

Introduction

1. Digital rights and freedoms should be accorded the same protection as offline rights and freedoms¹. Protection of freedom of expression, access to information, data protection and privacy have been guaranteed in international and regional instruments to which Benin is a party. Consequently, they must be considered in the recommendations made to Benin during the fourth cycle of the UPR.
2. This report reflects on digital rights and freedoms by assessing Benin's implementation of the recommendations emerging from the third cycle and compliance with the established national, regional and international standards over the period preceding the fourth cycle. It makes recommendations on how Benin should improve its operational environment on freedom of expression, access to information, media and digital rights in general.

Updates Since the Previous Review

3. Benin was reviewed at its 3rd cycle during the 28th session of the Universal Periodic Review (UPR) in November of 2017. It received a total of 198 recommendations and it supported 191 recommendations at the adoption of its UPR outcome in March 2018. This is an increase of 55% compared to the 2nd cycle.² Since its last review, there have been many developments in the francophone West African country relating to issues that were raised at its last UPR review.
4. During the review, Benin received a number of recommendations relating to freedom of expression, and the need to ensure that its national legislation complies with international standards. It also received specific recommendation to revise the Bill on freedom of association, freedom of expression and freedom of assembly, submitted in 2012, which was at the time pending review by the Supreme Court, with a view to adopting legislation that will protect the rights of civil society. Previous calls for Benin to bring its domestic law into compliance with international human rights standards persists. Benin is yet to fully reform its defamation legislation.
5. Benin enacted digital rights laws during the review period, including Law n° 2017 of 2018 (the digital code) which provides parameters for the governance of online communications including electronic communications, networks and services. In 2020, Parliament also adopted Law No. 2020-35 amending the Digital Code, which has been hailed as a good law that has contributed to the advancement of digital rights as will be enunciated later in this report.

¹ Human Rights Council, 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: The promotion, protection and enjoyment of human rights on the Internet' <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>

² https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/BJ/BENIN_Infographic_28th.pdf (Accessed 11 July 2022)

6. Since Benin's last review in 2017, the country has had general elections. Patrice Talon was re-elected for a second five-year presidential term in April 2021, and the ruling party currently enjoys an absolute majority in Parliament with 83 deputies.³

Freedom of Expression and Opinion

7. The right to Freedom of expression is protected by the Constitution of the Republic of Benin in Article 23.⁴ It provides that "every person has the right to freedom of thought, of conscience, of religion, of creed, of opinion and of expression with respect for the public order established by law and regulations". Benin has also committed to key international human rights standards such as the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). In 2016, the African Commission on Human and Peoples' rights adopted a resolution on the right to freedom of information and expression on the internet in Africa,⁵ which is binding on Benin as a state party to the African Charter.
8. Article 24 of the Benin Constitution also provides for freedom of the press, stating that freedom of the press shall be recognised and guaranteed by the State and that it shall be protected by the High Authority of Audio-Visuals and Communications under the conditions fixed by an organic law.
9. The government regulates the press and online media. The High Authority for Audiovisual and Communication (HAAC) is a quasi governmental commission with members appointed by the president, private media, and the legislature. HAAC has a dual role of providing for press freedom while protecting the country against "inflammatory, irresponsible, or destabilising" media reporting.⁶
10. The HAAC is meant to be an independent institution that guarantees and safeguards the freedom and protection of the press and other mass media. There are however concerns on the unjustified restrictions on freedom of expression,⁷ in particular the censorship of certain media by the HAAC, whose independence and operating procedures have been called into question.⁸
11. On December 21, the Beninese Human Rights Commission released its 2020-2021 activity report, pointing to a decline in freedom of expression. The report pointed to the digital code and asked parliamentarians to reconsider its provisions. The Commission stated that, "Several provisions of this law jeopardise freedom of expression and freedom of the media in Benin."⁹

³ <https://www.worldbank.org/en/country/benin> (Accessed 11 July 2022)

⁴ <http://extwprlegs1.fao.org/docs/pdf/ben135215.pdf> (Accessed 07 July 2022)

⁵ <https://www.business-humanrights.org/en/latest-news/resolution-on-the-right-to-freedom-of-information-and-expression-on-the-internet-in-africa-achprres-362lix-2016/>

⁶ <https://glosbe.com/en/en/HAAC> (Accessed 08 July 2022)

⁷ <https://rsf.org/en/benin-regulator-orders-unauthorized-media-outlets-close> (Accessed 11 July 2022)

⁸ n9 above

⁹ <https://paradigmhq.org/wp-content/uploads/2021/05/lr-Benin-Digital-Rights-Inclusion-2020-Report.pdf>

12. A report on the Media Development, Censorship and Working Conditions of Journalists in the Republic of Benin (West Africa) classified and distinguished various levels of constraints that are limiting an unhampered activity of journalists in the country. These are; legal-institutional and structural-economic, direct and indirect modes of censorship, as being exercised primarily by the state and the supreme media board HAAC, self-censorship, and the general place of media and its relevance in everyday life in Benin.¹⁰
13. In 2017, Benin drafted a Digital Code,¹¹ which was adopted in 2018. Law n° 2017 of April 20 2018 (Digital Code) is the regulatory framework for the digital sector in Benin. The Digital Code deals with electronic communications, networks and services. It sets the rules applicable to operators and electronic communications activities. It updated provisions concerning activities relating to electronic communications networks, services and personal data. It also sets out the legal rules applicable to electronic commerce and communication, cybercrime. It regulates the criminal law applicable to crimes and offences committed online. The law also regulates Internet service providers, standards on protection of personal data, Cyber Crime and Cyber Security.
14. On December 10, 2020, the Beninese Parliament deliberated and adopted Law No. 2020-35 amending articles 121, 125 and 464 of Benin’s Digital Code.¹² It is important to note however that no substantive revision was made in the amendment.
15. The Digital Code is commendable legislation as it has contributed to the improvement in affordability of data, promoting digital access through the institution of price ceilings for data and voice charges. It has also strengthened the framework for the right to privacy by setting standards governing personal data governance and data privacy.¹³
16. While the Digital Code is presumably a positive development in Benin, Amnesty International Benin in its report on the situation of human rights in Benin in 2021 highlighted the fact that journalists continue to be prosecuted on the basis of the digital code. The code allows for the prosecution and imprisonment of journalists for online content that is purportedly false or harasses individuals.¹⁴ Activist Jean Kptonwas convicted under the 2018 Digital Code, for “harassment by means of electronic communication”, an offence whose definition was considered “vague and too broad” by the UN Working Group on Arbitrary Detention in its October 2020 Opinion.¹⁵

¹⁰ <https://books.openedition.org/cei/155?lang=en> (Accessed 12 July 2022)

¹¹ <https://www.jonesday.com/en/practices/experience/2017/06/benin-adopts-law-creating-digital-code-governing-all-legal-aspects-of-digital-activities> (Accessed 11 July 2022)

¹² <https://www.village-justice.com/articles/overview-the-digital-code-amendment-act-benin-republic,38850.html> (Accessed 10 July 2022)

¹³ <https://bit.ly/3c91mHI> (Accessed 08 July 2022)

¹⁴ <https://www.amnesty.org/en/location/africa/west-and-central-africa/benin/report-benin/> (Accessed 12 July 2022)

¹⁵ <https://fij.ng/article/how-patrice-talon-is-silencing-the-media-and-dissidents-in-benin/> (Accessed 12 July 2022)

17. In February 2020, a Beninese and a Dutch journalist were arrested in the northern town of Tanguiéta for failure to notify local authorities of their presence near the park. After being identified as journalists and cleared by a prosecutor, they were accused of espionage and forcibly returned to the capital city Cotonou partly handcuffed. They spent four days and three nights in detention, sometimes behind locked doors, before the head of national police announced that the charges against them were dropped, after intervention from the Dutch embassy in Benin. The Beninese journalist was freed while the Dutch journalist was deported on the first flight back to Europe.¹⁶
18. On 7 December 2020, two journalists with the newspaper *Le Soleil Bénin Info* were sentenced to six months' suspended imprisonment and a fine of more than 500,000 Central African Francs (CFA) (915 USD) for "harassment by means of electronic communication", following a complaint of libel by a customs inspector.¹⁷
19. Former journalist, Aziz Imorou was arrested on 17 September 2020 after posting an article on Facebook in which he denounced an alleged act of aggression against himself by a bodyguard of Armand Ganse, Director General of the Société de Gestion des Marchés Autonomes (SOGEMA), the state-owned company that manages public markets. A day after the Facebook post, Imorou was summoned to the Central Office for the Repression of Cyber Crime (OCRC) following the complaint filed by the Director of SOGEMA. After questioning him, Imorou was brought before a court of first instance in Cotonou. Without rendering a judgment, the judge remanded the journalist to Cotonou Civil Prison for defamation. He was released in October.¹⁸
20. In April 2019, newspaper editor Casimir Kpédjo was arrested for publishing "false" information about the national debt; Kpédjo was bailed a month later, and his case remained pending at the end of 2020.¹⁹
21. In December 2019, Ignace Sossou of Bénin Web TV received an 18-month sentence for "harassment" after quoting a public prosecutor.²⁰ Sossou was released in June 2020 after his sentence was reduced. It was later revealed that Sossou had quoted the official accurately, bringing to question his sentencing.²¹ In January 2020, an online news editor was detained for a week for reporting on a speculated ambassadorial appointment.²²
22. On October 2 2018, the Court of Cotonou convicted Sabi Sira Korogone under the Digital Code of incitement of hatred and violence, incitement of rebellion, and "racially motivated slander" for statements posted on social media sites. The court sentenced him to imprisonment for one year and a fine of three million CFA francs (\$5,415).²³

¹⁶ <https://mg.co.za/africa/2022-06-09-detained-and-deported-journalism-has-become-a-risky-business-in-benin/> (Accessed 08 July 2022)

¹⁷ n7 above

¹⁸ <https://www.mfwa.org/country-highlights/benin-former-journalist-jailed-over-facebook-post-released/> (Accessed 10 July 2022)

¹⁹ <https://bit.ly/3yZOblh> (Accessed 08 July 2020)

²⁰ <https://www.amnesty.org/en/documents/afr14/1769/2020/en/> (Accessed 09 July 2022)

²¹ <https://rsf.org/en/beninese-reporter-jailed-tweets-quoted-official-accurately> (Accessed 12 July 2022)

²² <https://freedomhouse.org/country/benin/freedom-world/2021> (Accessed 10 July 2020)

²³ <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/benin/> (Accessed 05 July 2022)

Freedom of Information and Censorship of content

23. In Benin, access to information is a fundamental right for all citizens guaranteed in the Constitution of 1990. The Official Journal of the Republic of Benin is published twice a month to disseminate all legal texts and administrative notices to the public.²⁴
24. Freedom of information and access to administrative documents are currently governed by Law no. 2015-07 on information and communication in Articles 70-107.²⁵ The law specifies who has the right to access administrative documents (all citizens), and allows for administrative or judicial sanctions to be imposed on public agents or bodies that fail to provide grounds for their refusal to disclose requested information. A long list of exemptions is also provided. However, response times to information requests are not clearly set out in the law; while public bodies have only five days to make a decision on a request, no time frame for providing the requested information is explicitly stated.²⁶
25. A major shortcoming for freedom of information in Benin is section 378 of the Penal Code which compels civil servants not to divulge professional secrets. Additionally, Section 43 of the Benin Law on State Employees obliges public officials to follow professional discretion.²⁷
26. In line with Article 24, the Regulatory Authority for Electronic Communications and Post Office (ARCEP) is responsible for defining standards and regulations for telecommunications service providers, granting licences and permits to operators, and arbitrating disputes between consumers and operators.²⁸
27. ARCEP stipulates that network neutrality is a legal principle in the Republic of Benin and that operators providing internet access should not apply traffic management measures. In essence, they must refrain from blocking, slowing down, modifying, restricting, degrading or discriminating against content, applications or specific content and application services.
28. Authorities in Benin shutdown the internet during the April 28, 2019 parliamentary elections. Benin blocked access to social media networks and communication applications for several hours, according to network data from the NetBlocks internet observatory. Major social media platforms were all affected. Benin's leading internet providers were fully shut down as of 11:00 AM UTC, following the social media blocks imposed earlier in the day.²⁹
29. On 7 July 2020, the Haute Autorité de l'audiovisuel et de la communication (HAAC) ordered the closure of online media for violating article 252 of the 2015 Information and Communication Code.³⁰ This law requires all internet sites that provide audiovisual and written information to

²⁴ Badet, S (2013) Sécurité nationale et droit à l'information: document d'orientation Bénin. Available at: <http://www.right2info.org/resources/publications/pretoria-finalization-meeting-april-2013-documents/national-security-and-rti-in-benin/view> (accessed 12 July 2022)

²⁵ Loi n° 2015-07 du 22 Janvier 2015 portant code de l'information et de la communication en République du Bénin.

²⁶ <https://journals.sagepub.com/doi/full/10.1177/0020852318762039> (Accessed 12 July 2022)

²⁷ https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session14/BJ/ARTICLE19_UPR_BEN_S14_2012_GlobalCampaignforFreeExpression_E.pdf (Accessed 12 July 2022)

²⁸ <https://globaledege.msu.edu/global-resources/resource/10729> (Accessed 05 July 2022)

²⁹ <https://netblocks.org/reports/internet-blocked-in-benin-on-election-day-aAwqknyM> (Accessed 10 July 2022)

³⁰ <https://www.beninplus.com/media/la-haac-ordonne-la-fermeture-des-medias-en-ligne-non-reconnus> (Accessed 05 July 2022)

request approval from HAAC.³¹ The Minister of Communication and Post, Alain Orounla supported the HAAC's announcement, saying it would bring discipline to the online media sector.³² A spokesperson for the HAAC, said in a press conference that the closure of online media had become necessary because the regulator had noticed an increased proliferation of online media without prior authorisation. Media owners considered the HAAC's decision as a severe infringement of press freedom and³³ issued a press release, expressing their disappointment for the lack of consultation between the HAAC and the sector.³⁴ While affirming that the intention to clean up is not bad, they argued that some online media organisations had taken steps to ensure compliance.³⁵

30. Public and private media reportedly refrain from openly criticising government policy. Self-censorship is widely practised because media houses are indebted to government officials who granted them service contracts or out of fear of suspension according to a United States, State Department report.³⁶

V. Right to Equal Access and Opportunity

31. The Regulatory Authority for Electronic Communications and Post Office (ARCEP) established a framework for voice, SMS and data service tariffs. The framework sets price thresholds and has led to lower prices in Benin relative to its neighbours Togo and Burkina Faso and the median for Sub-Saharan Africa.³⁷
32. Benin has ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), the Government has yet to ratify the Optional Protocol to CEDAW.
33. According to the International Telecommunication Union's (ITU) 2019 report, only 48% of women use the internet, compared to 58% of men globally. The GSMA report on the Digital Gender Divide places the mobile gender gap in Sub-Saharan Africa at 37%, a number reputed to be the second-highest in the world. Some of the factors hindering the accessibility of the internet to women flow from cultural, economic and infrastructural barriers boiling down to time, affordability, digital skills, service quality and availability restrictions.³⁸

³¹ <https://numerique.gouv.bj/lois/Loi-n2015-07-du-20-mars-2015-portant-Code-de-l-Information-et-de-la-Communication.pdf> (Accessed 05 July 2022)

³² <https://matinlibre.com/2020/07/13/suspension-des-medias-en-ligne-ce-quen-dit-orounla/> (Accessed 05 July 2022)

³³ <https://www.voaafrique.com/a/les-journalistes-contre-la-suspension-des-m%C3%A9dias-en-ligne-au-b%C3%A9nin/5511719.html>

³⁴ <https://web.facebook.com/195249217475964/photos/pcb.1205368179797391/1205368143130728/?type=3&theater> (Accessed 05 July 2022)

³⁵ <https://www.mfwa.org/country-highlights/benins-online-media-come-under-callous-regulatory-audit/> (Accessed 12 July 2022)

³⁶ https://bj.usembassy.gov/wp-content/uploads/sites/162/313615_BENIN-2021-HUMAN-RIGHTS-REPORT.pdf (Accessed 12 July 2022)

³⁷ https://www.itu.int/en/ITU-D/Regulatory-Market/Documents/IIC_Africa_Final-en.pdf (Accessed 10 July 2022)

³⁸ <https://www.apc.org/en/pubs/digital-rights-are-womens-rights> (Accessed 07 July 2022)

34. The government introduced a law to tax citizens 5 CFA francs (\$0.008) per megabyte on the usage of social media apps, and another 5 per cent levy on texting and Internet calls. A move rejected by civil society organisations because of its negative implication on access. Over 7,000 Beninese signed a petition calling for the suspension of the levy, which, they said, would not favour the country of a population of 10 million people with a minimum wage of about 40,000 CFA francs (\$70.56).³⁹
35. Online spaces often harbour and perpetuate threats to the experience of women participating in them. Women are disproportionately impacted by online violence such as image-based sexual abuse, non-consensual distribution of intimate images, as well as online scams and hacks.⁴⁰
36. The Government of Benin has officially recognised gender equality without distinction: 'The State shall assure to everyone equality before the law without distinction of origin, race, gender, religion, political opinion or social position. Men and women are equal under the law. According to Article 26 of the Constitution.'⁴¹
37. Benin Telecom Infrastructures (BTO) reduced its costs by 50%. There is the establishment of three services namely: Community digital points, free Wi-Fi terminals in certain public places with a capacity of 4 Mbps and a subscription service for individuals with a capacity of 36 Mbps.⁴²

VI. Right to Privacy and Data Protection on the Internet

38. Under Article 21 of the Constitution, the secrecy of correspondence and of communications is guaranteed.
39. Two major laws regulate data protection in Benin: while Law No. 2017-20 regulates processing of personal data, Law No. 2009-09 established the National Data Protection Authority (Autorité de Protection des Données à caractère Personnel - APDP).⁴³
40. These regulations place Benin far ahead of many of its neighbours and other countries in Africa, who are still grappling with setting up data protection regimes that meet normative standards.
41. As at 2018, when half of African countries are yet to have privacy laws, Benin revamped its legal framework on data protection as part of larger project, the Benin Digital Code (Le Code numérique du Bénin) which regulates networks and electronic communication services, e-ID and e-signature, e-commerce, trust services providers, and cybercrime. This code is believed to

³⁹ <https://www.africanliberty.org/2018/09/25/tax-imposed-on-social-media-usage-in-benin-republic-has-been-revoked-after-citizens-petition/> (Accessed 12 July 2022)

⁴⁰ n38 above

⁴¹ https://www.afdb.org/sites/default/files/documents/projects-and-operations/bad_benin_-_country_gender_profile_ang-last.pdf (Accessed 07 July 2022)

⁴² <https://paradigmhq.org/report/londa-benin-digital-rights-and-inclusion-report-2020/> (Accessed 12 July 2022)

⁴³ <http://apdp.bj/wp-content/uploads/2016/08/Loi-No-2009-du-22Mai-2009-Version-Anglaise.pdf> (Accessed 04 July 2022)

be one of the most sophisticated and unified legal frameworks governing technology in Africa.⁴⁴

42. There is hardly any available information on the fines and sanctions already handed down by APDP since its establishment.
43. The Constitution and law prohibit arbitrary or unlawful interference with privacy, family, home or correspondence. A 2018 United States Department of State report affirmed that the government generally respected these provisions.
44. There were no credible reports the government monitored private online communications without appropriate legal authority.

VII. Recommendations

We urge that freedom of expression, access to information, and the right to privacy become prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Benin:

1. Review and amend provisions of the Digital Code that unnecessarily restrict freedom of expression and digital rights, specifically sections that provide for prosecution and imprisonment for online content that is purportedly false.
2. Adopt comprehensive freedom of information legislation that removes barriers on accessing public information from public institutions, by setting out reasonable and timely deadlines for responding to information requests.
3. Guarantee access to the internet all times by ensuring that the internet, including social media and other digital communication platforms, remain open, accessible, and secure across Benin including during elections. This includes removing unnecessary registration procedures for online media.
4. End intimidation, censorship and harassment of journalists and others exercising their right to free expression and hold to account those that violate journalists' rights.
5. Strengthen the independence of The High Authority for Audiovisual and Communication (HAAC) and make it apolitical and an unbiased umpire of freedom of expression and digital rights.
6. Make available and transparent the activities of the Data Protection Authority to ensure that there is verifiable information on its procedures especially fines and sanctions it has issued since inception.

⁴⁴ <https://iclg.com/alb/10175-data-protection-in-benin> (12 July 2022)



SMALL MEDIA

