PRIVACY INTERNATIONAL

Universal Periodic Review
Stakeholder Report: 23rd Session, Rwanda

The Right to Privacy in Rwanda

Submitted by Privacy International

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March 2015

Introduction

1. This stakeholder report is a submission by Privacy International (PI). PI is a human rights organisation that works to advance and promote the right to privacy and fight surveillance around the world.

2. PI wishes to bring concerns about the protection and promotion of the right to privacy in Rwanda before the Human Rights Council for consideration in Rwanda's upcoming review.

The right to privacy

3. Privacy is a fundamental human right, enshrined in numerous international human rights instruments.[1] It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information and association. The right to privacy embodies the presumption that individuals should have an area of autonomous development, interaction and liberty, a 'private sphere' with or without interaction with others, free from arbitrary State intervention and from excessive unsolicited intervention by other uninvited individuals.[2]

4. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.[3]

5. As innovations in information technology have enabled previously unimagined forms of collecting, storing and sharing personal data, the right to privacy has evolved to encapsulate State obligations related to the protection of personal data.[4] A number of international instruments enshrine data protection principles,[5] and many domestic legislatures have incorporated such principles into national law.[6]

Follow up to the previous UPR

6. There was no mention of the right to privacy and data protection either in the National Report submitted by Rwanda or in the report of the Working Group. On the other hand,

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1 Universal Declaration of Human Rights Article 12, United Nations Convention on Migrant Workers Article 14, UN Convention of the Protection of the Child Article 16, International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights Article 17; regional conventions including Article 10 of the African Charter on the Rights and Welfare of the Child, Article 11 of the American Convention on Human Rights, Article 4 of the African Union Principles on Freedom of Expression, Article 5 of the American Declaration of the Rights and Duties of Man, Article 21 of the Arab Charter on Human Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Johannesburg Principles on National Security, Free Expression and Access to Information, Camden Principles on Freedom of Expression and Equality.

2 Martin Scheinin, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 2009, A/HRC/17/34.

3 Universal Declaration of Human Rights Article 29; General Comment No. 27, Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights, CCPR/C/21/Rev.1/Add.9, November 2, 1999; see also Martin Scheinin, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism," 2009, A/HRC/17/34.

4 Human Rights Committee general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17).

5 See the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (No. 108), 1981; the Organization for Economic Co-operation and Development Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data (1980); and the Guidelines for the regulation of computerized personal data files (General Assembly resolution 45/95 and E/CN.4/1990/72)

6 As of December 2013, 101 countries had enacted data protection legislation.
See: David Banisar, National Comprehensive Data Protection/Privacy Laws and Bills 2014 Map (January 28, 2014). Available at SSRN: http://ssrn.com/abstract=1951416 or http://dx.doi.org/10.2139/ssrn.1951416

stakeholders raised widespread concerns regarding the right to freedom of expression and attacks against human rights defenders and journalists.

7. The Working Group[7] made several relevant recommendations to the Rwandan government, including:
   - Ensure freedom of expression, including by protecting journalists and human rights defenders from intimidation and aggression (Brazil);
   - Review the 2009 Media Law in conformity with international standards, reform the High Media Council in order to strengthen its credibility and independence, and conduct impartial investigations into the cases of harassment and intimidation of journalists (Italy);
   - Continue to amend the 2009 Media Law and undertake independent and credible investigation and prosecution in cases of clear harassment (Netherlands);
   - Take effective steps to review and improve the laws unduly restricting freedom of expression, press and association, and prevent authorities from violating these rights (Sweden);
   - Take all necessary measures to ensure freedom of expression and the right to participate in political and public affairs by journalists, based on the provisions of the ICCPR (Belgium).

Domestic laws related to privacy

8. The Rwandan Constitution[8] guarantees the protection and respect of the rights to privacy.

   Article 22 states that:

   "The private life, family, home or correspondence of a person shall not be subjected to arbitrary interference; his or her honour and good reputation shall be respected. A person's home is inviolable. No search of or entry into a home may be carried out without the consent of the owner, except in circumstances and in accordance with procedures determined by law. Confidentiality of correspondence and communication shall not be subject to waiver except in circumstances and in accordance with procedures determined by law."

Article 34 (2) of the Constitution also states that:

"Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honour, good reputation and the privacy of personal and family life. It is also guaranteed so long as it does not prejudice the protection of the youth and minors."

9. The Rwandan Penal Code establishes a series of offences to protect the right to privacy, including invasion of personal privacy (Article 281), opening and diverting correspondence, and installing devices for unauthorized interception (Article 285), gathering personal information in computers (Article 286) and recording and publishing personal information (Article 287.)

10. The 2013 Law on access to information prohibits publication of information held by a public or private body if it may involve interference in the privacy of an individual when it is not in the public interest (Article 4, Law No 03/2013 of 08/02/2013 regulating access to information.[9]

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7 A/HRC/17/4, Report of the Working Group on the Universal Periodic Review – Rwanda, 14 March 2011

8 The Constitution of the Republic of Rwanda, Adopted on 26 May 2003. Available at: http://www.parliament.gov.rw/fileadmin/Images2013/Rwandan_Constitution.pdf

9 Law No. 04/2013 relating to Access to Information, Official Gazette No. 10 of 11 March 2013. Available at: http://www.mhc.gov.rw/fileadmin/templates/PdfDocuments/Laws/Itegeko_rishya_rya_MHC_-_Official_Gazette_n__10_of_11_March_2013.pdf

11. The Media Law of 2013 contains some improvements to the previous legislation, including granting journalists the *"right to seek, receive, give and broadcast information and ideas through media,"* and explicitly provided for freedom of online communications.[10] Despite these improvements, concerns remain (see section below.)

12. The Law No. 54/2011 of 14 December 2011 relating to the rights and the protection of the child also contains a provision stating that child privacy is protected by the law (Article 19.)[11]

International obligations

13. Rwanda has ratified the International Covenant on Civil and Political Rights ('ICCPR'). Article 17 of the ICCPR provides that *"no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation"*. The Human Rights Committee has noted that states parties to the ICCPR have a positive obligation to "*adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right [privacy]."*[12]

14. In accordance with Article 190 of the Rwandan Constitution the provisions of international treaties, such as the ICCPR, take precedent over ordinary domestic law and the courts can invoke them.[13]

Areas of concern

I. Communications surveillance

State surveillance of private communications

15. The capacity of Rwandan authorities' surveillance of communications is unknown, although given the extent of the repression of freedom of expression and association, including repression of political dissent, attacks and threats to human rights defenders,[14] there is a strong sense that the extent of state surveillance, including of online communications, is vast. This is of significant concern, given that the legal framework and oversight of interception of communication falls short of applicable international human rights standards.

16. The law that regulates telecommunications contains a general provision safeguarding the privacy of communications.[15] Article 54 of Law 44/2001 states that *"every user's voice or data communications carried by means of a telecommunications network or telecommunications service, remains confidential to that user and the user's intended recipient of that voice or data communication."*

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10 See Article 19 of the 2013 Media Law, Section 3. Available at: http://rema.gov.rw/rema_doc/Laws/Itegeko%20rishya%20rya%20REMA.pdf

11 Law No. 54/2001 of 14 December 2011 relating to the right and the protection of the child, Official Gazette No. 26 of 26 June 2012, pp. 2-54. Available at: http://migeprof.gov.rw/IMG/pdf/Law_relating_to_the_rights_the_protection_of_the_Child_O_G_no_26_of_25_06_2012_.pdf

12 General Comment No. 16 (1988), para. 1

13 See Article 190 of the Rwandan Constitution: "Upon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non compliance by one of the parties." See also concluding observations of the Human Rights Committee on Rwanda, CCPR/C/RW A/CO/3, 7 May 2009, paragraphs 8 and 9.

14 Amnesty International, *Annual report 2014/15: Rwanda*. Available at: https://www.amnesty.org/en/countries/africa/rwanda/report-rwanda/

15 Law 44/2001 of 30 November 2001 of 30 November 2001 governing telecommunication

17. However, Article 55 of the same law provides some exceptions to the prohibition of interception of communications. In particular, a court may authorize the interception upon request from relevant authorities (ministry of justice, the ministry of defence, the ministry of commerce or the regulatory board) if it deems it necessary on grounds of national security; public security; or for the prevention, investigation, detection and prosecution of criminal offences.

18. If a court makes an order permitting the interception of communications, it may (but it not required) to limit the scope of the interference, such as by limiting the extent of that order to a particular type of interception; limiting the duration in time of the interception of communications or the geographical area in which interception may take place; or specifying the persons permitted to carry out the interception of communications.

19. None of these limitations, nor the requirement of a court's order, are included in the 2013 law regulating the interception of communications (Law No 60/2013). It is not clear from the text of the 2013 law whether it supersedes law 44/2001 in the regulation of these matters.

20. The law empowers the police, army and intelligence services to listen to and read private communications, both online and offline, in the interest of *"national security"*. It does not provide any significant limitations to the authorities' capacity to intercept communications: there is no requirement to justify the interference with someone's privacy as necessary and proportionate to a legitimate aim.

21. All communication service providers are required to ensure that their system are technically capable to enable communications interception upon request.

22. The law also provides for the interception of communications using technologies that do not require the facilitation by the relevant communication service provider. De facto, this provision allows Rwandan security agencies to hack into the telecommunication network without the communication provider knowledge or assistance.

23. Interception warrants are issued by a prosecutor designed by the Minister of Justice. As such there is no requirement of prior judicial authorisation. Nor there seems to be independent judicial oversight on the application of the law: the only monitoring envisaged is by inspectors appointed by Presidential Order.

24. In April 2014, it was reported that Rwandan authorities had intercepted the communications of two suspects in a treason trial. According to reports, private messages sent over the phone, Whatspp and Skype were presented in court as evidence to show conspiracy to topple the government.[16] On 27 February 2015, the radio journalist, Cassien Ntamuhanga, and other co-accused were convicted and sentenced to imprisonment, in a decision strongly criticized by Reporters without Borders.[17]

25. In effect, the legislation subordinates the right to privacy to poorly defined concerns of "public security". In order to justify restrictions on rights such as privacy or freedom of expression, governments must show that such restrictions are necessary to and proportionate in achieving their aim, and that they are subject to legal safeguards and oversight. Such safeguards seem to be either ineffective or non-existent in Rwanda, a country in which there is significant government control of political life and public discourse.

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16 The East African, *Phone evidence used in terror, treason case*, 26 April 2014. Available at: http://www.theeastafrican.co.ke/news/Phone-evidence-used-in-terror/-/2558/2294196/-/klwpvi/-/index.html

17 Reporters sans Frontières, *Un journaliste Rwandais écope d'une peine de 25 ans de prison*, 2 March 2015. Available at: http://fr.rsf.org/rwanda-un-journaliste-rwandais-ecope-d-02-03-2015,47637.html

Limitations to internet content

26. According to Freedom House, users' access to independent news outlets and blogs of opposition parties has been restricted in Rwanda. While there are no laws that specifically restrict internet content, Rwanda's generally restrictive legal provisions governing the traditional media could be applied to the internet. For example, the website of the independent newspaper *Umuvugizi* was banned in 2011 on the basis of charges of publishing *"divisive language"* Further, a few opposition sites continued to be blocked on some ISPs but were available on others.[18]

Threats to journalists and their sources

27. Concerns remain about the protection of the right to privacy and the protection afforded to journalists' sources in the Media Law of 2013.[19] According to Article 13 of the law, *"the court may order a journalist to reveal his/her sources of information whenever it is considered necessary for purposes of carrying out investigations or criminal proceedings."* As noted by Article 19, this provision would apply to any criminal trial and not limited to the most serious of criminal cases. Nor there is a requirement to establish whether other reasonable alternatives are available for obtaining the information before ordering the disclosure of the journalist's sources.[20]

28. Threats to independent journalists have been reported by the Committee to Protect Journalists. This includes the case of a journalist whose website was repeatedly suspended and who was threatened and warned to leave the country.[21]

II. Lack of comprehensive data protection law

29. Rwanda does not have yet a comprehensive data protection law. According to reports, a 2013 bill on data protection was drafted, containing provisions that would penalise unauthorised access to computer systems and data, unauthorised modification of computer data, unlawful possession of computer systems, devices and data, and unauthorised disclosure of passwords, among others things. However, concerns were expressed about broad exceptions to protection of personal data, on grounds of national sovereignty, national security and public policy.[22]

    The lack of a comprehensive data protection law is of particular concern in view of the following:

Biometrics identity system

30. According to presentation made at a World Bank workshop in 2014, the Rwandan National Identification Agency (NIDA) has issued biometric IDs to more than 80 percent of the adult

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18 Freedom House, *Freedom on the Net 2014: Rwanda*, pp. 9. Available at: https://freedomhouse.org/sites/default/files/resources/Rwanda.pdf

19 No. 02/2013 law regulating media of 8 February 2013, Official Gazette, No. 10 of 11 March 2013, pp. 28-49. Available at: http://www.mhc.gov.rw/fileadmin/templates/PdfDocuments/Laws/Official_Gazette_n__10_of_11_March_2013.pdf

20 Article 19, *Rwanda: Media law does not go far enough*, Press release, 18 March 2014. Available at: http://www.article19.org/resources.php/resource/3665/en/rwanda:-media-law-does-not-go-far-enough

21 Committee to Protect Journalists (2014) *Legacy of Rwanda genocide includes media restrictions, self-censorship: A special Report of the Committee to Protection Journalists*, pp. Available here: https://cpj.org/reports/NEWrwanda2014-english.pdf

22 Niyitegeka, J.D., *Rwanda: ICT Experts Discuss Data Protection Policy,* All Africa, 12 July 2013. Availableat: http://allafrica.com/stories/201307150285.html

population. The IDs are used to proof identity to access a range of services ranging from banking to social security.[23] Biometric IDs are also used to enable fingerprint banking.[24]

Mandatory SIM card registration

31. In 2013 Rwanda introduced a requirement for SIM card registration, demanding SIM card owners to register their cards with service providers and all service providers to set up a database of all registered subscribers.[25] SIM card owners were given a deadline of 31 July, after which any unregistered SIM card was disconnected.[26] The regulation of SIM card registration allows unfettered access to the SIM card database to the Rwanda regulator (the Rwanda Utilities Regulatory Agency, RURA) (The Regulatory Authority shall have access to SIM Card registration database when deemed necessary) and contain other broad provisions to allow other authorized person or institution to have access to the operator's database.[27]
32. Mandatory SIM card registration facilitates the establishment of extensive databases of user information, eradicating the potential for anonymity of communications, enabling location-tracking, and simplifying communications surveillance and interception.

33. Without effective data protection provisions, other initiatives, such as the introduction of e-passports,[28] are also exposing Rwandans to the risk of breaches of their right to privacy by state and non-state actors.

Recommendations

34. We recommend that the government of Rwanda:

- Undertake a review of the communications surveillance laws, policies and practices with the view to uphold the right to privacy in line with international human rights standards as enshrined in the International Principles for the Application of Human Rights to Communications Surveillance;[29]
- Adopt a comprehensive data protection law that complies with international human rights standards and establishes an independent data protection authority;
- Remove the requirement for mandatory SIM card registration.

23 South-South Social Protection and Labor Learning Forum, March 2014. Available here: http://www.worldbank.org/content/dam/Worldbank/Event/social-protection/Building_Robust_Identification_Systems_Session_Packet.pdf

24 Vrankulj, A., *MobiCash and KBC Bank launch fingerprint banking in Rwanda*, Biometric Update, 4 January 2013. Available at: http://www.biometricupdate.com/201301/mobicash-and-kcb-bank-launch-fingerprint-banking-in-rwanda

25 Republic of Rwanda, Regulation on SIM Card Registration issued by the Regulatory Board, RURA, serial Number 001/iCT/RURA/2013, 26 January 2013. Available at: http://rura.gov.rw/fileadmin/docs/Board_Decisions/FINAL_SIM_CARD_REGISTRATION_REGULATIONS.pdf

26 The Daily Monitor, *Rwanda switches off unregistered SIM cards*, 2 August 2013. Available at: http://www.monitor.co.ug/News/National/Rwanda-switches-off-unregistered-SIM-cards/-/688334/1934958/-/rj2m4o/-/index.html

27 Republic of Rwanda, Regulation on SIM Card Registration issued by the Regulatory Board, RURA, serial Number 001/iCT/RURA/2013, 26 January 2013. Available at: http://rura.gov.rw/fileadmin/docs/Board_Decisions/FINAL_SIM_CARD_REGISTRATION_REGULATIONS.pdf

28 Kwibuka, E., *Rwanda: Why Rwanda Plans to Issue E-passport*, All Africa, 25 November 2015. Available at: http://allafrica.com/stories/201411250349.html

29 See: International Principles on the Application of Human Rights to Communications Surveillance. Available at: https://en.necessaryandproportionate.org/text