibits publishing or communicating information which may be useful to a foreign power for purposes prejudicial to the interests of Uganda and prohibits public officials from disclosing information for which they are responsible.⁵⁶⁹ In practice, officials rely on the Official Secrets Act to justify denying information requests.⁵⁷⁰

Uganda’s RTI Rating Scores:

Category	Max Points	Score	Percentage
----------	------------	-------	------------

⁵⁶⁴ Freedom House, Freedom on the Net 2018: Uganda. Available at: <https://freedomhouse.org/report/freedom-net/2018/uganda>.

⁵⁶⁵ Halima Athumani, Ugandan Online Publishers Criticize Registration as Political Control, VOA, 14 August 2019, available at: <https://www.voanews.com/africa/ugandan-online-publishers-criticize-registration-political-control>; and Freedom House, Freedom on the Net 2018: Uganda, note 564.

⁵⁶⁶ Rebecca Ratcliffe and Samuel Okiror, Millions of Ugandans Quit Internet Servers Over Social Media Tax Takes Effect, The Guardian, 27 February 2019. Available at: <https://www.theguardian.com/global-development/2019/feb/27/millions-of-ugandans-quit-internet-after-introduction-of-social-media-tax-free-speech>.

⁵⁶⁷ RTI Rating, Uganda. Available at: <https://www.rti-rating.org/country-data/Uganda/>.

⁵⁶⁸ Access to Information Act, 2005, section 2. Available at: <https://www.rti-rating.org/wp-content/uploads/Uganda.pdf>.

⁵⁶⁹ Official Secrets Act, 1964. Available at: <https://ulii.org/ug/legislation/consolidated-act/302>.

⁵⁷⁰ The World Bank, Open Data Readiness Assessment, available at: http://opendatatoolkit.worldbank.org/docs/odra/odra_uganda.pdf; and Davidson Ndyabahika, Secrecy Law Aiding Public Officials to Deny Citizens Information, Uganda Radio Network, 28 September 2017, available at: <https://ugandaradionetwork.com/story/public-officials-hide-behind-official-secrecy-to-deny-citizens-information>.

1. Right of Access	6	6	100%
2. Scope	30	26	87%
3. Requesting Procedures	30	21	70%
4. Exceptions and Refusals	30	22	73%
5. Appeals	30	11	37%
6. Sanctions and Protections	8	6	75%
7. Promotional Measures	16	5	31%
Total score	150	97	65%

Restrictions on freedom of assembly

The controversial 2013 Public Order Management Act imposes a number of restrictions on freedom of assembly. Notice of all public meetings must be given at least three days prior to the meeting. Notably, a “public meeting” includes any gathering, assembly or demonstration in a public place held for purposes of discussing or expressing views on a matter of public interest. While a number of exceptions are enumerated, including for any “spontaneous public meeting”, this definition subjects a broad array of civil society activities to the notification requirement.⁵⁷¹

The police must notify the organiser if the meeting is not possible because of another meeting at that time or if the venue is unsuitable “for purposes of crowd and traffic control or will interfere with other lawful business”. This gives the police significant discretion in determining when a venue is unsuitable. Other key concerns with the Act include the fact that it bans public gatherings between 7:00 PM and 7:00 AM and the extent of legal liability it places on organisers of a gathering.⁵⁷²

More positively, the Constitutional Court recently struck down several parts of the Police Act which had permitted dispersal of unlawful assemblies and which granted the police discretion in terms of the force used to disperse authorities. However, this leaves Uganda without a strong legal framework regulating police use of force.⁵⁷³

National security

The Anti-Terrorism Act, 2002, criminalises running, supporting or establishing an institution for promoting terrorism, or publishing and disseminating news or materials that promote terrorism.⁵⁷⁴ This is overly restrictive given the expansive definition of terrorism under the Act, particularly since a 2015 amendment which includes on the list of terrorist acts “any act prejudicial to national security or public safety”.⁵⁷⁵

⁵⁷¹ Public Order Management Act, 2013, section 4. Available at:

<https://ulii.org/system/files/legislation/act/2013/1/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>.

⁵⁷² *Ibid.*, sections 5, 6 and 10.

⁵⁷³ ICNL, Civic Freedom Monitor: Uganda, note 550.

⁵⁷⁴ Anti-Terrorism Act, section 9. Available at:

http://www.vertic.org/media/National%20Legislation/Uganda/UG_Anti-Terrorism_Act_2002.pdf.

⁵⁷⁵ As quoted in Library of Congress, Global Legal Monitor, Uganda: Parliament Amends Terrorism Law, 25 June 2015. Available at: <https://www.loc.gov/law/foreign-news/article/uganda-parliament-amends-terrorism-law/>.

Aspects of the Regulation of Interception of Communications Act, 2010, enhance the government's surveillance powers by requiring telecommunications companies to install surveillance technology for purposes of anti-terrorism efforts and by requiring service providers to retain user data.⁵⁷⁶

Whistleblower, witness and other protection systems for those at risk

Uganda enacted a Whistle Blowers Protection Act in 2010. This provides protection from employment retaliation or from civil or criminal proceedings for disclosures and requires the State to provide protection when requested. However, these protections are somewhat limited, only applying to those who make disclosures to an authorised officer and maintain the confidentiality of the disclosed information, thereby excluding those who share information with the press, for example.⁵⁷⁷

Legislation establishing a witness protection programme has been pending since 2015. In the meantime, the Director of Public Prosecutions has introduced some witness protection guidelines but there is still a clear need for protective legislation.⁵⁷⁸

Zambia

Freedom of association: non-profit registration requirements and restrictions on advocacy

A 2009 law made the operation of unregistered NGOs a crime and imposed burdensome requirements on NGOs. For example, allowed authorities to reject applications if they consider the activities of an NGO to be against the public interest, required NGOs to renew their registration certificates every five years and granted authorities significant supervisory authority over NGO activities.⁵⁷⁹

Beginning in 2013, authorities began to enforce this law more aggressively, commencing proceedings against unregistered NGOs, calling for foreign missions to stop funding such NGOs and, in 2016, proposing additional restrictive amendments to the 2009 law. NGOs responded by bringing a lawsuit challenging the constitutionality of the law, obtaining a settlement that required the government to work with NGOs to develop a new NGO policy. In the meantime, the government agreed to refrain from implementing the 2009 law. The regulatory situation for NGOs is therefore currently in flux while the 2009 law is being replaced.⁵⁸⁰

⁵⁷⁶ Regulation of Interception of Communication Act, 2010, available at: <https://ulii.org/ug/legislation/act/2015/18-2>; and Freedom House, Freedom on the Net 2018: Uganda, note 564.

⁵⁷⁷ Whistleblowers Protection Act, 2010, section 2. Available at: <https://ulii.org/ug/legislation/act/2015/6-10>.

⁵⁷⁸ Office of the Director of Public Prosecutor, The Launch of the Victim's Rights and Empowerment Guidelines and Witness Protection Guidelines, 15 June 2019, available at: <https://www.dpp.go.ug/index.php/component/k2/item/31-the-launch-of-the-victims-s-rights-and-empowerment-guide-lines-witness-protection-guideline>; and Parliament of Uganda, Expedite Witness Protection Law, 30 April 2018, available at: <https://www.parliament.go.ug/news/1393/expedite-witness-protection-law>.

⁵⁷⁹ Non-Governmental Organisations Act 2009, sections 13 and 15. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/82358/90119/F282082597/ZMB82358.pdf>.

⁵⁸⁰ Civicus, Monitor: Zambia, available at: <https://monitor.civicus.org/country/zambia/>; and Godfrey Musila, note 62.

Funding restrictions, financial reporting requirements, and special tax requirements

The 2009 law required NGOs to disclose their sources of funding when registering and included financial reporting requirements but, as noted, this legal framework is under review.⁵⁸¹

Media regulation

While there have been various attempts to establish a statutory media regulator in Zambia over the years, these have been largely unsuccessful. Following debate over whether to adopt a self-regulatory or a statutory media regulator, in June 2019 media delegates reportedly voted to establish “media self-regulation backed by law”. It remains to be seen what form this will take.⁵⁸²

Newspapers are required to register under the Printed Publications Act. Registration is simple and straightforward under the Act, although it is silent as to whether a newspaper may be deregistered, possibly creating a vulnerability.⁵⁸³

The broadcasting regulator is the Independent Broadcasting Authority. Under a 2010 amendment, the information minister directly appoints the members of the Authority’s Board and, in practice, the Authority is widely viewed as being strongly influenced by the government.⁵⁸⁴

Content restrictions

Defamation of the president, defined as publishing any defamatory or insulting matter with intent to bring the president into hatred, ridicule or contempt, is punishable by up to three years’ imprisonment. Another provision makes it a misdemeanour to commit defamation against a foreign prince or dignitary. Libel against any person is also a misdemeanour.⁵⁸⁵

The Penal Code’s provisions on contempt of court also include some ambiguous prohibitions, such as disseminating content which is capable of prejudicing any person in favour of or against parties to a judicial proceeding, or calculated to lower the authority of the person hearing such a proceeding. This is far too broad and could cover a significant range of reporting or commentary on pending court proceedings. Criminal prohibitions on obscenity have similar vagueness problems, referring to obscene writings, printed matter and other objects “tending to corrupt morals”.⁵⁸⁶

⁵⁸¹ Non-Governmental Organisations Act 2009, note 579, section 11.

⁵⁸² Mthoniswa Banda, We Vote Media Self-Regulation by Law, Zambia Daily Mail, 3 June 2019, available at: <http://www.daily-mail.co.zm/we-vote-media-self-regulation-by-law/>; and *Zambian Journalists Opt for Self Regulation Backed by Law*, Lusaka Times, 11 May 2019, available at: <https://www.lusakatimes.com/2019/05/11/zambian-journalists-opt-for-self-regulation-backed-by-law/>.

⁵⁸³ Printed Publications Act, 1964. Available at: <http://www.parliament.gov.zm/sites/default/files/documents/acts/Printed%20Publications%20Act.pdf>.

⁵⁸⁴ Independent Broadcasting Authority Act, 2002, section 7, available at: <https://zambialii.org/system/files/legislation/act/2002/17/ibaa2002349.pdf>, as amended; and *Freedom House, Freedom of the Press 2016: Zambia*, available at: <https://freedomhouse.org/report/freedom-press/2016/zambia>.

⁵⁸⁵ Penal Code, sections 69, 71 and 191. Available at: <http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf>.

⁵⁸⁶ *Ibid.*, sections 116 and 177.

Finally, the president has absolute discretion, via an order published in the Gazette, to declare any publication or class of publications to be prohibited.⁵⁸⁷

Internet and digital rights

A draft Cybersecurity and Cyber Crimes Law is currently pending in the legislature. The draft Law raises some concerns about freedom of speech online, particularly a provision which penalises initiating electronic communications with the intent to “coerce, intimidate, harass, or cause substantial emotional distress” punishable by one year’s imprisonment and/or a fine.⁵⁸⁸ This provision needs to be more clearly defined to target cyber harassment and avoid penalising online discourse about matters of public interest.

In 2018, authorities introduced new rules requiring WhatsApp group administrators to register their groups and develop codes of conduct. It is not entirely clear yet how these requirements will be enforced. Zambia also announced a social media tax in 2018.⁵⁸⁹

Right to information and secrecy laws

Zambia does not have a right to information law, although there have been attempts to pass a bill since 2002. An access to information bill was reportedly approved by Cabinet in March 2019 but it does not appear to have been tabled in parliament.⁵⁹⁰

Other laws, particularly the State Security Act, disincentivise the sharing of government information, such as by creating an offence punishable by 15 to 25 years’ imprisonment for anyone who is entrusted with government information to use it in a matter which is prejudicial to the national interest or to communicate it to someone where this is not in the national interest. Another provision imposes the same penalty on anyone who communicates classified matter without authorisation; this provision extends to anyone, including journalists, since a lack of knowledge that the information is classified is not a defence.⁵⁹¹

Restrictions on freedom of assembly

⁵⁸⁷ *Ibid.*, section 53.

⁵⁸⁸ Draft Cyber Security and Cyber Crimes Bill, section 88. Available at: <https://www.lusakatimes.com/wp-content/uploads/2018/06/The-Cyber-Security-and-the-Cyber-Crimes-DRAFT-Bill-2017.pdf>.

⁵⁸⁹ Freedom House, Freedom on the Net 2018: Zambia, available at: <https://freedomhouse.org/report/freedom-net/2018/zambia>; and Onkokame Mthobi, Zambia Data Prices Fall, Africa Portal, 31 October 2019, available at: <https://www.africanportal.org/publications/zambian-data-prices-fall-more-70-internet-use-remains-below-20/>.

⁵⁹⁰ Lusaka Times, Cabinet Approves Access to Information Bill, 19 March 2019, available at: <https://www.lusakatimes.com/2019/03/19/cabinet-approves-access-to-information-bill/>; and Xinhua, Zambia Journalists Welcome Cabinet Approval of Access to Information Bill, 25 November, 2019, available at: http://www.xinhuanet.com/english/2019-03/19/c_137907853.htm.

⁵⁹¹ State Security Act, sections 4 and 5. Available at: <http://www.parliament.gov.zm/sites/default/files/documents/acts/State%20Security%20Act.pdf>.

Under the Public Order Act, organisers of public meetings, processions or demonstrations must give the police seven days notice before an event.⁵⁹² Although this is technically a notice requirement, not a requirement to obtain permission, in practice the police have interpreted it as requiring police permission before any assembly may be held.⁵⁹³ In addition, the inclusion of “public meetings” in the requirement, defined as meetings in a public place which the public may attend, held for the purpose of discussing matters of public interest, imposes an undue burden on the sort of regular events which civil society organisations hold.⁵⁹⁴

The definition of “unlawful assembly” in the Penal Code includes three or more people assembled to carry out a common purpose who conduct themselves in a manner which causes their neighbours “reasonably to fear that the people so assembled will commit a breach of the peace” or will provoke others to commit a breach of the peace. By focusing on fear of a breach of the peace, and not actual acts of violence, this provision may impose criminal sanctions on participants in peaceful assemblies. Participation in an unlawful assembly may result in five years’ imprisonment.⁵⁹⁵

National security

The Penal Code prohibits seditious practices, meaning undertaking any act with a seditious intent, uttering seditious words, or printing, distributing, reproducing or importing any seditious publication. Such acts are punishable by seven years’ imprisonment. Seditious intent may include an intention to “bring into hatred or contempt or to excite disaffection against the Government”, which is too low a bar, possibly encompassing speech merely critical of the government or peaceful forms of protest and civic action.⁵⁹⁶

The Electronic Communications and Transactions Act establishes some key protections, such as requiring a court order for authorities to intercept information, but also enables government surveillance. It requires service providers to use communication systems which are capable of supporting communication interceptions, install hardware to enable interception of communications by law enforcement and store call-related information.⁵⁹⁷ There is evidence that the government has obtained or is attempting to obtain spyware technology and authorities have signalled that they have the capacity to monitor digital devices and social media discussions about government issues.⁵⁹⁸

Whistleblower, witness and other protection systems for those at risk

Zambia has a whistleblower protection law, namely the 2010 Public Interest Disclosure (Protection of Whistleblowers) Act. The law is reasonably comprehensive, providing protection for anonymity

⁵⁹² Public Order Act, section 4.

<http://www.parliament.gov.zm/sites/default/files/documents/acts/Public%20Order%20Act.pdf>.

⁵⁹³ Amnesty International, Zambia: Rising Impunity and Lack of Accountability, November 2017. Available at: <https://www.amnesty.org/download/Documents/AFR6366132017ENGLISH.pdf>.

⁵⁹⁴ Public Order Act, note 592, section 2.

⁵⁹⁵ Penal Code, note 585, sections 74 and 75.

⁵⁹⁶ *Ibid.*, sections 57 and 60.

⁵⁹⁷ Electronic Communications and Transactions Act, 2009, sections 77 and 79. Available at: https://www.zicta.zm/Downloads/The%20Acts%20and%20SIs/ICT%20Acts/ect_act_2009.pdf.

⁵⁹⁸ Freedom House, Freedom on the Net 2018: Zambia, note 589.

and from reprisals. Some components could discourage whistleblowers from making use of the Act, however, such as the imposition of a condition that, to be a protected disclosure, an employee must believe that disclosure to the employer would result in retaliation or destruction of evidence, that the impropriety was very serious or that an employee had already disclosed the matter to the employer and no action was taken. Penalties are also imposed for frivolous and bad faith disclosures.⁵⁹⁹

Zimbabwe

Freedom of association: non-profit registration requirements and restrictions on advocacy

Organisations may register under three main legal forms. The primary form for NGOs is a “public voluntary organisation” under the Public Voluntary Organisation Act. Registration is mandatory before beginning activities or seeking funding. To register, an organisation must publish a notice in a local paper before submitting an application to the Registrar, who confirms the application requirements are met before submitting the application, along with any objection, to the Private Voluntary Organisations Board. The Board then either orders the Registrar to issue a certificate of registration or rejects the application. It has significant discretion to reject applications where it believes that the organisation is not operating in furtherance of the objections mentioned in its application or if it does not comply with the Act.⁶⁰⁰

The Board may cancel a registration certificate on grounds such as failing to comply with a registration condition, if the organisation ceases to function as a private voluntary organisation or if the Board considers that the objects for which the organisation registered are “incidental to the other objects of the organisation.” In addition, the Minister of Public Service, Labour and Social Welfare may suspend an organisation’s executive committee on very broad grounds, including if the Minister believes “it is necessary or desirable to do so in the public interest”.⁶⁰¹

The two other forms of civil society organisations are trusts and “universitas”, which is an entity with activities that entirely benefit its own members. These forms are not subject to the Public Voluntary Organisations Act and accordingly registering under one of these forms may allow an organisation to avoid the restrictions under that Act.⁶⁰²

Funding restrictions, financial reporting requirements, and special tax requirements

A 2004 bill attempted to prohibit NGOs working on governance issues from obtaining foreign funds but the bill did not pass and has not been revived, although government rhetoric attacking foreign-funded NGOs continues.⁶⁰³

⁵⁹⁹ Public Interest Disclosure (Protection of Whistleblowers) Act, 2010, sections 13 and 22. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86261/97230/F1813836845/ZMB86261.pdf>.

⁶⁰⁰ Private Voluntary Organizations Act, sections 6 and 9. Available at: https://zimlil.org/zw/legislation/num-act/1967/63/PRIVATE_VOLUNTARY_ORGANIZATIONS_ACT_17_05.pdf.

⁶⁰¹ Private Voluntary Organizations Act, note 600, sections 10 and 21.

⁶⁰² ICNL, Civic Freedom Monitor: Zimbabwe, 1 October 2018. Available at: <http://www.icnl.org/research/monitor/zimbabwe.html>.

⁶⁰³ Civicus, Monitor: Zimbabwe. Available at: <https://monitor.civicus.org/country/zimbabwe/>.

Tax-exempt status is available for donations and grants received by organisations.⁶⁰⁴

Media regulation

The 2013 Constitution establishes a Zimbabwe Media Commission tasked with monitoring the media, receiving complaints from the public and taking appropriate action and, if established by an Act of Parliament, conducting investigations and taking disciplinary action against media workers who breach the law or applicable codes of conduct. The Commission is to be appointed by the president from a list of nominees selected by a parliamentary committee.⁶⁰⁵ This presumably overrides an earlier law establishing a Media and Information Commission appointed entirely by the executive branch.⁶⁰⁶

A Media Commission Bill has been drafted to implement the Constitutional requirement. Controversial elements include the Commission's ability to impose fines and/or six months' imprisonment for offences and the scope of oversight power given to the information minister.⁶⁰⁷

The government has announced plans to merge the broadcasting and telecommunications regulators but parliament has not yet passed an act effecting this change, which could potentially herald in broader reform of broadcast regulation.⁶⁰⁸ In the meantime, the Broadcasting Services Act, which establishes a Broadcasting Authority, continues to govern. The Authority is not independent since its members are appointed by the information minister after consultation with the president.⁶⁰⁹

Content restrictions

In 2016, the Constitutional Court ruled that the offence of criminal defamation was unconstitutional. However, other crimes remain in force which impose restrictions on freedom of expression. Insult, for example, is still a crime, defined as impairing the dignity of another person or seriously invading the privacy of another person by words or conduct. While some exceptions and limits are placed on this offence, the breadth of the underlying rule leaves the provision vulnerable to acting as a replacement for the now repealed criminal defamation offence.⁶¹⁰

Undermining the authority of or insulting the president may result in a fine and/or one year's imprisonment. This is defined to include making a public statement about or concerning the president with the knowledge or realisation that there is a risk the statement may engender hostility

⁶⁰⁴ ICNL, Civic Freedom Monitor: Zimbabwe, note 602.

⁶⁰⁵ Constitution, sections 248 and 249. Available at:

https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf.

⁶⁰⁶ Access to Information and Protection of Privacy Act, section 40. Available at: <https://www.rti-rating.org/wp-content/uploads/Zimbabwe.pdf>. This Act was repealed in July 2020.

⁶⁰⁷ Media Commission Bill. Available at: <https://www.parl.zim.gov.zw/component/k2/zimbabwe-media-commission-bill>.

⁶⁰⁸ MISA Zimbabwe, MISA Zimbabwe Statement on POTRAZ and BAZ Merger, 4 May 2018. Available at: <http://kubatana.net/2018/05/04/misa-zimbabwe-statement-potraz-baz-merger/>.

⁶⁰⁹ Broadcasting Services Act, section 4. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/zw/zw036en.pdf>.

⁶¹⁰ Criminal Law (Codification and Reform) Act, section 95. Available at: <https://zimlil.org/zw/legislation/num-act/2004/23/Criminal%20Law%20%28Codification%20and%20Reform%29%20Act%20%5BChapter%209-23%5D.pdf>.

towards or cause hatred or contempt of the president. Any abusive, indecent or obscene statement about the president is also covered by this offence.⁶¹¹ Although a lower court has found this provision to be unconstitutional, it remains in force pending an appeal to the Constitutional Court.⁶¹²

Publishing or communicating false statements which are prejudicial to the State is also an offence, punishable by a fine and/or up to 20 years' imprisonment. This includes publishing a false statement with the intent to or realisation that there is a risk of promoting public disorder or violence, adversely affecting Zimbabwe's economic or defence interests or disrupting any essential service. The intent requirement is waived if the person knows the statement to be false and the statement causes one of the harms described above.⁶¹³

Internet and digital rights

The Cyber Crime and Cyber Security Bill is currently under consideration in parliament. While the law has had several reported iterations, commentators have expressed concern throughout its development over its potentially chilling effect on online speech due to reported penalties of ten years' imprisonment and offences such as causing substantial emotional stress, communicating falsehoods and degrading others.⁶¹⁴

Zimbabwe has previously instructed telecommunications to block WhatsApp and, in January 2019, blocked Internet access, citing the Interception of Communications Act as a justification. However, it is not clear that this Act permits such blocking, except possibly under a somewhat strained reading of a provision which allows the communications minister to issue a directive on matters "not involving any interception or monitoring of communications".⁶¹⁵

Right to information and secrecy laws

Zimbabwe's 2002 right to information law is not very strong, ranking 100th out of the 128 laws current assessed on the RTI Rating. Reasons for this include an insufficiently defined procedure for making information requests and overly broad grounds on which authorities may refuse to disclose information.⁶¹⁶

⁶¹¹ *Ibid.*, section 33.

⁶¹² Tendai Marima, After Mugabe, Zimbabwe Still Enforces a Law against Insulting the President, NPR, 20 December 2018. Available at: <https://www.npr.org/2018/12/20/676055453/after-mugabe-zimbabwe-still-enforces-a-law-against-insulting-the-president>.

⁶¹³ Criminal Law (Codification and Reform) Act, note 610, section 31.

⁶¹⁴ Interception of Communications Act, 2007, section 6, available at: [http://www.vertic.org/media/National%20Legislation/Zimbabwe/ZW Interception of Communications Act.pdf](http://www.vertic.org/media/National%20Legislation/Zimbabwe/ZW%20Interception%20of%20Communications%20Act.pdf); and Zimbabwe Finalises New Cybercrime Bill, IT Web Africa, 29 August 2017, available at: <http://www.itwebafrica.com/business-continuity/617-zimbabwe/239781-new-cybercrime-law-to-criminalise-spreading-falsehoods-on-the-internet-revenge-porn-bullying-and-other-activity-59a36caf4f9f0>.

⁶¹⁵ Alex Magaisa, Legality of Zim's Internet Shutdown, Zimbabwe Independent, 18 January 2019. Available at: <https://www.theindependent.co.zw/2019/01/18/legality-of-zims-internet-shutdown/>.

⁶¹⁶ RTI Rating, Zimbabwe. Available at: <https://www.rti-rating.org/country-data/Zimbabwe/>.

A new draft right to information law is was passed in July 2020. Unfortunately, while reform is needed, a draft of the bill shows only a marginal improvement over the 2002 law, scoring only two additional points on the RTI Rating.⁶¹⁷

Zimbabwe’s RTI Rating Scores:

Category	Max Points	Score	Percentage
1. Right of Access	6	2	33%
2. Scope	30	16	53%
3. Requesting Procedures	30	10	33%
4. Exceptions and Refusals	30	14	47%
5. Appeals	30	22	73%
6. Sanctions and Protections	8	1	13%
7. Promotional Measures	16	5	31%
Total score	150	70	47%

Restrictions on freedom of assembly

The Public Order and Security Act requires seven days notice to be given for any procession or public demonstration and five days notice before any public meeting, defined as 15 or more people meeting in a public place to discuss a matter of public interest. Upon notification, the relevant authority may require the organiser to engage in consultations or negotiations if the authority has credible information that the meeting or demonstration will seriously disrupt traffic or result in injury to people or property or “other public disorder”. If an agreement cannot be reached, the authority can impose conditions on the assembly.⁶¹⁸ While these procedures open a door for the police to restrict freedom of assembly, more positively, in 2018 the Constitutional Court struck down a provision which essentially allowed the police to suspend an assembly at their discretion.⁶¹⁹

Where organisers do not give notice, fail to comply with notice or directions given by authorities or encourage participants to engage in conduct which “could reasonably be expected to lead to public disorder or a breach of the peace”, the Act makes them civilly liable for any damage to property or injury to a person “caused by or arising out of or occurring at the gathering”.⁶²⁰

⁶¹⁷ CLD, Zimbabwe: Analysis of the Freedom of Information Bill, 2019. Available at: https://www.law-democracy.org/live/wp-content/uploads/2019/11/Zimbabwe.ATI_Sep19.Analysis.pdf.

⁶¹⁸ Public Order and Security Act, sections 2 and 25. Available at: <https://zimlil.org/zw/legislation/num-act/2002/1/Public%20Order%20And%20Security%20Act%20as%20amended.pdf>.

⁶¹⁹ Library of Congress, Zimbabwe Court Declares Law Empowering Police to Ban Public Demonstrations Indefinitely Unconstitutional, 20 November 2018. Available at: <https://www.loc.gov/law/foreign-news/article/zimbabwe-court-declares-law-empowering-police-to-ban-public-demonstrations-indefinitely-unconstitutional/>.

⁶²⁰ Public Order and Security Act, note 618, section 28.

A Maintenance of Peace and Order Bill is currently under consideration which would repeal and replace the Public Order and Security Act. Critics argue that the Bill largely replicates the problematic provisions of the Act.⁶²¹

In practice, the use of lethal and excessive force against protestors and widespread arbitrary detention of protestors has occurred following protests occurring in 2019.⁶²²

National security

Authorities have arrested and charged a number of civil society leaders, activists and members of the opposition with the crime of “subverting constitutional government”. This crime, which is punishable by up to 20 years imprisonment, includes any advocacy in favour of, organisation of or support for a group that attempts to overthrow or take over the government by unconstitutional means, or using or threatening physical force in an attempt to coerce the government. The definition of this offence generally limits its scope to violent actions or to use of force. The government has attempted to evade this by charging people with *incitement* to subverting the constitutional government, so as to avoid needing to show evidence of actual involvement in violence, but this reading has been constrained by the courts. Law enforcement agencies appear to be using this crime to target civil society and protestors without a proper basis for doing so.⁶²³

There is increasing concern over Zimbabwe’s surveillance capacity, particularly following reports that it obtained facial recognition technology from a Chinese company and is expanding a “Smart Cities” initiative that involves surveillance camera installation.⁶²⁴ Aspects of the legal framework facilitate government surveillance. A 2007 law requires service providers to ensure telecommunications system can support interceptions, to install hardware and software that enables interception of communications and to implement interception orders in a manner that ensures that the target is not aware of this. It also establishes a Monitoring of Interceptions Communications Centre to be established which is responsible for overseeing telecommunications interceptions, although it is not clear whether this Centre is in fact operational.⁶²⁵

Whistleblower, witness and other protection systems for those at risk

⁶²¹ Zimbabwe Human Rights NGO Forum, An Analysis of the Maintenance of Peace and Order Bill, 2019, 1 July 2019. Available at: <http://www.hrforumzim.org/publications/an-analysis-of-the-maintenance-of-peace-and-order-bill-2019/>.

⁶²² Amnesty International, Zimbabwe: Ruthless Crackdown on Freedom of Assembly Exposes Intolerance for Dissent, 8 February 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/02/zimbabwe-ruthless-crackdown-on-freedom-of-assembly/>.

⁶²³ Criminal Law (Codification and Reform) Act, note 610, section 22; and ICJ, Zimbabwe: Subverting a Constitutional Government, 2019, available at: <https://www.icj.org/wp-content/uploads/2019/03/Zimbabwe-Subverting-Constitutional-Gvt-Advocacy-Analysis-Brief-2019-ENG.pdf>.

⁶²⁴ MISA Zimbabwe, Submission on the Surveillance Industry and Human Rights in Zimbabwe, 15 February 2019, available at: <https://www.ohchr.org/Documents/Issues/Opinion/Surveillance/MISA%20ZIMBABWE.pdf>; and Freedom House, Freedom on the Net 2018: Zimbabwe, available at: <https://freedomhouse.org/report/freedom-net/2018/zimbabwe>.

⁶²⁵ Interception of Communications Act, sections 4 and 9. Available at: http://www.vertic.org/media/National%20Legislation/Zimbabwe/ZW_Interception_of_Communications_Act.pdf.

Zimbabwe does not have a whistleblower protection law. In July 2019, it was reported that a draft amendment to the anti-corruption law would, if enacted, establish some protections.⁶²⁶

⁶²⁶ Rich Pickings for Whistleblowers, The Sunday Mail, 21 July 2019. Available at: <https://www.sundaymail.co.zw/rich-pickings-for-whistleblowers>.