

Introduction

1. The Universal Periodic Review (UPR) is an important UN mechanism aimed at addressing human rights issues across the globe. ISOC Mali, Rudi International and Small Media Foundation welcome the opportunity to contribute to Mali's fourth review cycle.
2. This submission examines the right to freedom of expression, access to information, freedom of the media and digital rights in general. Specifically, this submission raises concerns regarding the unwarranted internet disruptions, violations of media freedom including media bans, arrests and prosecutions of journalists and other critical voices.
3. The Republic of Mali, a large, land-locked country, covers an area of 1.24 million km² with a population estimated at 21.16 million as of January 2022. Mali has been fighting rebel and Islamic jihadists groups for more than 10 years now in its northern part.
4. In recent times, Mali has been marred by political tensions, which evolved into two military coups in 2020 and 2021 respectively. Following a public outcry and anti-government protests, the military, under the auspices of the National Committee for the Salvation of the People (CNSP) staged a coup d'état in August 2020, capturing the sitting President, Ibrahim Boubacar Keïta, and forcing him to resign. A transitional government was then put in place in September 2020, and Bah N'Daou was elected as the acting President. However, in May 2021, another coup was staged, overthrowing the transitional government and bringing on a new transitional president, Colonel Assimi Goïta, the leader of the 2020 coup.¹
5. Following the coups, media freedoms have generally deteriorated with several arrests of journalists. French journalist Olivier Dubois² arrested in March 2021 is still under detention. In March of 2022,³ local broadcasts from French Media France 24 and Radio France internationale (RFI) following a warning by the military to the media to desist from reporting that annoys the government.

Updates Since the Previous Review

¹ Freedom House, Freedom in the World Report, 2022, see <https://freedomhouse.org/country/mali/freedom-world/2022>

² RSF, French journalist held hostage longer than any other since 1980s, <https://rsf.org/en/french-journalist-held-hostage-longer-any-other-1980s>

³ RSF, Mali bans local broadcasts by leading French radio and TV news outlets, 17 March 2022, see <https://rsf.org/en/mali-bans-local-broadcasts-leading-french-radio-and-tv-news-outlets>

6. The Republic of Mali has continued to rank poorly on the global press freedom index, scoring at 111th place in 2022, 99th in 2021 and 108th in 2020, out of 180 countries ranked.⁴
7. Mali is currently ranked as “Not Free”⁵ on Freedom House’s 2022 Global Freedom index, a score it has retained since 2021.
8. Domestically, various laws and regulations restrict freedom of expression, the most significant being Law 2019-056, commonly known as the Repression of Cyber-criminality Law. Coming into force in 2019, this law contains several provisions repressing various aspects of freedom of expression, including putting in place exorbitant fines. The press Law 00-046 also continues to create a chilling effect on the practice of journalism, with offences like criminal defamation.

International and Domestic Legal Frameworks

9. On 16 July 1974, Mali acceded to the International Covenant on Civil and Political Rights (ICCPR) and is currently a States party to many major international human rights instruments,⁶ including the African Charter of Human Rights and the Peoples Rights.
10. Domestically, freedom of expression is guaranteed under Article 4 of the current 1992 Constitution.⁷
11. As an African Union member state, besides ratifying the African Charter, Mali is one of a handful of African countries that have ratified the protocol for the establishment of the African Court and further deposited a Declaration allowing NGOs and individuals to institute cases directly before the African Court.⁸

⁴ RSF, Global Press Index, <https://rsf.org/en/index?year=2022>

⁵ Ranking of Republique of Mali on the website site of Freedom House for year 2022
<https://freedomhouse.org/explore-the-map?type=fiw&year=2022&country=MLI> Accessed October 10th 2022

⁶ UN Treaty Body DataBase, Mali,
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=107&Lang=EN

⁷ Official Newspaper of Republic of Mali containing the promulgation Decree of the current Constitution
<https://sgg-mali.ml/JO/1992/mali-jo-1992-04.pdf> Accessed October 9th 2022. Also see english version
https://www.constituteproject.org/constitution/Mali_1992.pdf

⁸ African Court Declarations, see <https://www.african-court.org/wpafc/declarations/>

12. There are four (04) main laws related to Digital matters in the Republic of Mali. They include:
- Law 2013-015 of May 21st 2013 related to the protection of Personally Identifiable Information (PII) in Republic of Mali⁹ ;
 - Law 2016-011¹⁰ of May 06th 2016 related to rules applicable to means, modalities, services and cryptology systems in Republic of Mali ;
 - Law 2016-012¹¹ of May 06th 2016 related to Transactions, Exchanges and electronic services;
 - Law 2019-056¹² December 5th 2019 of Repression of Cyber Criminality (cyber-crime)..
13. There are several other provisions and articles of the Penal Code of Mali and other laws such as the Law 00-046¹³ of July 07th 2000 related to press regime and press offences for example, prescribing various sanctions ranking from fines to jail time also applicable to offences committed online.

⁹ Official Newspaper of Republic of Mali containing the law protecting Personally Identifiable Information
<https://sgg-mali.ml/JO/2013/mali-jo-2013-26.pdf> Accessed October 5th 2022

¹⁰ Official Newspaper of Republic of Mali containing the law related to rules applicable to means, modalities, services and cryptology systems
<https://sgg-mali.ml/JO/2016/mali-jo-2016-21.pdf> Accessed October 5th 2022

¹¹ Official Newspaper of Republic of Mali containing the law related to Transactions, Exchanges and electronic services
<https://sgg-mali.ml/JO/2016/mali-jo-2016-22.pdf> Accessed October 5th 2022

¹² Official Newspaper of Republic of Mali containing the law related to repression of Cybercriminality
<https://sgg-mali.ml/JO/2019/mali-jo-2019-43.pdf> Accessed October 5th 2022

¹³ Official Newspaper of Republic of Mali containing the law related to press regime and press offenses
<https://sgg-mali.ml/JO/2000/mali-jo-2000-21.pdf> Accessed October 5th 2022

Freedom of expression and opinion online

14. The Internet penetration rate in Mali is quite low as it is for many other developing countries in Africa. However, the use of the Internet in Mali continues to rise, particularly through the expansion of mobile broadband, and the government is actively pursuing investments to expand its reach. Data from the International Telecommunications Union (ITU) 2022 report¹⁴ shows that 27% of Malian citizens were using the internet in 2020 recording an increase from approximately 19%.¹⁵
15. The number of internet users in the Republic of Mali is estimated at 6.33 million (30% of the population) as of January 2022 while the total number of social media users was estimated at 2.15 million in the same period. According to GSMA Intelligence data, there were 23.60 million cellular mobile connections in Republic Mali at the start of 2022.
16. Article 4 of the Malian Constitution broadly protects freedom of expression, stating that: "Every person shall have the right to freedom of thought, conscience, religion, cult, opinion, expression and creation within the law."¹⁶ Further, journalists rights are affirmed under Article 7 of the Constitution which provides that: "Freedom of the press shall be recognized and guaranteed. It shall be exercised within conditions determined by law. Equal access for all to the State media shall be assured by an independent organ whose regulations shall be established by an organic law".
17. However, human rights online are seriously endangered in the Republic of Mali since the bill, initially intended to fight against cyber crime, was signed into Law on December 15th 2019. *Law 2019-056 on the suppression of cyber crime*, has been used to drastically restrict freedom of expression online by unnecessarily prosecuting and jailing several citizens, political figures, anchors, activists, artists, humorists and journalists. Many of these online users have been incarcerated¹⁷ serving time behind bars mostly before their court appearance, then subsequently released after being sentenced to the timeframe they already served in prison.

¹⁴ The world's richest source of ICT statistics and regulatory information
<https://datahub.itu.int/> Accessed October 5th 2022

¹⁵ <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=ML>

¹⁶ Official Newspaper of Republic of Mali containing the promulgation Decree of the current Constitution
<https://sgg-mali.ml/JO/1992/mali-jo-1992-04.pdf> Accessed October 9th 2022. Also see english version
https://www.constituteproject.org/constitution/Mali_1992.pdf

¹⁷ Journalists in custody

https://www.impact.sn/Mali-arrestation-du-journaliste-Abdoul-Niang-dans-l-affaire-Birama-Toure_a27761.html Accessed October 9th 2022

18. Article 2 of the law provides for the objectives and jurisdiction, stating that the act is applicable to “any offence committed by means of Information and Communication Technologies (ICT) in whole or part on the territory of Mali, to any offence committed in cyberspace and whose effects occur on the national territory.”
19. *Law 2019-056*, contains several provisions repressing various aspects of freedom of expression, including putting in place exorbitant fines for those perceived to be in violation. For example, Article 21 of the law provides that: “*Anyone who utters an insult via an Information System to another person is punished by imprisonment from between six months up to two years and fined from 1.000.000 Fcfa (\$1,500.00) up to 10.000.000 Fcfa (\$15,000.00) or both of these two sanctions.*”
20. However, neither the *Law 2019-056* nor the Penal Code or the Criminal Procedure Code or any other law clearly defines what exactly an insult entails or means under the law. The vagueness and ambiguity would mean that any person can file a complaint against another for any word or comment in a chat, a post or a call that he believes to be insulting to him or her. Oftentimes, authorities use the insult provision to prosecute and jail critical voices including online users.¹⁸
21. Article 23 of the cyber law stipulates a fine of CFA 200,000 to 2,000,000 (USD 332 to 3,318), and imprisonment of between six months and one year, or both, for fake and illegal online content. The law does not define fake or illegal, making the provision prone to abuse.
22. Article 54 of the cybercrime law states that “press offences, committed through information and communication technologies, with the exception of those committed by the press on the internet, are punishable by ordinary law”. However, the Press Law makes no reference to online offences, making it difficult to identify breaches under the cyber crime, press or ordinary law..

¹⁸ Republic of Mali, arrestation of online activists
<https://www.youtube.com/watch?v=l45r6xM3lUs> Accessed October 9th 2022

23. In May 2022, four critics including Sara Yara, Ramata Diabate, Dede Cisse, and Amy Cisse were detained for allegedly criticising the head of the state security agency. They were charged under cybercrime law of 2019 for their Facebook posts and remained in custody despite a court ruling releasing them in June. Another online critic, Alhassane Tangara, was also detained in July 2022, for his comments on Facebook.¹⁹
24. The *Press Law 00-046* of July 07th 2000²⁰ provides for the conditions of exercise of the profession of journalism detailing rights and duties of journalists. However, the law is ambiguous insofar as it fails to clearly define press offences.
25. Over the past two decades, journalists have been prosecuted under this law, especially for criminal defamation. There are current attempts by media practitioners to amend the law,²¹ and a new draft is in the offing and will be reviewed by the National Council of Transition (CNT), the legislative body of the current transitional government. There is hope that the refined law will be more progressive in terms of enhancing media freedoms.
26. Many online press professionals in Mali have stated that their biggest fear is the cybercrime law rather than the other press laws. The cybercrime law has indeed caused a chilling effect to the practice of journalism and expression especially on digital platforms, due to the persecution under the law.

Internet shutdowns and disruptions

¹⁹ Human Rights Watch,

Mali: Rights Reforms Crucial for Civilian Rule, 9/Aug/2022, <https://www.hrw.org/news/2022/08/09/mali-rights-reforms-crucial-civilian-rule>

²⁰ Loi 00-046 AN RM, Régime de la presse et délit de presse, <https://www.rwi.uzh.ch/dam/jcr:00000000-0c04-fd04-0000-00002a968c2f/loi-00-046-an-rm-regime-de-la-presse-et-delit-de-presse.pdf>

²¹ Republic of Mali, see Legal Framework
<https://rsf.org/fr/pays/mali> Accessed October 9th 2022

27. Internet shutdowns were deployed on a number of occasions between 2018 and 2020 to crackdown on political opponents and civil society activists. In the run-up to the 2018 elections, it was reported that social media platforms and internet services were disrupted following a ban by the authorities on opposition protests for accountability and transparency.²²
28. From May 2020 to August 2020, the government further suspended internet services²³ in Bamako, the capital city, during demonstrations to protest against the results of Parliamentary elections. Various demonstrations²⁴ were organised as often as twice a week mainly in the capital, Bamako and other countryside towns such as Sikasso. Between 10 July 2020 and 15 July 2020, social media and messaging apps were restricted after protestors occupied the national broadcaster demanding for the resignation of president Ibrahim Boubacar Keïta.²⁵
29. The government has previously invoked article 4 of the Telecommunications Act, to disrupt internet services.²⁶ This provision stipulates that : "When public security or the defence of the territory of Mali so requires, the Government may, for a limited period, requisition all the telecommunications networks established in the territory of Mali, as well as the equipment connected to it and / or prohibit the provision of telecommunications service".
30. Internet shutdowns are a violation of human rights as several people depend on the internet to access information especially during times such as elections and political unrest. Internet disruptions also adversely affect businesses and other sectors including health, education, banking among others as individuals are barred from carrying out their transactions, which many times are a part of their livelihood.

²² Access Now, Fighting censorship during the 2018 elections season,, <https://www.accessnow.org/fighting-censorship-in-2018-elections/>

²³ Internet connexion suspended a demonstration day in Mali

<https://www.rfi.fr/fr/afrique/20200713-tensions-mali-internet-r%C3%A9seaux-sociaux-perturb%C3%A9s-jeunesse> Accessed October 7th 2022

²⁴ Unrest in Mali

<https://www.leparisien.fr/international/contestation-au-mali-cinq-minutes-pour-comprendre-une-situation-explosive-27-07-2020-8359557.php> Accessed October 7th 2022

²⁵ <https://netblocks.org/reports/social-media-restricted-in-mali-amid-protests-against-president-QyKpdX8D>

²⁶ <https://www.jeuneafrique.com/350119/politique/mali-a-suspendu-reseaux-sociaux/>

31. These Internet shutdowns are a violation of international human rights law, and in 2020, the UN Human Rights Council issued a resolution on the right to freedom of opinion and expression “strongly condemn[ing] the use of internet shutdowns to intentionally and arbitrarily prevent or disrupt access to or dissemination of information online” and called on governments to refrain from such acts.²⁷

Freedom of information and censorship of content online

32. Mali does not possess a comprehensive law on the right to information although some laws do provide for access to public information. Due to the vagueness of these laws, media practitioners have faced hurdles when attempting to access information, especially regarding military operations.²⁸

33. Access to information has been partially controlled and regulated in the Republic of Mali since the military coup of August 2020, and a number of websites are still blocked. Notably, the websites of RFI²⁹ (Radio France International) and the TV channel France24 can only be accessed through using a VPN (Virtual Private Network) to circumnavigate the restrictions.

34. The denial of access to these websites in the Republic of Mali after a court ruling took effect withdrawing the authorization to broadcast of these foreign radio stations and TV channels, preventing several thousands of Malian citizens from accessing the information from the banned sources.

35. Many online press professionals in Mali operate in fear of harassment and persecution under the cybercrime law which has constantly caused a chilling effect on the practice of journalism and online speech.

Privacy and Data Protection

²⁷ UN Human Rights Council, Freedom of opinion and expression, 2020, UN Doc A/HRC/RES/44/12, <https://undocs.org/en/A/HRC/RES/44/12>.

²⁸ Freedom House, Freedom in the World Report, 2022, <https://freedomhouse.org/country/mali/freedom-world/2022>

²⁹ Appendix A file named ; Website restrictions which shows screenshots of these restricted websites when I tried to launch them without VPN, failing to do so and succeeding to launch them as soon I used a VPN.

36. The Constitution of the Republic of Mali guarantees the right to privacy under Article 6, which states that; "The domicile, domain (people and things), private and family life, secrecy of correspondence and communication shall be inviolable. These areas shall only be touched within conditions preordained by the law".
37. A comprehensive Data Protection *Law 2013-015* known as "*Law for the protection of Personally Identifiable Information (PII) in the Republic of Mali*" came into force on May 21st 2013. In addition to provisions of other laws, *Law 2013-015* is designed to provide persons living in Mali with adequate protection of their personally identifiable information against unauthorised and unlawful accesses and disclosure.
38. Provisions of other laws limit this protection, providing for exceptions of right to privacy or interception of communications to be allowable "on one or several of the grounds of national security, safety of the State, public security."
39. For example, Article 17 of the *Law 2013-015* stipulates that "The provisions of Article 15 of the current law don't apply : 1) To data collected and used in treatments done by the State or on its behalf and related to the safety of the State, the national defence, public security or having for object the enforcement of a criminal conviction or for safety measures ...; 2). " The third paragraph of Article 71 of the Criminal Procedure Code stipulates : " For the purposes of the investigation, the judiciary police officers, upon written authorization obtained from the district attorney or a judge can intercept phone calls, electronic mails, and other mails of the suspects and of any other person related to them".
40. Article 71 further shows that under the Criminal Procedure Code, judicial approval is required for wiretapping and other forms of technical surveillance. No evidence has been made public to demonstrate that the intelligence services have been complying with the legal requirements before conducting such large-scale interception and surveillance³⁰.
41. Articles 83 to 86 provide for surveillance through interception of communications, and service providers are required to cooperate with authorities, and to facilitate interception of communications.

³⁰ Republic of Mali, fear of communication interception by Intelligence Services
<https://maliactu.net/mali-votre-telephone-est-espionne-par-la-se/> Accessed October 9th 2022

42. It's important to acknowledge that Mali, has been facing jihadist extremists' violence since 2012. Although a State of Emergency has not been declared officially, the security and intelligence services have been given more flexibility to conduct operations needed to secure the country and its inhabitants, in the respect of Human rights as government officials stated at multiple occasions.³¹
43. From 2017, recordings³² and intimate videos or photos of activists critical to the government, political opponents and former administration officials who had fallen out with the regime were leaked on social media platforms to discredit or humiliate them. However no one has claimed responsibility for the leaks³³ and no one has so far been held accountable.
44. Article 4 of the Cyber-crime Law 2019-056 states : "Anyone who accesses or attempts to access fraudulently all or part of a data system, is punished by imprisonment from two months up to one year and a fine from 200.000Fcfa (\$300.00) up to 5,000,000Fcfa (\$75,000.00) or both."

Recommendations

It is imperative for the government of Mali to uphold its human rights commitments, both on and offline. We urge that freedom of expression, media freedom, access to information, the right to privacy and digital rights in general become prominent issues in the upcoming UPR review cycle. We therefore recommend that the government of Mali:

1. End the practice of internet shutdowns and blocking of social media platforms and ensure that restrictions to the internet are consistent with fundamental human rights norms.
2. Revise and amend laws that unnecessarily restrict freedom of expression online including:
 - The *Law 2019-056, on suppression of cyber-crimes* by providing a clear definition of what constitutes an insult and reducing exorbitant fines against journalists.
 - *Press Law 00-046* by explicitly guaranteeing freedom of the press, and

³¹ See https://www.youtube.com/watch?v=ZXxuFsR_kE4

³² Republic of Mali, Leaked audio scandal

<https://www.djeliba24.com/mali-clement-dembele-et-madou-coulou-avoient-leur-plan-contre-ibk-et-karim-keita/?noamp=mobile> Accessed October 9th 2022

³³ Republic of Mali, Leaked video scandal

<https://niarela.net/maliweb-malijet-malijet-scandale-etienne-fakaba-sissoko-se-filme-la-main-sur-le-sexe-de-ses-eleves> Accessed October 9th 2022

media pluralism, and repealing obsolete provisions like criminal defamation.

3. Support low cost internet access particularly in the northern regions of the country where criminal activities create technical disruptions.
4. Enact a comprehensive access to information law, in line with Mali's international legal obligations.