

LEXOTA

Country Analysis

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Country Analysis: Angola

Last updated: July 2022

Angola currently has no specific legislation to counter disinformation.

However, its Penal Code includes two prohibitions on false information. Article 224 broadly prohibits the dissemination of false news, and Article 322 prohibits the dissemination of false or distorted statements that constitute propaganda against national defence and the armed forces. Both provisions are vague in scope and do not make clear how to determine what information is considered “false”. They also include aims that appear broader than those considered “legitimate” under international human rights standards, and include sanctions which could be disproportionate. These factors risk creating a chilling effect on freedom of expression.

We assess this law in further detail below.

NB: Articles 73, 74, 75 and 76 of the 2006 Press Law (Law No 7/06 of 15 May 2006) previously prohibited the dissemination of false news and false information; however, Article 6(2)(i) of Law No. 38/20, 11 November 2020 approving the new Penal Code explicitly revokes these articles and as such they are no longer in force.

Contents

General Speech Legislation

1. Penal Code

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 224 of the Penal Code provides for the crime of “abuse of press freedom.” Article 224(1) criminalises the dissemination of information that incites secession, the creation of organised crime, racial, tribal, ethnic and religious hatred. It also criminalises the intentional promotion of a campaign to persecute or defame, through the systematic and continuous dissemination of false information about facts, attitudes, professional, administrative or commercial performance of any person. It further criminalises the intentional publication of false news. Article 322 of the Penal Code prohibits propaganda against national defense and the armed forces. It covers the divulging of false statements or distortion of true facts that may disturb the actions of the armed forces. It is not clear how to determine what is considered “false”, whether in regards to news, facts, attitudes, professional, administrative or commercial performance, or “the distortion of true facts”. Articles 224 and 322 therefore fail to provide clear guidance for individuals and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by some subsections of Article 224(1) and Article 322 appear targeted at public order, national security and protecting the rights of others. However, Article 224(1)(e), which criminalises the intentional publication of false news, does not appear targeted at any particular aim. This lack of clarity suggests that restrictions may occur when not in pursuance of legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 224(1)(c) and (e) criminalise the intentional dissemination of false information or news, which would provide a defence for those without intention or knowledge. However, there is no explicit reference to this within the Penal Code. Article 322 criminalises propaganda against the armed forces when committed with and without intention, and provides different sanctions for each.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 224 is punishable by up to 6 months in prison or a fine. Violation of Article 322 may result in up to three years in prison or a fine, and up to five years during wartime. Violation of Article 322 may result in up to five years in prison when committed intentionally, and between two and six years during wartime. These sanctions may be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly the case where no harm actually occurs. It is also concerning that Article 224 appears to include a criminal offense of defamation, which would be disproportionate in and of itself. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Country Analysis: Benin

Last updated: December 2023

Benin currently has no specific legislation to counter disinformation. However, two laws include strict restrictions on the dissemination of false information: Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin and Loi N° 2015-07 du 20 Mars 2015 portant code de l'information et de la Communication en République du Bénin.

These laws raise serious concerns from a human rights perspective. They are both ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech, and Loi N° 2017-20 in particular allows for restrictions in pursuance of aims which would not be considered "legitimate" according to international human rights standards. Both laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws in detail below. We also include three examples of how Loi N° 2017-20 is being enforced in practice.

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General Speech Legislation

1. [Loi N° 2015-07 du 20 Mars 2015 portant code de l'information et de la Communication en République du Bénin](#)
2. [Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin](#)

Law enforcement action

1. [Arrest of Journalist Virgile Ahouansè \(Jan 2023\)](#)
2. [Arrest of Casimir Kpedjo, April 2020](#)
3. [Arrest of journalist Aristide Hounkpèvi, January 2020](#)
4. [Arrest of journalist Ignace Sossou, December 2019](#)

General Speech Legislation

[Loi N° 2015-07 du 20 Mars 2015 portant code de l'information et de la Communication en République du Bénin](#)

Is there clarity over the precise scope of the law?

No. Article 266 prohibits “the publication, distribution or reproduction, by any means whatsoever, of false news, fabricated, falsified or falsely attributed documents to third parties when, made in bad faith, it will have disturbed the public peace [...] or is likely to undermine the discipline and morale of the armed forces”. It is not clear how to determine whether news or documents are false, or how it would be determined whether the sharing of such news or documents would be likely to disturb the public peace or undermine the discipline and morale of the armed forces. Article 266 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective harm might be caused. The aims pursued under Article 266 appear to be directed at protecting public order and national security, which are legitimate aims. However, there is a risk that illegitimate restrictions might be pursued under the ambiguous wording of “discipline and morale of the armed forces”, which could be interpreted in a broad sense to include illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 266 prohibits the dissemination of false news when done “in bad faith”, which implies the intention to deceive.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. It will be decided by a court.

Are any responses or sanctions proportionate?

Potentially. Article 266 imposes a penalty of imprisonment of six months to three years and/or a fine of 500,000 to 2,000,000 CFA francs (USD 840 to 3,360). If the maximum prison and fine sentence were applied without considering the circumstances of the offence or the actual harm caused, these penalties would be disproportionate. The minimum penalties may also be disproportionately heavy in cases where no harm actually occurs. If made in pursuit of an illegitimate aim, any sanctions would be disproportionate.

Are intermediaries liable for third party content?

N/A.

[Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin](#)

Is there clarity over the precise scope of the law?

No. Article 550(3) broadly criminalises the dissemination of false information against a person. It is not clear how to determine whether information is “false” and the scope of what is considered to be information “against a person”. Article 550(3) thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 550(3) are unclear as there is no requirement for any intention to cause harm, or any particular harm to be caused. This is particularly troublesome as there is no indication that a legitimate aim is being pursued.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Article 550(3) does not specify that the act must be committed intentionally or with knowledge. It only specifies that the dissemination has to be “against a person”.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 550(3) may result in a fine of 500,000 CFA to 1,00,000 CFA and between one to six months of imprisonment, or both. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Law enforcement action

Arrest of Journalist Virgile Ahouansè (Jan 2023)

Virgile Ahouansè, news director of internet radio station Crystal News, was arrested and detained for 48 hours in December 2022 in relation to an investigation he had published on alleged extrajudicial killings by Beninese police. He was charged with spreading false news aimed at disturbing the peace and sentenced in June 2023 by Benin's Special Court for Economic Offences and Terrorism (CRIET) to a fine of 200,000 CFA francs and a year's suspended prison sentence.

Does the action have a legal basis?

Unclear. Ahouansè was reportedly charged and sentenced with spreading false news in violation of Article 550 of the Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin. However, this article provides for a penalty of only one to six months for the publication of false news (whereas longer prison sentences of up to two years are provided for harassment or causing emotional distress through electronic communications). The grounds on which Ahouansè was sentenced to one year in prison are therefore unclear.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. While a copy of Ahouansè's report is not publicly available and so we cannot verify the truth of his reporting, it seems likely that the action was taken to silence public interest reporting that is critical of the police rather than in pursuit of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Arrest of Casimir Kpedjo, April 2020

Casimir Kpedjo, the managing editor of the newspaper Nouvelle Economie, was arrested and charged with publishing false information in April 2020. These charges stem from articles shared by Casimir on Facebook which alleged that the government was nearly 725 million USD in debt and in breach of a 2019 finance law.

Does the action have a legal basis?

Yes. The editor was arrested and charged for violating Article 550(3) of the Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the actions taken against the editor appear to be politically motivated and not directed towards an objectively legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. These actions were not made in pursuance of a legitimate aim so any response would be unnecessary and disproportionate.

Arrest of journalist Aristide Hounkpèvi, January 2020

In January 2020, journalist Aristide Hounkpèvi was arrested at his home for allegedly publishing false news via social media. He had previously tweeted about the possibility that the Minister of Foreign Affairs of Benin might be appointed as ambassador to Paris. He was kept in custody for five days before being released for lack of evidence.

Does the action have a legal basis?

Yes; reports indicate that the action was taken under alleged violation of Article 550(3) of Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. There was no evidence that Hounkpèvi's social media posts included false information or posed any real threat to individuals' rights or public safety, and as such Hounkpèvi's case was dismissed by the prosecutor. The action is a clear attempt to intimidate a journalist.

Is the action necessary and proportionate in all the circumstances?

No. The action does not pursue a legitimate aim, therefore is neither necessary nor proportionate.

Arrest of journalist Ignace Sossou, December 2019

Beninese journalist Ignace Sossou was arrested and charged in December 2019 for "harassment by means of electronic communications". This action stems from tweets the journalist made at a workshop on disinformation that both Sossou and the prosecutor attended in which the prosecutor made critical comments on Beninese laws. Sossou was eventually released in June 2020 after six months of detention.

Does the action have a legal basis?

Yes. Sossou was charged and convicted under Article 550(3) of the Loi N° 2017-20 du 20 Avril 2018 portant code du numérique en République du Bénin.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. Here, reports clearly indicate that the journalist was prosecuted due to the critical comments they shared online, which had no risk of causing any public harm. The actions were clearly targeted at silencing the journalist and would not constitute a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. The action was made in pursuance of an illegitimate aim and thus any response would be unnecessary and disproportionate.

Country Analysis: Botswana

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Botswana currently has no specific legislation to counter disinformation. However, there are laws and policies under which someone could—theoretically—be prosecuted for spreading disinformation: the Penal Code, the Communications Regulatory Authority Act, 2012, the Emergency Powers (COVID-19) Regulations, 2020, and the Cybercrime and Computer Related Crimes Act, 2018.

All four laws raise concerns from a human rights perspective. They are all loosely defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and some appear to pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting content which causes “annoyance, inconvenience or anxiety to another person” (see Communications Regulatory Authority Act, 2012).

These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression. We assess these laws individually in more detail below. We also include some data on the enforcement of these laws in response to disinformation.

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General Speech Legislation

1. [Communications Regulatory Authority Act, 2012](#)
2. [Cybercrime and Computer Related Crimes Act, 2018](#)
3. [Emergency Powers \(COVID-19\) Regulations, 2020](#)
4. [Penal Code](#)

Law enforcement Action

1. [Arrest of three individuals, April 2020](#)
2. [Man charged with publishing false information on social media, July 2020](#)

General Speech Legislation

Communications Regulatory Authority Act, 2012

Is there clarity over the precise scope of the law?

No. Section 55(b) makes it illegal for an individual to send a message “which he or she knows to be false” with the purpose of causing “annoyance, inconvenience or anxiety to another person”. It is not clear how to determine what is “false” and the potential scope of what is considered annoying, inconvenient or intended to cause anxiety is excessively broad. The threshold of committing this offence in terms of the harm caused is thus very low. Section 55(b) therefore does not provide sufficient guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While Section 55(b) may be legitimately aimed at protecting the rights of others, the low threshold of what could be considered annoying, inconvenient, or causing anxiety suggests that not all restrictions would be.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 55(b) requires the individual to know that the information is false.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 55(b) may result in a fine between P10,000 and P50,000, or imprisonment for a term of between one and four years (or both). If the maximum penalties were imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as

to how these penalties are imposed in practice, which makes it difficult to determine whether they are.

Are intermediaries liable for third party content?

(N/A)

Cybercrime and Computer Related Crimes Act, 2018

Is there clarity over the precise scope of the law?

No. Section 18 criminalises offensive electronic communications. While this provision does not directly address disinformation, it has been used to prosecute individuals alongside other offences of disinformation in practice. It provides that “a person who willfully, maliciously or repeatedly uses electronic communication of an offensive nature to disturb or attempt to disturb the peace, quiet or privacy of any person with no purpose to legitimate communication” is guilty of an offence. It is unclear what is considered to be “offensive in nature” or what might constitute disturbance of the peace or quiet. Additional guidance is needed on what is meant by a “legitimate communication” or how this could be determined. Section 18 does not, therefore, provide clear guidance for individuals and could provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While restrictions in the pursuance of public order, or the rights of others, may be legitimate, it is unlikely that disturbing the “peace, quiet or privacy” of a person would fall within these aims. The potential scope of these terms is therefore broader than what is normally considered to fall under public order or the rights of others.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. The truth or falsity of the communication is irrelevant for Section 18.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 18 may result in a fine not exceeding P20,000 or to imprisonment for a term not exceeding one year, or to both. If content or speech is restricted in pursuance of an illegitimate aim, then any response would be disproportionate. If legitimate aims are pursued, the proportionality of the sanctions would depend on the specific circumstances of the offence. If the maximum fines and longest prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. In the absence of information as to how these penalties are imposed in practice, it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/a

Emergency Powers (COVID-19) Regulations, 2020

Is there clarity over the precise scope of the law?

No. Regulation 31(3) criminalises the publication of any statement with the intention of deceiving another person about COVID-19, the COVID-19 infection status of a person, or any measure taken by the government to address COVID-19. It is unclear what is included in the scope of "any measure taken by the government to address COVID-19". Regulation 31 therefore does not provide sufficient guidance for individuals to conform their behaviour and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Yes. Speech is restricted only where it is in pursuance of the protection of public health, which is a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Regulation 31(3) requires an intention to deceive, so the issue of truth is irrelevant.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Section 31 may result in a fine up to or exceeding the maximum financial penalty, or imprisonment for a period not exceeding twenty years, or both. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Penal Code

Is there clarity over the precise scope of the law?

No. Section 59(1) of the Penal Code criminalises the publication of, “any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace”. It is not clear how to determine whether a statement, rumour or report is “false” or the scope of something that is “likely to cause fear and alarm to the public or to disturb the public peace”. Section 59(1) therefore does not provide sufficient guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. Section 59 of the Penal Code falls under “Offences Against Public Order” and can be assumed to be aimed at protecting public order and safety. However, while restrictions in the pursuance of “public order” may be legitimate, it is unclear whether public order is synonymous with “public peace” as described in Section

59. If the scope of “public peace” is the same or narrower than “public order”, then restrictions may be in the pursuance of a legitimate aim. If the scope of “public peace” is broader than “public order” or requires a lower threshold, then it would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 59(2) of the Penal Code provides a defence for the accused if they can prove that, prior to publication, they “took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true”.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Section 33 of the Penal Code indicates that a violation of Section 59 may result in a punishment of imprisonment for up to two years, or a fine, or both. If these penalties are imposed without taking into account the circumstances of the offence, then they would be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Law Enforcement Action

Arrest of three individuals, April 2020

Three individuals, including the opposition spokesperson Justice Motlhabane, have been arrested and charged for publication of fake news related to COVID-19. These individuals have been accused of intending to deceive others of the true intentions of the government in addressing COVID-19. Two of the articles in question suggested that the President had declared a lengthy state of emergency so that he could deal with his

political rivals and business competitors. Another article questioned why individuals infected with COVID-19 in hospital were not developing further complications or recovering.

A police spokesperson stated that the three men had published an “offensive statement against the government” as well as “degrading and maligning the leadership of the country”. However, these individuals and their lawyers argue that the arrests were politically motivated, and that the government is attempting to criminalise legitimate expression. Justice Motlhabane has also [gone on record](#) to say that the police tortured him and questioned him about a potential coup against the government.

Does the action have a legal basis?

Yes. The three individuals were arrested and charged for publishing statements with intention to deceive persons about COVID-19, contrary to Regulation 31 of the Emergency Powers (COVID-19) Regulations, and for offensive electronic communication, contrary to Section 18 of the Cybercrime and Computer Related Crimes Act, 2018. Some reports suggest that Justice Motlhabane was charged for violation of the Penal Code as well.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the actions were likely pursued for political purposes and that the arrests were not directly at tackling an objectively legitimate aim such as public health.

Is the action necessary and proportionate in all the circumstances?

No. The arrests and charges filed against the three individuals were most likely politically motivated and therefore illegitimate. No response would be considered necessary or proportionate in these circumstances.

[Man charged with publishing false information on social media, July 2020](#)

Victor Moyo was sentenced to a fine of P2000 (USD 170) or two months imprisonment in default of payment in July 2020 for publishing false information on social media. This

sentence stems from a post Victor Moyo's made on social media alleging that police officers had raped a Zimbabwean illegal immigrant and later killed her husband.

Does the action have a legal basis?

Yes. Victor Moyo was charged and sentenced for violating Section 18 of the Botswana Cybercrime and Computer Related Crimes Act, 2018.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. In this case, the Principle Magistrate noted that the false communication was disturbing and had the potential to tarnish the image of police. While this would be indicative of illegitimate aims, the Magistrate went on to claim that they were also concerned about misleading information intended to cause panic, fear and alarm. If this action was taken in response to concerns about public order then this action may have been in pursuance of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate. However, even if the action was taken in pursuance of a legitimate aim, it would still be disproportionate as the court's concerns were simply hypothetical in nature and there was no actual panic, fear or alarm caused, only the possibility. A criminal conviction and fine with the possibility of imprisonment would not be a proportionate response.

Country Analysis: Burkina Faso

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Burkina Faso currently has no specific legislation to counter disinformation. However, there are laws that include restrictions on online disinformation: the Penal Code, the Legal Regime of the Online Press and the Legal Regime of Audiovisual Communication.

These laws raise concerns from a human rights perspective. The scope of prohibited expression is not clearly defined, potentially providing authorities with power to restrict a wide range of speech; and the aims they pursue are not clearly legitimate ones according to international human rights standards. Furthermore, the penalties for sharing disinformation are potentially disproportionate in their severity.

We assess these laws in detail below.

Contents

General Speech Legislation

1. Law 058-2015/CNT on the Legal Regime of the Online Press in Burkina Faso, (amended by Law 086-2015/CNT) September 2015
2. Law No. 059-2015 on the Legal Regime of Audiovisual Communication in Burkina Faso (amended by Law 087-2015/CNT) September 2015
3. Penal Code

Law enforcement Action

1. Suspension of La Chaine Info, June 2023
2. Media Group suspended for dissemination of fake news, June 2021

Government Pressure

1. Expulsion of Le Monde and Libération correspondents, April 2023
2. Suspension of outlet Jeune Afrique, September 2023
3. Suspension of Radio France Internationale, December 2022

General Speech Legislation

Law 058-2015/CNT on the Legal Regime of the Online Press in Burkina Faso, (amended by Law 086-2015/CNT) September 2015

Is there clarity over the precise scope of the law?

No. Article 86 prohibits the “publication or reproduction, through the online press, of false news, fabricated, falsified or misleading documents, likely to undermine public peace”. It is not clear how to determine whether news or documents are false, or how it would be determined whether the sharing of such news or documents would be likely to undermine public peace. This article therefore fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The restriction in Article 86 appears to pursue the legitimate aim of public safety, however it is possible that the term “public peace” may be interpreted more broadly to allow for restrictions pursuing potentially illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Unclear. While the law refers to the Penal Code in the determination of appropriate penalties, which would be decided by a court, journalists and media organisations have also been held accountable for violations of this law by the Superior Council of

Communications (CSC) under administrative proceedings. The CSC is a government body and is therefore not an independent and impartial authority.

Are any responses or sanctions proportionate?

Potentially. Article 86 states that dissemination of false news “is punished in accordance with the provisions of the Penal Code”. The Penal Code provides for a fine of 1,000,000 to 10,00,000 FCFA and between one to five years of imprisonment (Article 312-13). In practice, however, violations have also resulted in suspensions by the CSC, which while not mentioned as penalties in the text of the law, are provided for in separate legal instruments. If penalties, whether penal or otherwise, are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs.

Are intermediaries liable for third party content?

(N/A)

[Law No. 059-2015 on the Legal Regime of Audiovisual Communication in Burkina Faso \(amended by Law 087-2015/CNT\) September 2015](#)

Is there clarity over the precise scope of the law?

No. Article 130 prohibits the “dissemination or reproduction of false, fabricated, falsified or misleading news, likely to undermine public peace”. It is not clear how one would determine what constitutes “false, fabricated, falsified or misleading news”, or how to ascertain whether the sharing of such information would be likely to disturb public peace. This article therefore does not provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The restriction in Article 130 appears to pursue the legitimate aim of

protecting public safety, however it is possible that the term “public peace” may be interpreted more broadly to allow for restrictions pursuing potentially illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Unclear. While the law refers to the Penal Code in the determination of appropriate penalties, which would be decided by a court, journalists and media organisations have also been held accountable for violations of this law by the Superior Council of Communications (CSC) under administrative proceedings. The CSC is a government body and is therefore not an independent and impartial authority.

Are any responses or sanctions proportionate?

Potentially. Article 130 states that dissemination of false news “is punished in accordance with the provisions of the Criminal Code”, while the Criminal Code provides for a fine of 1,000,000 to 10,00,000 FCFA and between one to five years of imprisonment (Article 312-13). In practice, however, violations have resulted in suspensions by the CSC, which – while not mentioned as penalties in the text of the law – are provided for in separate legal instruments. If penalties, whether penal or otherwise, are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs.

Are intermediaries liable for third party content?

N/A

[Penal Code](#)

Is there clarity over the precise scope of the law?

No. Article 312–13 of the Penal Code criminalises the intentional dissemination of false information which is likely to make others believe that the destruction of property or an attack against persons has already occurred or is likely to take place. It is unclear what is included in the scope of information that pertains to the destruction of property or an attack against persons. Article 312–13 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 312–13 appear to be targeted at public order and national security as this particular offence is located within a section of the Penal Code on “Crimes and Minor Offences against the Security of the State”. However, the broad scope of speech that potentially pertains to the destruction of property or an attack against persons suggests that restrictions may fall outside the scope of what is normally considered “public order”.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 312–13 requires that the offence be committed “intentionally”. While it is unclear whether this simply means intention to send the information, or a specific intention to send false information, it is likely that the court will assess the authors intention to deceive.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Article 312–13 may result in a fine of 1,000,000 to 10,00,000 FCFA and between one to five years of imprisonment. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Law Enforcement Action

Suspension of La Chaine Info – June 2023

In June 2023, the Conseil Supérieur de la Communication suspended French television channel La Chaine Info for three months, accusing the outlet of spreading ‘false information’. This is in response to a report published by LCI journalist Abnousse Shalmani on deadly violence and attacks in the country in the preceding months. The CSC said that Shalmani’s statements were baseless and exaggerative, and held LCI responsible for allowing such “erroneous information” to be disseminated through its channel.

Does the action have a legal basis?

Yes. The CSC states in its [decision](#) that Shalmani’s remarks were made in violation of Article 312-13 of Burkina Faso’s Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Legitimate aims include respect for the rights or reputations of others and for the protection of national security, public order, public health or morals. Without access to the report in question, it is difficult to verify whether Shalmani’s claims were indeed exaggerated or false; and if they were, they may indeed have posed a risk to public order or public safety. However, it is more likely that the action was taken in response to Shalmani’s praise of the French army and criticism of the military junta government’s handling of the outbreak of violence across Burkina Faso, merely to silence political criticism. This does not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

Unclear. Without access to the report in question, it is difficult to assess whether a three-month suspension was proportionate to the allegedly false information published. If, however, the information was true, the aim would have been illegitimate and therefore no action taken would be necessary or proportionate.

Media Group suspended for dissemination of fake news, June 2021

In June 2021, the Superior Council of Communication (CSC) suspended the Omega Media Group's radio and TV programmes for 5 days, permitting them only to broadcast music. The Omega Group had previously broadcast news about terrorist attacks perpetrated on the night of June 4 to 5 in a village in the province of Yagha, via their radio and television channels, social media and website. The CSC alleged that there were several mistakes in their news reporting.

Does the action have a legal basis?

Yes, the [decision](#) of the CSC makes reference to the Law No. 059-2015 on Audiovisual Communication.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others. The CSC stated that this false information caused panic among the populations, and that their action was aimed at protecting public safety. However, facts that the CSC stated were false were later contested as true by the village's mayor, and it seems from external reports that Omega's broadcast contained only minor errors. If true, this would indicate that the restriction was motivated by a desire to cover up government negligence with respect to ongoing violence, which would not be a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

Potentially. No fines or prison sentences were levied, and the suspension was limited to five days. However, before the suspension Omega Group had already taken steps to correct the false information, potentially demonstrating willingness to cooperate and lack of intention to cause harm. Civil society groups like RSF have argued, therefore, that the suspension was not proportionate. If the action was taken in pursuit of an illegitimate aim, no sanctions or penalties would be proportionate.

Government Pressure

Expulsion of Le Monde and Libération correspondents – April 2023

Two foreign correspondents from Le Monde and Libération newspapers were expelled from Burkina Faso in April 2023, in response to reporting relating to allegations of training of child soldiers in Burkina Faso. The junta-led government described the investigation as a “manipulative” attempt to tarnish the image of Burkina Faso.

Does the action have a legal basis?

No. There was no legal basis cited for the expulsion of the two journalists by the junta. The Law on the Legal Regime of the Online Press and the Law on the Legal Regime of Audiovisual Communication do not explicitly provide for suspensions or expulsions as penalties. While violations of these laws have previously resulted in suspensions provided for in separate legal instruments, there appears to be no legal basis in the case of these correspondents.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others; but here it appears that the two journalists were expelled in order to undermine and discredit their reporting on the issue of child soldiers and criticism of the junta.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Suspension of outlet Jeune Afrique – September 2023

Burkina Faso's junta-led government suspended French news outlet Jeune Afrique in September 2023 until further notice, in relation to an article the outlet published about the Burkina Faso army. Communications Minister Rimalba Jean-Emmanuel Ouedraogo

said in a statement that Jeune Afrique was spreading baseless allegations designed to “discredit” the national armed forces.

Does the action have a legal basis?

No. There was no legal basis cited for the suspension. The Law on the Legal Regime of the Online Press and the Law on the Legal Regime of Audiovisual Communication do not explicitly provide for suspensions or expulsions as penalties. While violations of these laws have previously resulted in suspensions provided for in separate legal instruments, there appears to be no legal basis in the case of this suspension.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others. In this instance it seems that the outlet has been suspended in order to silence political criticism, which is not a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary and proportionate.

Suspension of Radio France Internationale – December 2022

Burkina Faso’s military government suspended Radio France Internationale in December 2022, claiming that the outlet had broadcast false reports and given voice to armed groups. This action was taken in response to a broadcast by RFI featuring a statement from the leader of an armed group and mention of an alleged coup attempt against President Captain Ibrahim Traore, which the government denies.

Does the action have a legal basis?

No. No legal basis was cited for the suspension, and RFI claims that its broadcasting was suspended without prior notice and without implementation of appropriate procedures put in place by the national communications regulator.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech may only be restricted in pursuance of public order, public morals, public health, national security, or to protect the rights of others. This action is clearly an attempt to silence political criticism against the junta and is not in pursuit of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Country Analysis: Burundi

Last updated: July 2022

Burundi currently has no specific legislation to counter disinformation. However, it has two laws that include restrictions on disinformation: the Penal Code and the Press Law 2018.

Both laws raise concerns from a human rights perspective. For example, their scope is not fully clear, meaning that authorities could interpret them as giving them power to restrict a wide range of speech and this lack of clarity also means that they may result in restrictions being made in pursuit of aims considered illegitimate by international human rights standards. They also carry penalties which are potentially disproportionate in their severity, although this would depend on how they are applied in practice.

Furthermore, the Press Law 2018, does not ensure that determinations are made by an impartial judicial authority. In line with this, we have found evidence of it being applied in non-rights respecting ways in practice, that risk having a chilling effect on freedom of expression in the country.

We assess these laws and examples of recent enforcement in detail below

Contents

General Speech Legislation

1. Penal Code
2. Press Law 2018

Government Pressure

1. Revocation of BBC operating licence, March 2019

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 625 of the Penal Code prohibits an individual from knowingly spreading false rumours that are likely to alarm the public or incite them against the government. It also prohibits an individual from knowingly publishing or disseminating false news by any means with an intention to disturb public peace. It is not clear how to determine whether information is “false”, a “rumour” or the scope of what is considered “public peace”. Article 625 therefore does not provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Article 625 appear to be aimed at protecting public order and public peace and it is unclear whether “public peace” is synonymous with public order. If the potential scope of “public peace” is much broader than “public order”, then restrictions could be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 625 states that the individual must knowingly spread false rumours, or knowingly publish or disseminate false news with the intention to disturb public peace. It may therefore be inferred that an individual would not be convicted when they were unaware of the false nature of a particular message.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 625 may result in a fine between 50,000 and 200,000 Burundian Franc, and between one and three years of prison, or both. These sanctions would be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly relevant where no harm actually occurs. We currently lack information as to how these penalties are imposed in practice, so it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Press Law 2018

Is there clarity over the precise scope of the law?

No. Article 21 of the law requires the media to “convey information honestly and faithfully” in accordance with constitutional principles, legal and professional ethics. Article 54 further requires journalists to “demonstrate moral integrity and to be guided by facts” and “not to distort the texts and documents used to present the facts or comment on them” and “correct in a timely manner any published information which proves to be false or inaccurate.” Furthermore, Article 62 obliges media houses to avoid publication of any content that is contrary to morality, or that could threaten public order. Article 77 also empowers the National Council for Communication (CNC) to suspend or prohibit the distribution or the sale of printed newspapers, periodicals, or any other information medium, the broadcast of a show, the operation of a radio or television station or a news agency, when they do not comply with the law. These provisions are vaguely constructed in that they do not make it clear how to determine what is considered “false” or “inaccurate”. They fail to provide clear guidance for journalists and give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under this law appear to largely be aimed at protecting morality and public order, aims which would be considered legitimate. However, the lack of clear definitions means that governments could also use the law to restrict speech for illegitimate aims, such as silencing critics.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

This is unclear. Article 54 requires journalists to correct any published information which is proven to be false or inaccurate. It is not clear whether this is sufficient to avoid sanctions by the CNC under Article 77.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Unclear. Determinations are made by the CNC. The Council's decisions are appealable before the Administrative Court, but are otherwise decided by this body. The CNC is closely associated with the government and would not be considered impartial in its decisions.

Are any responses or sanctions proportionate?

No. Article 77 empowers the CNC to "suspend or prohibit or prohibit the use of a press pass (journalist pass or press card), the distribution or the sale of a printed newspapers, a periodical, or any other information medium, the broadcast of a show, the operation of a radio or television station or a news agency, when they do not comply with the law." These sweeping powers are disproportionate, particularly due to the lack of clarity surrounding the scope of the law.

Are intermediaries liable for third party content?

N/A.

Government Pressure

Revocation of BBC operating licence, March 2019

In March 2019, the CNC revoked the operating licence of the BBC on accusations of "airing a documentary that it said was false and damaged the country's reputation". The CNC also indefinitely suspended Voice of America, accusing it of employing a reporter who opposed the government. The license was [reinstated](#) in June 2021.

Does the action have a legal basis?

Yes. The decision of the CNC to revoke the operating license of the BBC and indefinitely suspend Voice of America was based on their powers under Article 77 of the Press Law 2018.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, reports clearly indicate that the actions were pursued for political purposes to shield the government from negative press.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and therefore unnecessary and disproportionate.

Country Analysis: Cape Verde

Last updated: July 2022

Cape Verde currently has no specific or general legislation to counter disinformation. While its [Press Law](#) (Law N° 73/VII/2010) states that, as a general principle, all entities operating in the field of press, press publishing or news dissemination must act transparently and not issue “misleading information”, this does not appear to constitute a prohibition itself nor correspond to a particular punishment.

Country Analysis: Cameroon

Last updated: July 2022

Cameroon currently has no specific legislation to counter disinformation. However, there are two laws that include restrictions on disinformation: Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon and Law N°2016/007 of 12 July 2016 on the Penal Code.

Both raise substantial concerns from a human rights perspective. They are all ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they include aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech which might “injure public authorities or national unity” (Penal Code). These laws also carry penalties which could be disproportionate in their severity and result in a chilling effect on freedom of expression.

We assess these laws individually in detail below.

We also include some examples of how these laws are being enforced in practice in ways which risk having a chilling effect on freedom of expression.

Contents

General Speech Legislation

1. Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon
2. Law N°2016/007 of 12 July 2016 on the Penal Code

Law enforcement Action

1. Arbitrary Detention of Journalist Paul Chouta, 2019–2021
2. Arrest of Journalist Mimi Mefo, November 2018
3. Detention of Journalist Emmanuel Matip, August 2020

Government Pressure

1. Government SMS warnings over spreading false news, April 2020
2. Threats from minister against NGOs and media, March 2020

General Speech Legislation

Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon

Is there clarity over the precise scope of the law?

No. Section 78(1) criminalises the use of electronic communications to “publish or propagate a piece of information without being able to attest its veracity or prove that the said piece of information was true”. It is unclear how to determine whether information is true or the scope of what information is covered by his law. Section 78(1) does not, therefore, provide clear guidance for individuals and could provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. Section 78(2) indicates that penalties provided for in 78(1) shall be doubled where the offence is committed with the aim of disturbing the peace. Restrictions made in pursuance of public peace may be legitimate if considered to be within the scope of “public order”. Still, the provision itself doesn’t give an indication of any legitimate aim. Further information is needed to determine the exact aims pursued under Section 78(1).

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. While Section 78 criminalises the publication of information without being able to attest its veracity or prove it is truth, this law does not account for circumstances where an individual reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. If content or speech is restricted in pursuance of an illegitimate aim, then any response would be disproportionate. If legitimate aims are pursued, the proportionality of the sanctions would depend on the specific circumstances of the offence.

Violation of Section 78(1) may result in a fine between CFA 5,000,000 and CFA 10,000,000, or imprisonment between six months and two years, or both. These penalties are doubled under 78(2) where the offence is committed with the aim of disturbing the peace. If the maximum fines and longest prison sentences, or both, are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. In the absence of information as to how these penalties are imposed in practice, it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

(N/A)

[Law N°2016/007 of 12 July 2016 on the Penal Code](#)

Is there clarity over the precise scope of the law?

No. Section 113 of the Penal Code criminalises the propagation of false information. It covers “false information liable to injure public authorities or national unity”. In parallel, Section 240 of the Penal Code criminalises false news, which covers anyone who “publishes or propagates by any means whatever any news without being able to prove either its truth or that he had good reason to believe it to be true”. It is not clear how to determine whether information is “false” or the scope of something that is “liable to injure public authorities or national unity”.

Sections 113 and 240 thus fail to provide clear guidance for individuals to conform their behaviour and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 113 that are aimed at public order and safety

would be legitimate. However, it is unlikely that injury to public authorities or national unity would fall within these aims. The potential scope of these terms is likely to be much broader than what is normally considered to fall under public order and would therefore be illegitimate.

Moreover, it does not appear that any legitimate aim is pursued by Section 240. There is no requirement for any intention to cause harm, or any particular harm to be caused. This is particularly troublesome as there is no attempt to even suggest that a legitimate aim is being pursued.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 240 provides a defence for individuals who are able to prove the truth of the information or demonstrate that they had good reason to believe it to be true. But Section 113 does not appear to account for instances where the individual reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 113 may be punished by imprisonment for three months to three years, and a fine between CFA 100,000 to CFA 2,000,000. Violation of Section 240 may be punished by imprisonment for one to five years, and a fine between CFA 20,000 and CFA 10,000,000. The penalty for Section 240 shall be doubled for anonymous publication or propagation. If the maximum fines and prison sentences are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. This is particularly relevant for an anonymous publication, or in situations where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Law Enforcement Action

Arbitrary Detention of Journalist Paul Chouta, 2019–2021

On 28 May 2019, Paul Chouta was arrested in Yaounde in response to a defamation complaint filed by French Cameroonian writer Calixthe Beyala, who claimed that Chouta had made defamatory allegations about her personal life on social media and on his news page Le TGV de l'info. Chouta was charged with defamation, spreading false news, and hate speech on 10 June, but the hate speech charge was dropped the following day. Chouta was then detained without trial for 23 months. In May 2021, he was finally sentenced to 23 months in prison – which he had already served – and ordered to pay a fine of 160,000 CFA francs and a further 2 million CFA francs in damages (a total of some 3,200 euros). He was released on 20 May 2021.

Does the action have a legal basis?

Yes. Chouta was charged under Section 240 of the Penal Code, which provides for up to five years in jail and a fine of 1 million CFA for the sharing of false news.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others. While on its face the action seems to have been taken to defend the rights and reputation of complainant Calixthe Beyala, the action was actually directly aimed at silencing government criticism. Prior to the arrest, Chouta reported on topics critical of the government such as the arrest of a former Cameroonian government official and abuse allegations against police and a pro-government journalist. Chouta was frequently the target of threats over such stories.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Without a legitimate aim, no action would be necessary or proportionate.

Arrest of Journalist Mimi Mefo, November 2018

On 7 November 2018, Équinoxe TV's deputy editor-in-chief and presenter Mimi Mefo was arrested for propagating false information and threatening state security. This action

was taken in response to a tweet she posted claiming that the Cameroonian military was behind the death of an American missionary. She was detained for several days before charges against her were dropped and she was released.

Does the action have a legal basis?

Unclear. Mefo was summoned on suspicion of publishing false news, but then detained on the basis of having undermined state security. Sources claim that Mefo was arrested for “publishing and propagating information that infringes on the territorial integrity of the Republic of Cameroon”, but it is unclear whether such charges were brought under Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon, the Penal Code, the 2014 Anti-Terrorism law, or under no law at all.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others. While law enforcement claimed that Mefo’s tweet had undermined national security, Mefo maintained that this incident was merely one of many incidents of harassment and intimidation by law enforcement for her reporting, and her arrest has attracted international criticism for arbitrary detention and journalist intimidation.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

[Detention of Journalist Emmanuel Matip, August 2020](#)

On 17 August 2020, Emmanuel Mbombog Mbog Matip, director of the private newspaper CliMat Social, was arrested and detained in relation to his coverage of two stories – one about an alleged coup plot, and the other about the theft of luxury cars from Togo. On 7 September, he was charged before a military court of “spreading fake news” and detained for 16 months before finally being acquitted and released in December 2021 due to a lack of evidence.

Does the action have a legal basis?

Yes. Matip was charged under Section 74 of the Penal Code relating to “punishment and responsibility” and under Section 78 of the 2010 Law on Cybersecurity and Cybercrime in Cameroon, which prohibits the sharing of unverified information.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights of others. While Cameroonian officials claimed that Matip’s coverage of the alleged coup attempt threatened national security, there was no evidence that the stories would cause any objective public harm, and he had already received several threats and been the target of an intimidation attempt shortly before his arrest. It is clear that his arrest and imprisonment was in order to silence political dissent, which does not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Government Pressure

Government SMS warnings over spreading false news, April 2020

In April 2020, the National Agency for Information and Communication Technologies sent SMS messages to ICTs users in the country which warned about penalties for spreading false news.

Does the action have a legal basis?

Yes. The SMS messages were sent as a reminder of the penalties for violating Article 78(1) of Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially, depending on whether the prosecution of any individuals is considered to be within the scope of “public order” or another legitimate aim. The legitimacy of the action

should be evaluated as provided for in our analysis of Article 78(1) of Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon.

Is the action necessary and proportionate in all the circumstances?

Potentially, depending on whether the prosecution of any individuals is in pursuance of a legitimate aim and whether the circumstances of the offence are considered when applying sanctions. If any individuals were ultimately prosecuted, the necessity and proportionality of the action should be evaluated as provided for in our analysis of Article 78(1) of Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon.

Threats from minister against NGOs and media, March 2020

In March 2020, the Minister of Territorial Administration, Paul Atanga Nji, threatened international NGOs and domestic media outlets over the publication and dissemination of "false" reports about the ongoing Anglophone Crisis. The Minister accused the NGOs, including Human Rights Watch, of using local media outlets to spread false information. The Minister also claimed that the NGOs received over CFA 05 Billion from "réseaux occultes à l'intérieur et à l'extérieur du Cameroun" (undercover networks inside and outside the country) to destabilise the government.

Does the action have a legal basis?

Yes. Minister Paul Atanga Nji specifically noted that the dissemination of false information was an offence under the Penal Code. He further added that media outlets had an obligation to verify the truth of any publication.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the threats made against the NGOs and local media outlets were clearly done for political purposes, specifically to discredit criticism of the government. This is not an objectively legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. These threats are not necessary or proportionate in any circumstance.

Country Analysis: Central African Republic

Last updated: July 2022

The Central African Republic currently has no specific legislation to counter disinformation. However, Law N° 20.027 on Freedom of Communication in the Central African Republic includes restrictions on disinformation.

This law raises some concern from a human rights perspective. Its scope is not sufficiently defined, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it may pursue aims which would not be considered “legitimate” due to their vague construction. It also carries penalties which are potentially disproportionate in their severity.

We assess this law in detail below.

Contents

General Speech Legislation

1. Loi N°20-27 relative à la liberté de la communication en République Centrafricaine

Government Pressure

1. Two news sites blocked, February 2021

General Speech Legislation

Loi N°20-27 relative à la liberté de la communication en République Centrafricaine

Is there clarity over the precise scope of the law?

No. Article 123 prohibits false news and material which is made-up, falsified or falsely attributed to third parties which disturbs the “public peace” or “is likely to shake the discipline or the morale of the armies or to hinder the war effort of the nation”. It is not clear how to determine what constitutes “false” or “falsified” information, nor what types of speech or content would be considered “likely to shake the discipline or the morale of the armies or hinder the war effort of the nation”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Unclear. Article 123 specifies that false information is only prohibited if it “disturbs the public peace” or “is likely to shake the discipline or the morale of the armies or to hinder the war effort of the nation”. While the law appears to be directed at public peace and national security, terms such as “discipline or the morale of the armies” and “hindrance of the war effort” are likely to fall outside the scope of “public order” and may therefore constitute illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Article 144 imposes a fine of 50,000 to 250,000 FCFA (USD 86 to 430) for disseminating false or misleading information as provided for in Article 123. If the maximum fine is imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. This is particularly the case where an

individual reasonably believes in the information to be true, where there is no intention to cause harm, and where no harm actually occurs.

Are intermediaries liable for third party content?

(N/A)

Government Pressure

Two news sites blocked, February 2021

On 16 February 2021, the Ministry of Posts and Telecommunications instructed internet operators to block the websites of two newspapers, Corbeau News and Le Tsunami, until further notice. The minister said this was because they had spread “hate speech” and fake news amid a “security crisis.” The newspapers were given no warning of the action, and the entire websites were blocked and no specific articles identified as the cause of the action.

Does the action have a legal basis?

No, no legal provision was cited.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. Here, authorities asserted that the news sites were suspended for disseminating “hate speech” and “false information” in the context of a “security crisis”. Yet no reference was made to any specific evidence of such crimes, nor any lawful provision cited, indicating that it is more likely that this action was aimed at silencing political dissent and criticism of the President’s relationship with Russian forces in CAR. This point of view is also held by the managing editor of Corbeau News who claims to have been asked by Russian forces to change his editorial line, and threatened by a senior official of the Central African Republic’s army.

Is the action necessary and proportionate in all the circumstances?

No. Without a legitimate aim, any response would be unnecessary and disproportionate.

Country Analysis: Chad

Last updated: June 2022

Chad currently does not have specific legislation to counter disinformation. However, it has laws that include potential restrictions on disinformation: Law N° 020/PR/2018 on Audio-visual Communication, Law No. 025/PR/2018 on Press and Online Media, and Law N° 014/PR/2014 on eCommunications.

These laws raise concerns from a human rights perspective. Their scope is not fully clear, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; this lack of clarity also means that they may result in restrictions that pursue illegitimate aims according to international human rights standards. These laws also carry penalties which are potentially disproportionate in their severity, although this would depend on how they are applied in practice.

We assess these laws in detail below along with examples of their enforcement.

Contents

General Speech Legislation

1. Law N° 014/PR/2014 on eCommunications in Chad
2. Law N° 020/PR/2018 on Audio-visual Communication
3. Order N° 025/PR/2018 Regulating the Written Press and Electronic Media, passed by Law N° 31/PR/2018 of December 3, 2018

Law Enforcement Action

1. Newspaper and journalist suspended for 1 year, June 2020
2. Newspaper given formal notice, July 2021

Government Pressure

1. Government Press Release on Disinformation, April 2020
2. Suspension of Al-Chahed journal

General Speech Legislation

Law N° 014/PR/2014 on eCommunications in Chad

Is there clarity over the precise scope of the law?

No. Article 115 prohibits any person from knowingly transmitting false or misleading distress signals or calls on the radio. It is unclear how “false” or “misleading” is determined, and the exact scope of what is distressing. Article 115 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Article 115 appear to be aimed at protecting public order. However, it is otherwise unclear what aims are pursued through these restrictions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. The offence provided for in Article 115 requires knowledge, suggesting that the authorities would consider the intention or knowledge of the individual.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Violation of Article 115 may result in imprisonment between six months to one year, and a fine between one million and ten million FCFA, or both. These sanctions would be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. We currently lack information as to how these penalties are imposed in practice, so it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

(N/A)

[Law N° 020/PR/2018 on Audio-visual Communication](#)

Is there clarity over the precise scope of the law?

No. Article 81 of the law prohibits any false or misleading audiovisual advertising comprising false allegations, indications or presentations that are likely to mislead. Article 34 further requires that all broadcasts do not contain indications or presentations that are false or likely to mislead consumers. It is not clear how to determine whether information is “false” or “likely to mislead”. Article 81 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Article 81 appear to be partly aimed at protecting the rights and reputations of others. However, it is unclear what other aims are pursued through these restrictions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. The law empowers the High Authority for Media and Audiovisual (HAMA) to make determinations under the law.

Are any responses or sanctions proportionate?

Potentially. This law extends broad powers to the HAMA to sanction entities for a lack of compliance with their obligations. Article 57 provides the HAMA with the ability to

request the Minister of Communications suspend the functions of a media entity and institute disciplinary proceedings against the perpetrators. However, more information is needed on the enforcement of this law and the role of the HAMA.

Are intermediaries liable for third party content?

(N/A)

[Order N° 025/PR/2018 Regulating the Written Press and Electronic Media, passed by Law N° 31/PR/2018 of December 3, 2018](#)

Is there clarity over the precise scope of the law?

No. Article 93 prohibits the “publication, distribution or reproduction by any means of communication whatsoever, of false news, fabricated or falsified documents, or documents falsely attributed to third parties, when made in bad faith, if it disturbs public order, public security, national cohesion or territorial integrity”. It is not clear how to determine whether news or information is false, and therefore this article does not provide clear guidance for individuals to reasonably know what acts are prohibited.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued under Article 93 appear to be directed at protecting public order and national security, which are legitimate aims. However, there is a clear risk here of illegitimate restrictions being pursued under the ambiguous wording of “national cohesion”, which could be interpreted in a broad sense to include illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 93 appears to prohibit the dissemination of false news when done in bad faith, which implies the intention to deceive.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. The offence in Article 93 is punishable in accordance with the provisions of the Penal Code, and will thus be decided by a court.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Unclear. Violation of Article 93 is punishable in accordance with the Penal Code. However, the Penal Code does not contain a corresponding offence for the publication of false information. Furthermore, enforcement actions by the government often cite offences of defamation under Article 78 of this law. More information is needed on the enforcement of this provision in practice.

Are intermediaries liable for third party content?

Potentially. Article 25 states that, for any comments or user post sections of websites, the publisher must implement appropriate measures to fight against illegal content, to allow reports of such content and to ensure that the editor can remove them or prevent access to them promptly. Yet it is not clear whether, if the publisher does not implement such measures, they are to be held accountable for the offending content, or whether false news as defined in Article 93 which is shared by commenters would fall within the scope of “illegal content” here.

Law Enforcement Action

[Newspaper and journalist suspended for 1 year, June 2020](#)

On 8 June 2020, the High Authority for Media and Broadcasting (HAMA) suspended the quarterly *Abba Garde* for 12 months, on the grounds of “violation of the Code of Ethics and Professional Conduct, defamation and publication of false news”. HAMA also banned its director Moussaye Avenir De La Tchiré from working as a journalist for the same period. This action was taken following the newspaper’s publication of an article entitled “Political Deal – Is it reliable?” in its issue N° 263 from 20 to 30 May 2020.

Does the action have a legal basis?

No. The [decision](#) referenced a number of relevant laws, including the Chadian Journalist’s Code of Ethics and Deontology, and Order N° 025/PR/2018 Regulating the Written Press and Electronic Media. However, whilst the decision was framed as a response to *Abba*

Garde's "publication of false news", the relevant provision of Order N° 025/PR/2018 (Article 93) was not actually referenced at all in the judgement.

Is the action clearly directed to tackle an objectively legitimate aim?

No. The action on its face appears to be targeted at protecting the rights and reputations of others, which would be a legitimate aim. Yet, Abba Garde and its employees have been targeted [multiple times](#) by law enforcement in recent years, with the director even being physically threatened, assaulted and forced to flee the country in 2012 and 2013. The Convention of Private Press Entrepreneurs in Chad (CEPPT) stated that the judgement was an abuse of power by HAMA, aimed merely at silencing political dissent and punishing those that are critical of government ministers. If true, this would make the action illegitimate.

Is the action necessary and proportionate in all the circumstances?

No. If there was no legitimate aim – as previous instances of harassment of Abba Garde would suggest – no action would have been necessary or proportionate. Even if the intention was genuinely to protect the rights and reputations of others, a 12-month ban on the quarterly is a significant restriction on freedom of expression, and does not take into account the fact that the publisher believed the information to be true.

[Newspaper given formal notice, July 2021](#)

On 5 July 2021, the High Authority for the Media and Audiovisual (HAMA) of Chad issued a formal notice to the quarterly Abba Garde for "violation of the rules of ethics, defamation and publication of false news". This decision related to an article published by the said newspaper in its issue N° 275 from May 25 to June 1, 2021 entitled "Prostitution within the government".

Does the action have a legal basis?

Potentially. The [decision](#) referenced a number of relevant laws, including the Chadian Journalist's Code of Ethics and Deontology, and Order N° 025/PR/2018 Regulating the Written Press and Electronic Media. However, whilst the decision was framed as a response to Abba Garde's "publication of false news", the relevant provision of Order N° 025/PR/2018 (Article 93) was not actually referenced at all in the judgement.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Speech may be restricted in order to protect democracy and public safety, and the judgement argues that the indicted article is “likely to undermine...the institutions of the republic”. Yet reports indicate that Abba Garde and its employees have been targeted [multiple times](#) by law enforcement in recent years, with the director even being physically threatened, assaulted and forced to flee the country in 2012 and 2013. If the action was taken merely to quash political dissent or to continue to punish the newspaper for its criticism of public figures, this would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the aim was illegitimate, any action would be unnecessary and disproportionate, even simply the issuing of a formal notice.

Government Pressure

[Government Press Release on Disinformation, April 2020](#)

In April 2020, the government of Chad published a press release which stated that perpetrators of fake news on social media and other communication platforms, aimed at sabotaging state actions and responses against COVID-19, will henceforth be prosecuted. However, applicable laws and relevant provisions were not mentioned in the press release.

Does the action have a legal basis?

Unclear. No relevant laws were mentioned in the press release.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The statement appears to be aimed at protecting public order and public health during the pandemic.

Is the action necessary and proportionate in all the circumstances?

N/A

Suspension of Al-Chahed journal

In August 2018, the Chadian weekly journal Al-Chahed was suspended for three months for plagiarism and "spreading false information" after publishing articles accusing Qatar and Sudan of being linked to Chadian rebel armed groups.

Does the action have a legal basis?

Unclear. No specific law was cited. The suspension was motivated by "analysis of these articles that they do not contain any fact or material element allowing to publish accusatory remarks against countries which maintain relations of cooperation and friendship with Chad", said HAMA President Dieudonné Djonabaye.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. Here, reports indicate that the articles provided relevant political analysis of a pressing issue in the country. There is no evidence that these articles had the potential to negatively impact national security by harming the government's relationship with Qatar and Sudan.

Is the action necessary and proportionate in all the circumstances?

No. The action was neither necessary or proportionate as it was made in pursuance of an illegitimate aim.

Country Analysis: Comoros

Last updated: July 2022

The Comoros currently has no specific legislation to counter disinformation. However, the Penal Code contains restrictions on false news, and has been used to prosecute individuals for this offence.

This law raises significant concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it pursue aims which may not be considered “legitimate” according to international human rights standards—for example, preventing the undermining of the population’s morale or protecting the reputation of the state or its institutions. It carries penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

Contents

General Speech Legislation

1. Penal Code

Law enforcement action

1. Journalist arrested for spreading false news online, December 2020

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 182(1) prohibits the dissemination of “false news or false allegations to the public” which are likely to, directly or indirectly, “undermine confidence in the credit of the state, local authorities, public establishments, and all organisations where these communities and public establishments participate”. Article 231 prohibits the publication, dissemination, disclosure or reproduction of false, manufactured, misleading or falsely attributed information, whether in good or bad faith, if it has led to or is likely to lead to “disobedience to the country’s laws or undermining of the morale of the population or discreditation of public institutions or their operation”. It is not clear how one would determine whether news or allegations are “false” or “misleading”, nor what sorts of information would be likely to discredit the state or public institutions or to “undermine the morale of the population.”

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear and objective public harm might be caused. Some of the aims pursued by Articles 182 and 231 might be considered legitimate; for example, in the name of public order or national security. Yet, they also include aims which are unlikely to be legitimate, such as preventing the undermining of the population’s morale and for protecting the reputation of the state and its affiliates as well as public institutions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 182 specifically targets those who have “knowingly” spread false news or false allegations, indicating that instances where the individual reasonably believed the information to be true would not be in scope. However, Article 231 condemns the spread of false news when made “in bad faith or not”, indicating that intention to deceive is not a prerequisite for the prohibition to apply.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Article 182 provides for imprisonment from three months to two years and a fine of 24,000 to 240,000 Comorian francs (USD 53 to 530). Article 231 provides for imprisonment from one year to three years and a fine of 75,000 to 750,000 Comorian francs (USD 167 to 1,670), and – if the offender is a foreigner – a ban on staying in the country for five years. If penalties are applied without consideration of the circumstance of the offence, the intention of the individual, or the actual harm caused, these penalties would be disproportionate. Furthermore, any penalty would be disproportionate if levied in pursuit of an illegitimate aim, as potentially permitted by both articles.

Are intermediaries liable for third party content?

(N/A)

Law enforcement action

Journalist arrested for spreading false news online, December 2020

In December 2020, Comorian journalist Oubeidillah Mchangama of Facebook-based news outlet FCBK FM was arrested and held at a remand centre in Moroni, following his publication about a potential gas shortage, which allegedly disturbed “public order” according to the reports from authorities. He was released after one day, but held at the judge’s discretion while other allegations were investigated, for another publication he authored in September 2020 about alleged government mismanagement of public funds, which the court said constituted spreading false news.

Does the action have a legal basis?

Yes, the action referenced Article 254 of the September 1995 version of the Penal Code (Article 231 of the current version of the Penal Code), which punishes “spreading false news” with up to three years in prison and a fine of 750,000 Comorian francs (USD 1,853).

Is the action clearly directed to tackle an objectively legitimate aim?

No. The authorities stated that the action was directed towards the protection of “public order”. Yet no actual harm was caused by Mchangama’s post and it seems more likely that the journalist was detained in order to punish his criticism of the government and to quash political dissent.

Is the action necessary and proportionate in all the circumstances?

No. Mchangama was detained and investigated but not charged on the basis of insufficient evidence. Whilst no charges were made or penalties levied, the action would be unnecessary and illegitimate as it appears directed at silencing political dissent.

Country Analysis: Côte d'Ivoire

Last updated: July 2022

Côte d'Ivoire currently has no specific legislation to counter disinformation. However, there are three laws under which individuals can be prosecuted for spreading disinformation: the Penal Code, Loi n°2013-451 relative à la lutte contre la cybercriminalité, and Loi n°2017-867 du Décembre 2017 portant régime juridique de la presse.

These laws raise significant concerns from a human rights perspective. They are loosely defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and appear to pursue aims which would not be considered "legitimate" according to international human rights standards—for example, restricting content which attacks the public morale, or discredits institutions or their functioning (Penal Code). These laws also carry penalties which are potentially disproportionate in their severity, and can result in a chilling effect on freedom of expression.

Furthermore, violations of specific provisions within Loi n°2017-867 du Décembre 2017 portant régime juridique de la presse are not determined by an independent and impartial judicial authority, further increasing risks for its illegitimate use.

We assess these laws individually in more detail below.

We also include data on the enforcement of these laws, in ways which would be considered illegitimate and disproportionate according to international human rights standards.

Contents

General Speech Legislation

1. Loi N° 2017-867 du Décembre 2017 portant régime juridique de la presse
2. Loi n°2013-451 relative à la lutte contre la cybercriminalité
3. Penal Code

Law enforcement action

1. Arrest of journalist Stanis Bujakera, September 2023
2. Arrest of opposition leader, May 2020
3. Newspaper directors fined, May 2020

General Speech Legislation

Loi N° 2017-867 du Décembre 2017 portant régime juridique de la presse

Is there clarity over the precise scope of the law?

No. Article 97 of the press law broadly prohibits the publication or dissemination of false news through the press. It is unclear how to determine whether speech is “false”. Article 97 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with its enforcement.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 97 are not specified, which is troubling as the law does not even attempt to establish a basis for restrictions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. While Articles 40-63 indicate that the National Authority of the Press will make determinations and sanction stakeholders, the organisation of this body and the nomination process of its members severely undermines its independence. Members of the Authority are chosen according to the will of the President of the Republic and other senior members of government, which are able to revoke membership according to arbitrary rules.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. While Côte d'Ivoire has abolished prison sentences for press offences, violation of Article 97 may result in a fine between 1,000,000 and 5,000,000 franc. If the

largest fines are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

(N/A)

[Loi n°2013-451 relative à la lutte contre la cybercriminalité](#)

Is there clarity over the precise scope of the law?

No. Article 65 criminalises the dissemination of false information which suggests that the destruction of property or an attack against persons has already occurred, or is likely to take place. Article 65 further covers false information regarding any other emergency situation. It is not clear how to determine whether information is “false”. It is also unclear what is included in the scope of information that pertains to the destruction of property, an attack against a person, or any other emergency situation. Article 65 thus fails to provide clear guidance for individuals and gives an overly wide degree of discretion to those charged with enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 65 would appear to be targeted at public order. However, the broad scope of speech that potentially pertains to the destruction of property, an attack against a person, or any other emergency situation, suggests that restrictions may fall outside the scope of what is normally considered “public order”. If so, the restrictions would not pursue legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 65 may result in a fine between 1,000,000 to 5,000,000 CFA, and imprisonment between six months to two years. If the largest fines and longest prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

(N/A)

Penal Code

Is there clarity over the precise scope of the law?

No. Article 173 of the Penal Code broadly criminalises the publication of false news. It covers the dissemination of false and fabricated information when it results (or could result) in civil disobedience, attacks the public morale, or discredits institutions or their functioning. It is not clear how to determine whether speech is “false” or the scope of something that is likely to cause civil disobedience, attacks the public morale, or discredit institutions or their functioning. Article 173 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 173 appear to be in the pursuance of public order and public morals. However, while restrictions in the pursuance of “public order” may be legitimate, the scope of public morale or the reputation of public institutions is likely to be broader than “public order”. If the scope of these terms is indeed broader than “public order” or requires a lower threshold, then a restriction would not be deemed “legitimate” according to international human rights standards.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 173 is punishable by one to three years of imprisonment and a fine of 500,000 to 5,000,000 CFA. If the largest fines and longest prison sentences are imposed without taking into account the circumstances of the offence, for example where individuals believed the information to be true, then sanctions may be disproportionate. This is particularly relevant in situations where no harm actually occurs.

However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

This is unclear. Article 173 indicates that directors, co-directors, printers or distributors may be charged as accomplices when involved in the dissemination of false information. However, the criminal liability of the intermediary itself is not specified.

Law enforcement action

[Arrest of journalist Stanis Bujakera, September 2023](#)

Stanis Bujakera Tshiamala, the deputy director of *Actualités.cd* and correspondent for *Reuters* and *Jeune Afrique* in the DRC, was arrested and detained in September 2023. This action was taken in relation to an article published by *Jeune Afrique* about the assassination of the former transport minister; the article was listed as authored by

“newsroom staff”. Bujakera was kept in police custody for three days and then transferred to prison after being charged with “spreading false information,” “forgery and the use of forged documents,” and “distributing false documents.” His bail requests have been [denied](#) three times.

Does the action have a legal basis?

Yes. Reports indicate that Bujakera was accused of “forgery”, “falsification of state seals”, “propagation of false rumors” and “transmission of erroneous messages contrary to the law” under the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights and reputations of others. Firstly, an independent investigation [reveals](#) that Bujakera was not actually the author of the article in question, and secondly it seems unlikely that – even if the claims made were false – the article in question posed any genuine risk of harm to the public or others.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

[Arrest of opposition leader, May 2020](#)

In May 2020, the Secretary-General of an opposition party, Mr. Étienne Daïpo NPonon, was arrested and jailed on charges such as harming national defence, disturbing public order, defamation and spreading false news. These charges stem from his role as an alleged accomplice to false publications shared by cyber activist Yapo Ebiba François.

Does the action have a legal basis?

Yes. Reports indicate that Mr. Étienne Daïpo NPonon has been charged as an accomplice to Yapo Ebiba François, who is accused of violating Articles 151, 153, 161 and 179 of the Penal Code and Articles 11, 32, 60, 65 and 70 Loi n°2013-451 relative à la lutte contre la cybercriminalité.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of national security, public health, public order, public morals, or to protect the rights of others. Here, the actions appear to be politically motivated and illegitimate. Reports do not establish a clear link between the posts shared by the cyber activist, which called for the destruction of Covid-19 testing equipment, and the opposition figure. Moreover, there is no indication that the original posts, even if shared by Mr. Étienne Daïpo NPonon, posed a legitimate threat to public order or public health.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim so any response would be unnecessary and disproportionate.

Newspaper directors fined, May 2020

Two newspaper directors were fined in May 2020 for publishing false information. The reports in question included statements by lawyers who raised concerns about the conditions of former Minister, Alain Lobognan, who is currently in prison for an offence of spreading fake news.

Does the action have a legal basis?

Yes. The two directors were fined on grounds that their publications were false. While the charge sheet is not publicly available, it is likely that they were charged under Article 173 of the Penal Code or Article 65 of the Loi n°2013-451 relative à la lutte contre la cybercriminalité.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of national security, public health, public order, public morals, or to protect the rights of others. Here, the fines appear to be politically motivated and illegitimate as the comments in question were in support of a jailed opposition figure. These fines reflect a pattern of restricting speech and voices that are critical of the government.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim so any response would be unnecessary and disproportionate.

Country Analysis: Democratic Republic of Congo

Last updated: December 2023

The Democratic Republic of Congo currently has no specific legislation to counter disinformation. However, there are two laws that include potential restrictions on disinformation: the Penal Code and the Press Freedom Law.

Both raise important concerns from a human rights perspective. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered legitimate according to international human rights standards—for example, restricting speech which might alarm the public worry them, or provoke them “against the established powers” (Penal Code). These laws also carry penalties which can be disproportionate in their severity and result in a chilling effect on freedom of expression.

We assess these laws individually in detail below.

Contents

General Speech Legislation

1. Penal Code
2. Press Freedom Law

Law enforcement action

1. Arrest of journalist Eboko Amani, 2016

Government Pressure

1. Internet shutdown, December 2018

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 199bis of the Penal Code prohibits an individual from knowingly spreading false rumours that are likely to alarm the public, worry them, or to provoke them against “the established powers”. Article 199ter prohibits the same offence even when committed without intention. Meanwhile, Article 211 of the Penal Code further prohibits anyone from intentionally sharing false news with the intention of disturbing the public peace.

The code is not clear how to determine what is considered a “false rumour”, “false news” or what the threshold is for deciding that information is likely to alarm the public, worry them, or provoke them against “the established powers”. Articles 199bis, 199ter and 211 therefore fail to provide clear guidance for individuals and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Articles 199 and 211 seem to be targeted at protecting public safety and public order. While speech or content restricted in pursuance of these aims may be legitimate, the scope of what might cause alarm to the public, worry them, or to provoke them against “the established powers”, is potentially much broader than “public order”. If so, restrictions would not pursue a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Article 211 only criminalises the dissemination of false news with the intention of disturbing the public peace, which would provide a defence for those without intention or knowledge. However, Articles 199bis and 199ter prohibit both intentional and unintentional acts respectively.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

No. Violation of Article 199bis may result in a fine of one hundred to five hundred zaires, and between two months and three years of imprisonment. Violation of Article 199ter, which covers unintentional dissemination, may result in a fine of twenty to one hundred zaires, and between one month and one year of imprisonment. Violation of Article 211 may result in a fine of one thousand to ten thousands zaires, and between two months and three years of imprisonment.

If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. This is particularly the case where an individual reasonably believes in the information to be true, where there is no intention to cause harm, and where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

(N/A)

[Press Freedom Law](#)

Is there clarity over the precise scope of the law?

No. Articles 76 and 77 of the Press Freedom Law broadly criminalise expression through any medium that directly incites theft, murder, pillage, arson, any offence against state security, including cases where the incitement has not been followed by action. Article 77 also covers direct incitement of discrimination, hatred or violence against an individual or group due to their origin, ethnicity, nationality, race, ideology or religion. Article 77 further criminalises insults to the Head of State or incitement of members of the armed forces with a view to diverting them from their duties. Due to their broad construction, each of these offences could be interpreted to include disinformation.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Articles 76 and 77 seem to be targeted at the legitimate aims of protecting public safety and the rights of others. However, the scope of what might incite theft or any offence against state security is potentially much broader than “public order” and as such would not pursue a legitimate aim. Restrictions made in the pursuance of avoiding insults to the Head of State are also illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 76 or 77 is punishable by 15 days in prison or a fine of 2,000,000 New Zaires, which is equivalent to 20 Congolese Franc. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate.

Are intermediaries liable for third party content?

(N/A)

Law enforcement action

Arrest of journalist Eboko Amani, 2016

A journalist by the name of Eboko Amani was arrested for disseminating false information about the army in 2016. The journalist allegedly reported that the army had killed a civilian and advocated for a two-day general strike in the city of Baraka to

protest against violent crime. This led the army to raid multiple radio stations and arrest the journalist.

Does the action have a legal basis?

This is unclear. There is no official charge sheet, but the offence of disseminating false information about the army or calling for a general strike could potentially fall within offences in either the Penal Code or Press Freedom Law.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, reports indicate that the army was not concerned about public safety or security. Instead, these actions appear directly targeted at criticism of the armed forces and reflect a pattern of the security services interfering with the legitimate work of the media.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim so any response would be unnecessary and disproportionate.

Government Pressure

Internet shutdown, December 2018

Authorities in the Democratic Republic of Congo cut Internet access and SMS services for 20 days between 31 December 2018 and January 2019. This action was apparently taken to address false information about the results of the December 2018 general election circulating on social media.

Does the action have a legal basis?

No. No legal provision was cited to justify the action.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. While the government claimed that the action was taken to protect democracy and public order, there is no indication that the proliferation of false information about the election presented any risks. There are also numerous reports which contend that the election was marred by irregularities, supporting claims that the government's actions were aimed at securing control of information online. This would be an illegitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. The action was in pursuance of an illegitimate aim and therefore unnecessary and disproportionate. Even if in pursuance of a legitimate aim, Internet disruptions are never considered to be necessary or proportionate responses given the blanket restrictions they impose on sharing any speech online.

Country Analysis: Djibouti

Last updated: July 2022

Djibouti currently has no specific or general legislation to counter disinformation. However, in October 2020 the Minister of Communication in charge of Posts and Telecommunications [submitted](#) two draft bills aimed at combating false information to the National Assembly Commission on Administrative Legislation and Human Rights. The texts are not publicly available, but it appears from the announcements that they would place new obligations on press publishers and social networks to moderate and remove false information.

Country Analysis: Equatorial Guinea

Last updated: July 2022

Equatorial Guinea currently has no specific legislation to counter disinformation. There is little information available about the laws that regulate the media and online landscape in general, with the Press Law – currently under revision – not publicly available online. We are not aware of any instances of law enforcement action taken against individuals or media organisations on the basis of disseminating false or misleading information.

Country Analysis: Eritrea

Last updated: July 2022

Eritrea has no specific legislation to counter disinformation. However, there are two laws that include restrictions on disinformation: the Penal Code and the Press Proclamation No. 90/1996.

Both raise important concerns from a human rights perspective. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards. These laws also carry penalties which can be disproportionate in their severity and result in a chilling effect on freedom of expression.

We assess these laws individually in detail below.

Contents

General Speech Legislation

1. [Press Proclamation No. 90/1996](#)
2. [Penal Code](#)

General Speech Legislation

Press Proclamation No. 90/1996

Is there clarity over the precise scope of the law?

No. Article 15(10) prohibits the dissemination of inaccurate news or information which “disrupts general peace”, defined in other areas of the law as that which impacts upon national security, territorial integrity and sovereignty and independence of the nation, general morality and the dignity of minors or the personal liberties and private lives of the citizens. It is not clear how to determine what information is “wrong” or “inaccurate” information. Article 15(10) therefore fails to provide clear guidance for individuals and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Article 15(10) appears to be aimed at public order, national security, public morals and the protection of the rights and reputations of individuals, which would all constitute legitimate aims. However, the broad wording of the provisions could also include restrictions which are not in pursuance of a legitimate aim. For example, the scope of information that might impact sovereignty may be broader than that which poses a concrete threat to public order or national security.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. The provision makes no reference to knowledge of the truth or falsity of the statement or even to intention to cause harm, meaning that individuals can be charged even when they believed the information to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These offences are determined by the High Court (Article 14).

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Unclear. The law provides that violation of Article 15(10) will result in sanctions as provided for under the Transitional Penal Code. However, the Transitional Penal Code is no longer in force. Penalties are therefore likely to correspond to analogous provisions under the current Penal Code (see Penal Code). Article 15(10) of the Press Proclamation also states that in the case of a repeat offence, a newspaper can be banned and its licence cancelled. These penalties are likely to be disproportionate, particularly if the circumstances of the offence are not taken into account.

Are intermediaries liable for third party content?

(N/A)

Penal Code

Is there clarity over the precise scope of the law?

No. Article 154 states that any person who publicly asserts or disseminates “fabricated or false facts, knowing them to be such” with the intention to “cast disparagement upon legislative, executive or judicial institutions” is guilty of defamation of government institutions. Article 194 states that any person who starts or spreads “false rumors concerning impending catastrophes or disasters or other harm to society” with the intent to alarm the public or undermine governmental authority and with the effect of “inflaming public opinion or causing a danger of public disturbance” is guilty of alarming the public. It is not clear how to determine which facts or rumours are “fabricated” or “false”, and what the scope of what is considered to inflame public opinion or to disparage or undermine the legislative, executive, judicial or governmental institutions and authorities. As such, these articles do not provide clear guidance for individuals and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Some of the aims pursued in Articles 154 and 194 would be considered legitimate under international human rights law, insofar as they seek to protect public health, public order and national security. However, avoiding “alarming the public” and “casting disparagement upon legislative, executive or judicial institutions” is likely to be broader than the legitimate aims of protecting democracy, national security and public

order. As such, these articles would permit restrictions on expression that are not in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 154 specifies that the individual must know the facts to be false to be found guilty of the offence. Whilst Article 194 does not refer specifically to knowledge of the falsity of the information, it specifies that an offence is committed only where the individual had “intent” to cause adverse effects, which implies knowledge of the falsity of the information.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court.

Are any responses or sanctions proportionate?

No. Under Article 154, defamation of government institutions is counted as a Class 9 serious offence, punishable by imprisonment of between 1 and 3 years. Under Article 194, alarming the public is counted as a Class 2 petty offence (or a Class 1 petty offence if done with intent to undermine governmental authority). The Class 2 petty offence is punishable with imprisonment of 1 to 6 months, or a fine of 5,001 to 20,000 Nakfas (330 to 1,330 USD); the Class 1 petty offence is punishable with imprisonment 6 to 12 months, or a fine of 20,001 to 50,000 Nakfas (1,330 to 3,330 USD). The minimum penalties may prevent a judge from taking into account the circumstances of the offence and the intention of the offender; and if the penalties are levied without consideration of the actual harm caused, penalties are likely to be disproportionate.

Are intermediaries liable for third party content?

N/A.

Country Analysis: Eswatini

Last updated: May 2023

Eswatini does not currently have specific legislation to counter disinformation. However, there are other laws that include restrictions on certain forms of disinformation: the Coronavirus (COVID-19) Regulations, 2020, the Suppression of Terrorism Act, and the proposed Computer Crime and Cybercrime Bill.

These laws and proposals raise substantial concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards. These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below and provide some limited data on the enforcement of these laws in practice.

N.B. The Computer and Cyber Crime Bill (2020) originally included a prohibition on the publication of “any statement or fake news through any medium, including social media with the intention to deceive any other person or group of persons” [Section 19]. However, this section was [removed](#) and disproportionate fines and jail terms adjusted before the bill was signed into law in March 2022, meaning that the Computer and Cyber Crime Act 2022 does not contain any restriction on fake news.”

N.B. Previously, eSwatini’s Coronavirus (COVID-19) Regulations 2020 criminalised the spread of false news about COVID-19. These Regulations have now lapsed and are no longer in force – yet we include two instances of their enforcement in practice in 2020 below.

Contents

General Speech Legislation

1. Suppression of Terrorism Act, 2008

Law enforcement action

1. Arrest of Journalist Zweli Martin Dlamini, April 2020
2. Arrests of journalists, April 2020

General Speech Legislation

Suppression of Terrorism Act, 2008

Is there clarity over the precise scope of the law?

Potentially. Section 5(3)(b) makes it illegal to intentionally communicate information which is “a false alarm” or “causes a false alarm or unwarranted panic” to another person or an institution. Similarly, section 5(3)(e) criminalises the intentional publication or communication of false information about the existence of any danger, dangerous thing, explosive or harmful or hazardous substance. These provisions may be clear in some circumstances for example, stating that there is a bomb in a particular building when the person knows that this is not true. However, it may be difficult to determine what is considered a “false alarm”, “false information” or “unwarranted panic” in all circumstances. The scope of “danger, dangerous thing, explosive or harmful or hazardous substance” requires further clarification and is potentially overbroad.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Section 5 appear to be aimed at protecting public order and safety. However, while restrictions in the pursuance of “public order” may be legitimate, it is unclear whether preventing “false alarm or unwarranted panic” will always fall within the scope of protecting “public order”. If the scope of these terms is the same or narrower than “public order”, then restrictions may be in the pursuance of a legitimate aim. If the scope is broader than “public order”, then it would not be in pursuance of a legitimate aim. It would also be illegitimate to restrict speech in pursuance of political aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 5(3)(e) provides that the intentional publication of “false information” occurs when “that person does not believe in the existence of that thing or truthfulness of that publication”. Section 5(3)(b) further provides that the offence is only committed when there is no “lawful excuse”. It is possible that believing the information to be true (and therefore trying to protect people from harm) could be a lawful excuse. However, more information is needed to determine what is considered a lawful excuse by a court of law

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. The penalty for violation of Section 5 is either a fine or imprisonment for a period not exceeding three years. If the maximum fines and prison sentences were imposed without taking into account the circumstances of the offence, then sanctions could be disproportionate. However, given the absence of information as to how these penalties will be imposed in practice, it is currently difficult to say.

Are intermediaries liable for third party content?

Yes. Section 5(4) provides that “Where a body corporate commits an offence under this Act, every director, officer or agent of the corporation who direct, authorised, assented to, acquiesced or participated in the commission of the offence is a party to and guilty of the offence and shall be liable, on conviction, to the punishment provided for whether or not the body corporate has been prosecuted”.

Law enforcement action

Arrest of Journalist Zweli Martin Dlamini, April 2020

In April 2020, authorities sought the arrest of Zweli Martin Dlamini, the editor of the privately owned news website Swaziland News, for spreading “unauthentic information” related to COVID-19. Police raided his home and interrogated his wife about his whereabouts. This action was taken in response to a news report posted on the website that questioned the king’s health during the pandemic. Dlamini had also been arrested on charges of sedition two months earlier, in relation to two articles he published accusing the king of misleading his citizens and promoting gender-based violence.

Does the action have a legal basis?

Yes. The warrant for Zweli Martin Dlamini’s arrest referred to suspected violation of Section 29(1) of the Coronavirus (COVID-19) Regulations, 2020, which prohibits the spreading of false information about the virus.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While the Coronavirus (COVID-19) Regulations, 2020 are in general directed at protecting public health and safety, there is no evidence that Zweli Martin Dlamini's publications posed any real threat to either, and he had already been targeted multiple times by law enforcement, subjected to torture and received death threats in relation to other articles he had published critical of the king and of the authorities. This seems to be a clear case of journalist harassment.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrests of journalists, April 2020

Several journalists were arrested and interrogated in April 2020 for publishing critical articles against King Mswati III and the government's response to COVID-19.

Does the action have a legal basis?

This is unclear. While some suggest that the journalists were arrested for criticising the King, a government spokesperson stated that the arrests were based on violation of the Coronavirus (COVID19) Regulations. A statement released by the government warned that anyone who reported "fake news" about COVID-19 would face prosecution and denied that the journalists were arrested for criticising the King.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Arrests made in pursuance of public health could be legitimate. However, the contradictory reports and circumstances here indicate that the journalists were arrested for political criticism, which would not be considered an objectively legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. If these arrests were due to criticism of the King then any action would be unnecessary and disproportionate. There have been reports that the police are using the COVID-19 Regulations to clamp down on the media for reporting on the government's response to the pandemic. Such actions deny the media an opportunity to facilitate debate and scrutinise the actions of the government.

Country Analysis: Ethiopia

Last updated: July 2022

Ethiopia has a specific law to tackle disinformation, the Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185/2020, as well as a restriction on disinformation in its Electoral, Political Parties Registration and Elections Code of Conduct Proclamation No. 1162/2019.

The former is aimed at curbing the historical tensions around hate speech and violence within the country, and the latter at protecting electoral processes from interference. However, both laws present a number of problems from a human rights perspective. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech. They also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws in more detail below along with two examples of how the Hate Speech and Disinformation Proclamation is being applied in practice to the detriment of freedom of expression.

Contents

Disinformation (specific legislation)

1. Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185/2020

General Speech Legislation

1. The Ethiopian Electoral, Political Parties Registration and Elections Code of Conduct Proclamation No. 1162/2019

Law Enforcement Action

1. Arrest of journalist Bekalu Alamrew, November 2020
2. Arrest of journalist Dawit Kebede, November 2020
3. Arrest of journalist Yayesew Shimelis, April 2020

Disinformation (Specific legislation)

Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185/2020

Is there clarity over the precise scope of the law?

No. Article 5 broadly criminalises the dissemination of disinformation and Article 2 provides a vague definition of disinformation. It is defined as “speech that is false, is disseminated by a person who knew or should reasonably have known the falsity of the information and is highly likely to cause a public disturbance, riot, violence or conflict”. From this, it is not clear how to determine whether speech is “false” or what is “highly likely to cause a public disturbance, riot, violence or conflict”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Yes. Speech should only be restricted where some clear, objective harm might be caused. Here, there is a clear objective of preventing violence and upholding public order, which has been recurrent in Ethiopia. Nevertheless, greater clarity over what constitutes a “disturbance” or “conflict” would still be helpful.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 6 provides that “speech will not be considered as disinformation” if “a reasonable effort has been made under the circumstances by the person making the speech to ensure the veracity of the speech”. Moreover, Article 2 defines disinformation as speech that is false and is disseminated “by a person who knew or should reasonably have known the falsity of the information”.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. Article 7.3 creates a criminal offence of disseminating “disinformation on public meeting by means of broadcasting, print or social media using text, image, audio or video”. This would be determined by a court. However, in parallel, the law also imposes obligations on social media service providers. Article 8.1 requires social media service providers to “endeavor to suppress and prevent the dissemination of disinformation” on their platforms, and Article 8.2 requires them to act within twenty four hours to remove

disinformation on their platforms upon receiving notification about its existence. This places the emphasis on social media service providers to determine which content is disinformation.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Article 7 provides that disseminating disinformation via broadcasting, print or social media will result in imprisonment for up to one year or a fine of up to 50,000 birr. Disinformation disseminated using social media by an individual with more than 5,000 followers or through a broadcast service or print media will result in imprisonment for up to three years or a fine of up to 100,000 birr. Disinformation leading to violence or a public disturbance will result in rigorous imprisonment for up to five years.

If the maximum penalties are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly relevant for instances where no harm actually occurs. Imprisonment for a year is particularly disproportionate for “disinformation in and of itself” when no harm is caused.

Are intermediaries liable for third party content?

Yes. Article 8.1 requires social media service providers to “endeavor to suppress and prevent the dissemination of disinformation” on their platforms, and Article 8.2 requires that they “act within twenty four hours to remove or take out of circulation disinformation or hate speech upon receiving notifications about such communication or post”. Failure to do so may lead to civil liability.

It is also worth noting that Article 8.4 requires the Ethiopian Broadcast Authority to prepare a report about social media enterprises and whether they have discharged their duties properly, and Article 8.7 provides the Council of Ministers with the power to issue further regulations setting out the detailed responsibility of social media service providers.

General Speech Legislation

The Ethiopian Electoral, Political Parties Registration and Elections Code of Conduct Proclamation No. 1162/2019

Is there clarity over the precise scope of the law?

No. Article 157(3)(b) of the proclamation prohibits any person from distributing, or attempting to distribute, false information which incites hatred or fear or affects the election result “with the intention of disrupting or interrupting the election or exerting undue influence on the election process or the result outcome”. It is not clear how to determine whether the information is “false” or what type of behaviour would constitute “exerting undue influence on the election process”. Article 157(3)(b) thus fails to provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective harm might be caused. This law, and Article 157 in particular, is clearly aimed at protecting electoral processes from interference, which would constitute a legitimate aim. However, the broad scope of the provision makes it likely that restrictions could be pursued for aims outside of those considered legitimate under international human rights law.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 157(3)(b) requires that the offence be committed with the intention of disrupting the electoral process or exerting undue influence on the election process or the result outcome, which implies an intention to deceive.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. Determinations will be decided by a court.

Are any responses or sanctions proportionate?

Potentially. Violation of Art 157(3)(b) may result in a fine of Birr 30,000 to Birr 50,000 (USD 590 to 980) or simple imprisonment of not less than six months or not exceeding one year. These sanctions would be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly true for instances where no harm occurred.

Are intermediaries liable for third party content?

N/A.

Law enforcement action

Arrest of journalist Bekalu Alamrew, November 2020

Bekalu Alamrew, an Ethiopian journalist with YouTube broadcaster Awlo Media Center, was arrested on November 4, 2020 for disseminating false news. The action relates to an unspecified media report that was produced by the journalist which alleged that the federal government and national army were directly involved in the killing of 200 ethnic Amharas. He was granted bail and released after being detained for over two weeks.

Does the action have a legal basis?

Potentially. Awlo Media Center claimed that at the time of the arrest, the officers did not produce a warrant and refused to answer questions about why they were taking the journalist into custody. The Office of the Federal Attorney General later claimed that Alamrew had been arrested on suspicion of contravening the Hate Speech and Disinformation Prevention and Suppression Proclamation, but did not provide the specific section of the law the journalist had contravened.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuit of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the vague reasons given by authorities for Bekalu's arrest, and his detention without formal charges, indicate that

the action was not related to concerns about public safety or security but instead was a clear case of journalist harassment.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of journalist Dawit Kebede, November 2020

Ethiopian journalist Dawit Kebede, managing editor of the online news outlet Awramba Times, was arrested on 30 November 2020, on accusations of disseminating false news, inciting violence, and attempting to violate the constitution. Whilst no specific publication was cited, it is believed that this action was in relation to his commentaries on the conflict between the Ethiopian federal government and forces in Tigray region, and his criticism of Prime Minister Abiy Ahmed and his party. Kebede was kept in custody without formal charge for over 3 weeks, and was shot and killed in suspicious circumstances in January 2021.

Does the action have a legal basis?

Unclear. Police alleged that Dawit had disseminated false information, which is prohibited in the Hate Speech and Disinformation Prevention and Suppression Proclamation. However, sources did not cite particular legal grounds for his arrest and detention, and no charges were formally made.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuit of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There is no evidence that Dawit's reporting had posed any objective public harm, and his detention without formal charges for a considerable amount of time indicates a clear case of journalist harassment.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and therefore both unnecessary and disproportionate.

Arrest of journalist Yayesew Shimelis, April 2020

Journalist Yayesew Shimelis was arrested and charged in April 2020 for allegedly violating the Hate Speech and Disinformation Prevention and Suppression Proclamation by disseminating disinformation. The disinformation in question relates to a Facebook post that suggested the government had prepared 200,000 burial places in response to COVID-19.

Does the action have a legal basis?

Yes. The arrest and charges were made under Articles 5 and 7.4 of the Hate Speech and Disinformation Prevention and Suppression Proclamation. The journalist was sentenced for deliberately and recklessly disseminating false information without an attempt to verify the authenticity of the information and without taking into consideration the prevailing circumstances. He was also charged with violating Article 74, which applies for disinformation offences where the individual has a social account with over 5,000 followers or when committed through a broadcast service or print media.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the action appears directed at tackling legitimate aims relating to public health (COVID-19) and public order. The post also contained an objectively false statement and was sent to over 100,000 followers. However, even if objectively false, the circumstances do not suggest an intention to cause harm or that the post in question would cause further harm if not removed. As such, the action cannot be said to tackle an objectively legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. This action was not made in pursuance of a legitimate aim and appears to be a clear case of journalist harassment. There does not appear to be an intention to cause violence or undermine the government's effort to address the pandemic and the journalist in question was held by the police for three weeks before any charges were brought.

Furthermore, without a legitimate aim, any response would be disproportionate, even if the journalist were to receive a minor penalty upon conviction.

Country Analysis: Gabon

Last updated: July 2022

Gabon currently does not have specific legislation to counter disinformation. However, it has laws that include potential restrictions on disinformation: the Penal Code and Loi N° 019/2016 du 09 août 2016 portant Code de la Communication en République Gabonaise.

These laws raise concerns from a human rights perspective. Their scope is not fully clear, meaning that authorities could interpret them as giving them power to restrict a wide range of speech, and they may pursue aims which would not be considered legitimate according to international human rights standards. These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws in detail below.

Contents

General Speech Legislation

1. Loi N° 019/2016 du 09 août 2016 portant Code de la Communication en République Gabonaise
2. Penal Code

Law enforcement action

1. Arrest of four union leaders for false news, July 2019
2. RFI journalist banned for publishing false news, August 2019

General Speech Legislation

[Loi N° 019/2016 du 09 août 2016 portant Code de la Communication en République Gabonaise](#)

Is there clarity over the precise scope of the law?

No. Article 44 prohibits “malicious insinuation; slander; insult; alteration of documents; distortion of facts; falsification by distortion, selection or infidelity; and lying” by journalists. It is not clear what would constitute “lying” and how one would determine the falsity or distortion of a report. Article 44 therefore does not provide sufficient guidance for individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Unclear. No specific aims are provided for in Article 44, but Article 3 indicates that restrictions will only be pursued in the name of public order and that journalists have a responsibility to promote the image of the country and national cohesion. While restrictions made in the pursuit of public order may be legitimate, “promoting the image of the country and national cohesion” are overly broad terms which would suggest that restrictions could be made in pursuance of illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. Determinations are made by the National Communications Council (CNC), which is referred to as the “regulatory authority” within the law, but not directly specified in the legislation. This body is composed of members appointed by the government and is responsible for monitoring compliance with the Communications Code.

Are any responses or sanctions proportionate?

Potentially. Articles 183 to 186 lay out the various administrative penalties that may apply for offences under the law, ranging from mandatory insertion of corrective statements to permanent bans from publishing or withdrawal of operating licences. Articles 194 and 195 lay out the financial penalties that may be applicable for violations, ranging from 1,000,000 to 10,000,000 CFA (USD 1,670 to 16,700).

Whilst there is some graduation of the stated penalties according to whether or not the offender has committed the offence multiple times, there is an overall absence of guidance or standards on how administrative and financial penalties will be imposed in practice. If penalties are levied without consideration for the circumstances of the particular offence, such as whether harm was likely to occur or the individual's intention to cause harm, the penalties could be disproportionate.

Are intermediaries liable for third party content?

N/A

Penal Code

Is there clarity over the precise scope of the law?

No. Article 93 prohibits "the dissemination or reproduction, by any means whatsoever, of false news, fabricated, falsified or falsely attributed material to third parties, when, made in bad faith, it will have disturbed public order or will be likely to disturb it". Article 94 increases the penalty for this offence in cases where the dissemination of false information is "likely to undermine the discipline or the morale of the state defence."

It is unclear how to determine what is "false" or "falsified" information, or what information is likely to disturb public order, or undermine the discipline or the morale of the state defence. Articles 93 and 94 therefore fail to provide clear guidance for individuals and could give an overly wide discretion to restrict expression to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective harm might be caused. Article 93 prohibits the sharing of false information only when it disturbs or is likely to disturb public order, which would indicate pursuit of a legitimate aim. Yet Article 94 prohibits the sharing of false information in the broader circumstances that it undermines “the discipline or the morale of the state defence”. If interpreted more broadly than the aims of protecting national security or public order, then the restriction would not be made in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Articles 93 and 94 both state that the sharing of false information is only prohibited when done “in bad faith”, which implies the intention to deceive.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Article 93 imposes a prison sentence of up to 5 years and fines of up to 3,000,000 CFA (USD 5,000), and Article 94 imposes a prison sentence of up to 10 years and fines of up to 5,000,000 CFA (USD 8,350). These penalties are likely to be disproportionate without the court taking into account the particular circumstances of the offence. This is particularly relevant for instances where no harm occurs.

Are intermediaries liable for third party content?

N/A

Law enforcement action

Arrest of four union leaders for false news, July 2019

On 2 July 2019, the president of the country's main trade union coalition, Jean Rémy Yama, said during a press conference that his organisation believed that President Ali Bongo Ondimba was dead. On 4 July, the Minister of the Interior and Justice threatened

Yama with “criminal proceedings for spreading false information” and “a manifest desire to create trouble and confusion in the minds of the population”. Yama fled his home and escaped arrest, but four other union leaders were arrested by armed police on 10 and 11 July. They were released, seemingly without charge, on 19 July.

Does the action have a legal basis?

Unclear. There was no mention of a specific law by authorities, but the Minister of the Interior and Justice stated that Yama’s actions had exposed him to “criminal prosecution” for spreading false information, indicating a potential intention to charge him under Articles 93 or 94 of the Penal Code. It is not clear whether the four arrested union leaders were charged with this offence.

Is the action clearly directed to tackle an objectively legitimate aim?

No. The Minister of the Interior and Justice argued that Yama’s statements were sowing public confusion and that he strongly condemned a desire to question the authority of the state. But there is no evidence of actual harm caused or any genuine threat to public safety, national security or democracy. Union leaders and opposition candidates argued instead that the arrest of the four individuals and the threats towards Yama were merely an attempt to silence political dissent and to disable a prominent union leader, indicating pursuit of illegitimate aims.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

[RFI journalist banned for publishing false news, August 2019](#)

In August 2019, the Gabon High Authority for Communication (HAC) banned Yves-Laurent Goma, a journalist from Radio France internationale (RFI) for two months, based on an article he published related to the health of the President Ali Bongo Ondimba. The HAC deemed his article to be “lies”, using “inaccurate information with malicious insinuation [...] challenging the physical integrity” of President Ali Bongo Ondimba.

Does the action have a legal basis?

No. The decision did not cite a specific law.

Is the action clearly directed to tackle an objectively legitimate aim?

No. The article did not pose any credible risk of objective harm to the public. This action was politically motivated and was therefore illegitimate.

Is the action necessary and proportionate in all the circumstances?

No. The action was not in pursuit of a legitimate aim and therefore any action would be unnecessary and disproportionate.

Country Analysis: Gambia

Last updated: December 2023

Gambia currently has no specific legislation to counter disinformation. However, there is one law that prohibits certain forms of disinformation: the Criminal Code.

This law raises several concerns from a human rights perspective. It is loosely-defined in scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it pursues aims which may not be considered "legitimate" according to international human rights standards. This law also carries penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess this law in detail below along with an example of how it has been applied in practice.

NB: Section 173A of the Internet and Communications Act, 2009, imposed a 15 year prison sentence or a fine of D3 Million (86,000 USD) on persons found guilty of publishing "false news" on the internet against the regime or public officials. Several individuals were prosecuted under this law. However, the Gambian Supreme Court struck down the provision, declaring it unconstitutional.

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1. Arbitrary detention of journalist 2015–2016
2. Arrest of activist Madi Jobarteh, June 2020

General Speech Legislation

Criminal Code

Is there clarity over the precise scope of the law?

No. Sections 59 and 181A of the Criminal Code broadly prohibit the publication of false news. Section 59 prohibits the publication of any statement, rumour or report “which is likely to cause fear and alarm to the public or disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false”. Section 181A prohibits the willful, negligent or reckless publication or broadcast of any information or news which is false.

It is not clear how to determine whether information is “false” or the scope of something that is “likely to cause fear and alarm to the public or disturb the public peace”. Sections 59 and 181A therefore fail to provide clear guidance for individuals to conform their behaviour and provide an overly wide degree of discretion to those charged with the enforcement of this law.

The constitutionality of these provisions was challenged and upheld by the Supreme Court of Gambia in 2018. However, another decision by the Community Court of Justice of the Economic Community of West African States (ECOWAS Court) held that the provisions violated the right to freedom of expression under international law. The ECOWAS Court reasoned that the definitions of these offences were “so broad as to be capable of diverse subjective interpretations”, and that this “indeed amounts to censorship on publication”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Sections 59 and 181A appear to be the avoidance of public fear and alarm or the disturbance of public peace. While restrictions in the pursuance of “public order” may be legitimate, it is unclear whether public order is synonymous with “public peace”. If the scope of “public peace” is the same or narrower than “public order”, then restrictions may be in the pursuance of a legitimate aim. If the scope of “public peace” is broader than “public order” or requires a lower threshold, then it would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 59(2) of the Criminal Code provides a defence for the accused if they can prove that, prior to publication, they took such measures to verify the accuracy of such statement, rumour or report. Section 181A(2) provides the same defence for the accused.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Violation of Section 59 is a criminal offence and the individual may be liable to imprisonment for two years, to a fine, or both. Violation of Section 181A will result in a fine between 50,000 GMD to 250,000 GMD, or imprisonment for a term of not less than one year, or both. These sanctions may be disproportionate if the court does not consider the circumstances of the particular offence. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Proposed Legislation

Proposed Criminal Offences Bill (2020)

Is there clarity over the precise scope of the law?

No. Item 154 of the proposed law would make it an offence to “wilfully, negligently or recklessly” publish or broadcast any information which is false in any material manner. It is not clear how to determine whether information is “false in any material manner”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While the provision appears in a section of the proposal entitled “Nuisances and Offences Against Health and Convenience”, the specific aims pursued by Item 154 are not specified, which is troubling as the law does not even attempt to establish a basis for restrictions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes, while Part ii) of Item 154 explicitly states that while belief in the truth of the information is not a defence, it can be a defence if the individual can prove that he or she took “reasonable measures to verify the accuracy of the information or news.”

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and would be decided by a court of law.

Are any responses or sanctions proportionate?

No. The offence carries penalties of a fine of fifty thousand dalasis (USD 720) or imprisonment for one year or both the fine and imprisonment. These penalties are likely to be disproportionate, particularly where the individual had no intention to cause harm and/or where no harm was actually caused.

Are intermediaries liable for third party content?

N/A

Law enforcement action

Arbitrary detention of journalist 2015–2016

Alaie Abdoulie Ceesay, the managing director of the independent radio station Teranga FM, was arrested on 2 July by the National Intelligence Agency after he privately shared a viral picture in which a gun was pointed toward a photograph of President Yahya Jammeh. He was detained in an unknown location with no access to a lawyer or his family for two weeks, before being charged with sedition and publication of false news. During his subsequent eight months in prison, Ceesay was tortured on multiple

occasions, and Media Freedom West Africa and 36 other freedom of expression organisations petitioned the African Commission on Human and People's Rights and the UN Special Rapporteur on Freedom of Expression and Opinion to urge President Jammeh to release Ceesay. On 8 November 2016, Ceesay was sentenced to two years in prison for false publication.

Does the action have a legal basis?

Yes. Ceesay was charged with six counts of sedition under Section 52 of the Criminal Code, and one count of false publication under Section 59.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Ceesay shared the photo, which had already gone viral, in a private message, indicating that it would not have had any impact on public order. Furthermore, the conditions under which Ceesay was detained and the international response to his arrest clearly indicate that the action was nothing more than journalist intimidation and an effort to silence criticism.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of activist Madi Jobarteh, June 2020

Madi Jobarteh, the country representative of the Westminster Foundation for Democracy, was charged with spreading false information on 30 June 2020. This followed an interview he gave to local media during a 'Black lives Matter' demonstration wherein he denounced the lack of effective investigation by the government of the Gambia into the deaths of three citizens who were allegedly killed by security officials between June 2017 and July 2019. He was released on bail, and all charges against him were dropped on 10 July 2020.

Does the action have a legal basis?

Yes. Madi Jobarteh was arrested for suspected violation of section 181A(1) of the Criminal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There is no evidence that Jobarteh's statements posed any risk of objective public harm, and the action seems instead to have been aimed at quashing political dissent.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Country Analysis: Ghana

Last updated: December 2023

Ghana currently has no specific legislation to counter disinformation. However, it has two laws that include restrictions on disinformation: the Criminal Code and the Electronic Communications Act, 2008.

While both laws account for instances in which an individual reasonably believed the information to be true they also raise some concerns from a human rights perspective. Their scope is not fully clear, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; this lack of clarity also means that they may result in restrictions being made which would not pursue aims considered legitimate according to international human rights standards. These laws also carry penalties which are potentially disproportionate in their severity, although this would depend on how they are applied in practice.

We assess these laws in detail below along with three examples of their recent enforcement.

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General Speech Legislation

1. Criminal Code
2. Electronic Communications Act, 2008 (Act 775)

Law enforcement action

1. Arrest of Journalist Noah Dameh, May 2022 & May 2023
2. Arrest of journalist and editor David Tamakloe, October 2020
3. Arrest of social media user, May 2020
4. Music artist arrested for faking his own shooting, October 2021

General Speech Legislation

Criminal Code

Is there clarity over the precise scope of the law?

No. Section 208 criminalises the publication or reproduction of any statement, rumour or report which is likely to cause fear and alarm to the public, or to disturb the public peace when knowing or having reason to believe that the statement is false. It is not clear how to determine whether information is “false” or the scope of what is considered “public peace”. Section 208 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 208 appear to be aimed at protecting public order and public peace. While this may be legitimate, it is unclear whether “public peace” is synonymous with public order. If the potential scope of “public peace” is much broader than “public order”, then restrictions would be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 208(2) provides a defence for the accused when they are able to prove that, prior to publication, they took reasonable measures to verify the accuracy of the statement.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 208 is a misdemeanour, but the Criminal Code does not provide for a specific penalty. Section 296 of the Criminal Procedure Code does, however, indicate that under these circumstances the penalty will be imprisonment for a term not exceeding three years. These sanctions would be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. We currently lack information as to how these penalties are imposed in practice, so it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

[Electronic Communications Act, 2008 \(Act 775\)](#)

Is there clarity over the precise scope of the law?

No. Section 76 prohibits an individual from using an electronic communications service to knowingly send false or misleading communications which are “likely to prejudice the efficiency of life-saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle”. It is not clear how to determine whether information is “false” or the scope of something that is “likely to prejudice the efficiency of life-saving service or to endanger the safety of any person, ship, aircraft, vessel or vehicle”. Section 76 thus fails to provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued under Section 76 appear to be aimed at protecting people’s lives and physical safety, which are legitimate aims. However, there is some risk that the ambiguous wording of this provision may result in illegitimate restrictions.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Subsection Section 76(2) provides a defence for the accused when they are able to establish that they took reasonable steps to determine whether the communication was false, misleading, reckless or fraudulent.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Violation of Section 76 may result in a fine of not more than thirty-six thousand cedis or to a term of imprisonment of not more than five years, or both. If the largest fines and longest prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate.

Are intermediaries liable for third party content?

No. Section 76(3) provides that Section 76(2) does not apply to the operator or provider of a network or service over which a communication is sent.

Law enforcement action

Arrest of Journalist Noah Dameh, May 2022 & May 2023

In March 2023, journalist Noah Dameh was remanded in custody for several days on charges of spreading false publication. He had originally been summoned on charges in May 2022 in relation to a publication he made on Facebook accusing the police of chaining a patient to his hospital bed upon orders from a prominent businessman. This case was dismissed in December 2022, before Noah Dameh was charged with making false publications in 2023. Mr Dameh unfortunately [passed away](#) in September 2023.

Does the action have a legal basis?

Yes. Mr Dameh was charged with making false publications under section 208 of the Criminal Offences Act, 1960 (Act 29).

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights and reputations of

others. In this case, Mr Dameh's reporting may indeed have damaged the reputation of the businessman in question, if the allegations were untrue. However, it is likely that the action was taken to silence police criticism, which would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. Any action would be disproportionate in the absence of a legitimate aim. However even if there was a legitimate aim and Mr Dameh had unlawfully defamed the businessman, the bringing of criminal charges against Mr Dameh and detaining him for multiple days would be considered a disproportionate response. This is further supported by sources which indicate that Mr Dameh's detention contributed to his subsequent decline in health and death.

Arrest of journalist and editor David Tamakloe, October 2020

David Tamakloe, journalist and editor in chief of the privately owned Whatsup News website, was arrested in Accra on 7 October 2020. He was detained overnight and charged the next day for publishing false news. This action stems from a report published in July 2020 which alleged a pre-election crisis in the Ashanti region.

Does the action have a legal basis?

Yes. Tamakloe was arrested and charged with violating Section 208 of the Criminal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, there is no indication that the report posed any risk of public harm. The action would instead appear to be politically motivated and an example of journalist intimidation by the authorities.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and is therefore unnecessary and disproportionate.

Arrest of social media user, May 2020

A Ghanaian social media user, Bless Kodjoe Amedegbe, was arrested in May 2020 and is awaiting trial for dissemination of false news. His posts allegedly encouraged Ghanaians to kill police officers and burn President Nana Akufo-Addo's house. He is also reported to have encouraged the public to defy the COVID-19 related restrictions imposed by the President, which were a hoax for the government to install 5G in the country.

Does the action have a legal basis?

Yes. The individual was arrested for violation of Section 76 of the Electronic Communications Act, 2008. It is unclear whether he has also been charged under Section 208 of the Criminal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Probably. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, reports indicate that the social media user made objectively false claims about the correlation between 5G and coronavirus, and encouraged violence in the country against police officers and elected officials. Under these circumstances, the action taken will likely have been in pursuance of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

Potentially. The proportionality of this action will ultimately depend on the decision of the court, and whether they take into account the specific circumstances of the offence.

Music artist arrested for faking his own shooting, October 2021

Dancehall artist Charles Nii Armah Mensah, popularly known as Shatta Wale, was arrested in October 2021 with two other individuals for creating public fear and panic by publishing false information. The arrest stems from Shatta Wale claiming that he was shot and his life was in danger, which was part of a publicity stunt to promote his new album. He was released on bail after cooperating with authorities, and is awaiting trial.

Does the action have a legal basis?

Yes. Reports indicate that the police arrested Shatta Wale for his alleged involvement in the creation and circulation of information intended to cause fear and panic. While we are unable to obtain the charge sheet, statements by the authorities and reports indicate that the action was taken under Section 208 of the Criminal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. While it seems that Shatta Wale had no intention to cause actual harm, the false information could feasibly have caused panic and distress to the public, particularly in the area where the shooting was supposed to have taken place. Therefore, the action taken by law enforcement to quell the rumour and discourage similar incidents may have been legitimate.

Is the action necessary and proportionate in all the circumstances?

Potentially. The proportionality of this action will ultimately depend on the decision of the court, and whether they take into account the specific circumstances of the offence.

Country Analysis: Guinea

Last updated: July 2022

Guinea currently has no specific legislation to counter disinformation. However, there are laws and policies under which someone could—theoretically—be prosecuted for spreading disinformation: the Penal Code, the Press Law, 2010, and the Cybersecurity and Data Protection Law, 2016.

These laws raise concerns from a human rights perspective. They are all loosely defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and some appear to pursue aims which would not be considered “legitimate” according to international human rights standards. These laws also carry penalties which could prove disproportionate in their severity, and result in a chilling effect on freedom of expression.

We analyse these laws in detail below, along with one example of enforcement.

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General Speech Legislation

1. Cybersecurity and Data Protection Law, 2016
2. Loi Organique L/2010/02/CNT du 22 juin 2010 Portant sur la Liberté de la Presse
3. Penal Code

Law enforcement action

1. Activist Oumar Sylla sentenced to three years' imprisonment, June 2021

General Speech Legislation

Cybersecurity and Data Protection Law, 2016

Is there clarity over the precise scope of the law?

No. Article 35 criminalises the dissemination of false information which suggests that the destruction of property or an attack against persons has already occurred, or is likely to take place. Article 35 further covers false information regarding any other emergency situation. It is not clear how to determine whether information is “false”. It is also unclear what is included in the scope of information that pertains to the destruction of property, an attack against a person, or any other emergency situation. Article 35 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 35 would appear to be targeted at public order. However, the broad scope of speech that potentially pertains to the destruction of property, an attack against a person, or any other emergency situation, suggests that restrictions may fall outside the scope of what is normally considered “public order”. If so, the restrictions would not pursue legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 35 may result in a fine between 20,000,000 to 100,000,000 GNF, and imprisonment between six months to three years. If the largest fines and longest prison sentences are imposed without taking into account the

circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

N/A

[Loi Organique L/2010/02/CNT du 22 juin 2010 Portant sur la Liberté de la Presse](#)

Is there clarity over the precise scope of the law?

No. Article 106 prohibits any communication by any means whatsoever of “false news, fabricated or falsified material or material falsely attributed to third parties” which is made in bad faith and is likely to “disturb public order” or “to undermine the discipline or morale of the armed forces or to hinder the war effort of the Nation.” It is not clear how to determine what constitutes “false news, fabricated or falsified material” or what information would be considered likely to undermine the “morale of the armed forces” or “the war effort of the Nation”. Article 106 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. The first part of Article 106 prohibits only false information which threatens public order, which would constitute a legitimate aim under international human rights law. However, the second part of Article 106 includes aims with potentially a far broader scope; protecting the “discipline or morale of the armed forces” and “the war effort of the nation”. If these aims are interpreted more broadly than “public order” and “national security”, then restrictions would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 106 appears to prohibit the dissemination of false news when done in bad faith, which implies the intention to deceive and thus the individual’s knowledge that the information is false.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. While Article 126 provides that offences under the Press Law shall be referred to the criminal courts unless in the case of “simple fines”, in practice, determinations and sanctions are also decided by the High Authority of Communication (HAC), which is not an independent body.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Article 106 provides that the publication, dissemination or reproduction of false news that disturbs public order shall be punished by a fine of 500,000 to 2,000,000 GNF (USD 56 to 224), and that which is likely to undermine the discipline or morale of the armed forces or to hinder the war effort of the Nation shall be punished by a fine of 5,000,000 to 10,000,000 GNF (USD 560 to 1120). Furthermore, Article 40 provides the HAC with broad authority to implement warnings, formal notices, suspensions and permanent bans to punish violations. If the harshest fines or restrictions are imposed without taking into account the circumstances of the offence or the actual harm caused, then sanctions may be disproportionate.

Are intermediaries liable for third party content?

N/A

[Penal Code](#)

Is there clarity over the precise scope of the law?

No. Article 875 of the Penal Code broadly criminalises the publication of false news through electronic means. It covers the dissemination of all false news where the person is unable to prove its veracity and doubles the penalty when the offence is committed with the aim of undermining public peace. Article 519 also criminalises the communication of false information with the intention of causing the public to believe in the existence of a dangerous or destructive situation. It is not clear how to determine whether speech is “false” or the scope of a dangerous situation and “public peace”. It is not clear how to determine whether speech is “false” or the scope of “public peace”.

Article 875 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 875 appear to be in the pursuance of public order. However, while restrictions in the pursuance of “public order” may be legitimate, the scope of public peace may be broader than “public order”. If the scope of public peace is indeed broader than “public order” or requires a lower threshold, then a restriction would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 875 only applies when the accused is unable to prove the veracity of the information or unable to prove they had good reason to believe the information to be true. Article 519 similarly requires intentionality as an element of the crime.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 875 is punishable by six months to two years of imprisonment and/or a fine of 50,000,000 to 100,000,000 GNF. This penalty is doubled when committed with the aim of undermining public peace. Violation of Article 519 is punishable by six months to one year of imprisonment and/or a fine of 1,000,000 to 5,000,000 GNF. If the largest fines and longest prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

N/A

Law enforcement action

Activist Oumar Sylla sentenced to three years' imprisonment, June 2021

On 10 June 2021, Conakry's Court of Appeal sentenced activist Oumar Sylla to three years imprisonment for "communication and dissemination of false information, violence and threat of death". He had previously been charged for this offence in April 2020 in relation to his denouncement of arbitrary arrests during electoral periods during a program on Radio Espace FM. However, these charges were eventually dropped and Sylla was released until his re-arrest in September 2020. This second arrest resulted in a 11 month prison sentence in January 2021 for "criminal participation in a gathering likely to disturb public order".

Does the action have a legal basis?

Unclear. The original charges against Sylla in 2020 referred to the dissemination of false information, presumably under Article 875 of the Penal Code, and Sylla's sentence seems to have been re-imposed on these same charges. But there is some confusion due to the judge's decision to combine the appeals case with Sylla's own appeal of his previous 11 month prison sentence for "criminal participation in a gathering likely to disturb public order".

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. In this case, reports indicate that Sylla had been frequently harassed by law enforcement due to his pro-democracy activism with the National Front for the Defence of the Constitution, and that this action was pursued for political purposes.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Country Analysis: Guinea-Bissau

Last updated: July 2022

Guinea-Bissau has no specific legislation to counter disinformation. However, there are three laws containing provisions that could be interpreted to restrict disinformation; the Penal Code, Lei n.º4/91 Aprova Lei da Imprensa and Lei n.º 5/2010 Aprovada a Lei de Base das Tecnologias de Informação e Comunicação.

These laws raise various concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech. The Press Law and the Penal Code also carry disproportionately harsh penalties for individuals, and may result in a chilling effect on freedom of expression.

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1. Código Penal (Decreto-Lei n.º 4/93 – Suplemento ao Boletim Oficial n.º 41, de 13 de Outubro de 1993
2. Lei n.º 5/2010.Aprovada a Lei de Base das Tecnologias de Informação e Comunicação
3. Lei n.º4/91 Aprova Lei da Imprensa

Government Pressure

1. President calls for justice for misinformation, July 2020

General Speech Legislation

[Código Penal \(Decreto-Lei n° 4/93 – Suplemento ao Boletim Oficial n° 41, de 13 de Outubro de 1993\)](#)

Is there clarity over the precise scope of the law?

No. Article 218 states that anyone in Guinea-Bissau in time of “preparation or war,” who disseminates or publicises “rumours or assertions”, whether his own or of others, which he knows to be wholly or partially false, to “undermine the peace effort of Guinea-Bissau or to aid the foreign enemy”. It is not clear how one would determine the falsity of rumours or assertions or the scope of what is considered to “undermine the peace effort” or “aid the foreign enemy”. It is also unclear what constitutes a time of “preparation” for war, and whether this definition would encompass times of national or civil political unrest or regional political instability. This lack of clarity means that an individual cannot reasonably know what actions or statements are prohibited under the law and in what circumstances it applies.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Article 218 appear to be aimed at protecting public order and national security in Guinea-Bissau. However, if the scope of “peace effort of Guinea-Bissau or to aid the foreign enemy” is interpreted more broadly than the protection of national security or public order, then restrictions would be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 218 requires that the individual know that the information was wholly or partially false. The individual would therefore not be liable if they reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This will be decided by a court.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

No. Sentences range from one year to eight years' imprisonment. Even the minimum penalty of one year in prison is severe, and prevents the court from administering more lenient penalties in cases where no actual harm was caused and the individual did not intend to cause harm. Furthermore, applying the maximum penalty of 8 years without reference to the actual harm caused or intention would be deemed disproportionate.

Are intermediaries liable for third party content?

N/A

[Lei n.º 5/2010.Aprovada a Lei de Base das Tecnologias de Informação e Comunicação](#)

Is there clarity over the precise scope of the law?

No. Article 113(d) prohibits ICT intermediaries from intentionally transmitting "fraudulent or illegal messages that threaten public safety, including the transmission of false distress signals". However, the scope of what is considered "fraudulent or illegal messages" is unclear and not specifically defined elsewhere in the law. Article 113(d) therefore fails to provide clear guidance and provides an overly wide degree of discretion to those charged with the enforcement of the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Yes. Article 113(d) restricts fraudulent or illegal messages only where they threaten public safety, which is a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Unclear. Article 113(d) prohibits ICT intermediaries from "intentionally transmitting fraudulent or illegal messages" but fails to provide further detail on what is meant by intentional transmission, including in instances where the intermediary merely plays a passive role in the dissemination of third-party content.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. The National Regulatory Authority (ARN) of Guinea-Bissau is charged with applying appropriate sanctions for any infractions of the law (Article 8(e) and Article 12(f)) and with arbitrating and resolving disputes that arise in the context of communications (Article 8(s)). Whilst Article 7 states that the ARN is “independent in the exercise of its functions”, Article 17 indicates that members of the ARN are must be approved by government, and that the ARN must include at least one representative of the President of the Republic (Article 17(4)(a)), two representatives of the National People’s Assembly (Article 17(4)(b) and two representatives of the Government (Article 17(4)(c).

Are any responses or sanctions proportionate?

Potentially. Article 111 states that non-compliance with the law can result in: (a) fines; (b) restriction of the scope or duration of the individual licence or of the general authorisation; c) suspension of the activity; d) revocation of the licence or authorisation. Whilst these penalties could result in considerable restrictions to freedom of expression, article 111(2) states that the determination of sanctions must consider: “aggravating or mitigating factors, including the nature and gravity of the act committed, the entity’s own background, recidivism, the offending entity’s willingness to repair the infractions and collaboration with the investigation of the ARN”. This indicates that any penalties or sanctions applied should be proportionate to the resultant harm and the due diligence of the entity in question.

Are intermediaries liable for third party content?

Unclear. Article 113(d) prohibits ICT intermediaries from “intentionally transmitting fraudulent or illegal messages” but fails to provide further detail on what is meant by intentional transmission, including in instances where the intermediary merely plays a passive role in the dissemination of third-party content. In any event, the determination of sanctions does take into account the entity’s willingness to collaborate with authorities and repair harms, indicating that intermediaries may not be liable so long as they cooperated fully with the national regulator’s requests.

[Lei n.º 4/91 Aprova Lei da Imprensa](#)

Is there clarity over the precise scope of the law?

No. Article 39(2)(a) prohibits the dissemination, through the press, of false news or unfounded rumours, when intended to jeopardise the public interest and the democratic order. The terms “false news” and “unfounded rumours” are highly subjective and are not clearly defined elsewhere in the law, meaning that individuals cannot be expected to reasonably know what is prohibited and provides an overly wide degree of discretion to those charged with the enforcement of the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Article 39(2)(a) provides that false information is to be prohibited only when it is shared with the intention to jeopardise “public interest and democratic order”. The aims of this provision therefore appear to be targeted at protecting democracy and public order. While speech or content restricted in pursuance of these aims may be legitimate, the scope of what might be considered “public interest and democratic order” is likely much broader than these legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 39(2)(a) appears to prohibit the dissemination of false news when intended to jeopardise public interest and democratic order, which implies the intention to deceive.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. The “press crimes” will be decided by a court of law (articles 51 and 52).

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Unclear. Article 44 states that the press crimes (see Article 39(2)) shall be punishable by imprisonment for a term not exceeding two years and a corresponding fine, if not subject to a more serious penalty, under the terms of the criminal law. If penalties are

levied without consideration of the harm actually caused by the sharing of the false information, such sanctions would likely be disproportionate.

Are intermediaries liable for third party content?

N/A

Government Pressure

President calls for justice for misinformation, July 2020

President Sissoco announced on 7 July 2020 that intelligence services would use equipment acquired from abroad to begin monitoring citizen communications and “call to justice” anyone who spread fake news or made insults under the guise of anonymity.

Does the action have a legal basis?

No. The press release contains no legal basis for the monitoring of communications or taking action against individuals for disseminating false information.

Is the action clearly directed to tackle an objectively legitimate aim?

No. The proposed actions would constitute serious restrictions on individuals’ privacy and freedom of expression online. They would therefore only be permissible when clearly directed at tackling an objectively legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. The announcement does not indicate that such actions would pursue any of these legitimate aims, and instead appears directed at addressing online threats and the dissemination of fake news in an overly broad manner.

Is the action necessary and proportionate in all the circumstances?

No. It would appear that the proposed actions would not be directed at tackling an objectively legitimate aim, and thus any action would be unnecessary and disproportionate. But even if taken in pursuit of a legitimate aim, such as public order or safety, then the proportionality of the action would ultimately depend on the nature of

the monitoring itself and the corresponding actions taken against those who disseminate fake news.

Country Analysis: Kenya

Last updated: May 2023

Kenya does not have specific legislation to counter disinformation. However, it has one law that includes restrictions on disinformation: the Computer Misuse and Cybercrimes Act, 2018.

While this law accounts for instances in which an individual reasonably believed the information to be true, it raises other concerns from a human rights perspective. It is not clear in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it carries penalties which are potentially disproportionate in their severity.

We assess this law in more detail below along with several examples of how it is being applied in practice to the detriment of freedom of expression.

N.B. Section 66 of Kenya's Penal Code, as amended in 2014, previously criminalised disinformation with prison sentences and fines. However, the Kenyan High Court [ruled](#) in May 2021 that Section 66 of the Penal Code violated Kenyans' freedom of speech as protected in the Kenyan Constitution. This section of the Penal Code is therefore null and void.

N.B. Section 29 of Kenya's Information and Communication Act, 1998 included a restriction on sending false messages for the purpose of causing "annoyance, inconvenience or needless anxiety to another person". However, the Kenyan High Court [ruled](#) in 2016 that Section 29 was unconstitutional because it unjustifiably limited freedom of expression and because it was worded in vague terms.

N.B. Section 23 of the Computer Misuse and Cybercrimes Act was challenged before the High Court in 2018 for limiting freedom of expression. The High Court [dismissed](#) the challenge in 2020; the case is now before the Court of Appeals.

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General Speech Legislation

Computer Misuse and Cybercrimes Act, 2018

Is there clarity over the precise scope of the law?

No. Section 22 of this Act criminalises “false publications” and Section 23 criminalises the “publication of false information”. Section 22 prohibits individuals from intentionally publishing false, misleading or fictitious data or misinforming with intent that the data be considered or acted upon as authentic. Section 23 prohibits individuals from knowingly publishing false information in print, broadcast, data or over a computer system, which “is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person”. It is unclear how to determine what is considered “false” or the scope of something which “is calculated or results in panic, chaos, or violence among citizens of the Republic, or which is likely to discredit the reputation of a person”.

N.B. Following a petition by the Bloggers Association of Kenya and the Kenya Union of Journalists in 2018, the High Court suspended the implementation of these provisions. However, the court ultimately dismissed the petition in February 2020 and these provisions were upheld.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Yes. Speech should only be restricted where some clear, objective public harm might be caused. Section 22(2) provides that restrictions under this provision are only permissible with respect to false publications or misinformation that is likely to propagate war, incite persons to violence, constitute hate speech, advocate hatred or incitement to cause harm, or negatively affect the rights of reputations of others. Section 23 also appears to be targeted at public safety and protecting the rights of others.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Sections 22 and 23 both suggest that liability would only apply in circumstances where the individual had knowledge of the falsity and intentionally acted.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 22 will result in a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or both. Violation of Section 23 will result in a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years, or both. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. This is particularly the case where no harm takes place.

Are intermediaries liable for third party content?

Yes, but only under certain circumstances. Section 56 indicates that a service provider will not be subject to civil or criminal liability unless they “had actual notice, actual knowledge, or willful and malicious intent, and not merely through omission or failure to act, had thereby facilitated, aided or abetted the use by any person of any computer system controlled or managed by a service provider in connection with a contravention of this Act of any other written law”. Services providers are not liable for simply maintaining and making available their services.

[Election Offences Act, 2016](#)

Is there clarity over the precise scope of the law?

Potentially. Section 13 (b) of the Act provides that it is an offence to “make or publish, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of withdrawal of any other candidate at such election.” While this clearly relates only to false statements of a specific kind (about another candidate’s withdrawal), it is still not clear how the falsity of a statement would be judged, and the ambiguity of this provision leaves it open to abuse to target particular political candidates during elections.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Section 13(b) in the context of elections seeks to ensure that the candidates and their supporters do not publish false news as an election campaign strategy, or to mislead voters on the basis of false news. The potentially legitimate ground for the restriction is the respect of the rights and reputations of others, which is a permissible ground of restriction of expression. The restriction is linked to safeguarding the integrity of elections and the right of political participation.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Section 13 (b) does not predicate liability on knowledge of falsity or reasonable belief of the veracity of the information.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. The election offence of publishing a false statement is prosecuted through the courts, once a complaint is filed and charges preferred against any person alleged to have published a false statement.

Are any responses or sanctions proportionate?

Potentially. Offences under Section 13 carry a fine not exceeding 500 000 shillings (approximately USD 3 700) or imprisonment for a term not exceeding five years, or both. If the maximum penalties were imposed without taking into account the actual harm caused, the penalties are likely to be disproportionate. Furthermore, the imposition of a penal sanction for the spread of false news is likely to be disproportionate if the circumstances of the case are not severe.

Are intermediaries liable for third party content?

Not applicable.

Law Enforcement Action

Summons of former Cabinet Secretary and his Advocate, February 2023

In February 2023, Kenya's the Director of Criminal Investigations summoned Dr Fred Matiang'i (the former Cabinet Secretary in charge of internal security and coordination of government affairs) – and his advocate Danstan Omari in relation to a charge of publishing false information. Dr Matiang'i and his Advocate had both made comments in media outlets and television regarding an alleged raid on Dr. Matiang'i's residence by police officers who were reportedly intending to arrest him. The Law Society of Kenya protested the summons of Advocate Omari, who is one of their members.

Does the action have a legal basis?

Yes. The government action was based on charges including an offence under section 23 of the Computer Misuse and Cybercrimes Act, which criminalises the intentional publication of false information calculated or results in panic, chaos, or violence. Omari was alleged to have published false information while addressing the media in relation to the summons issued to his client, Dr. Fred Matiang'i.

Is the action clearly directed to tackle an objectively legitimate aim?

No. An action can only be said to pursue a legitimate aim where the restriction on free expression seeks to either ensure the respect of the rights or reputations of others, or for the protection of national security, public order, public health or morals. In this case, none of these objectives can be said to have been pursued. Considering Dr. Matiang'i's status as the immediate former Cabinet Secretary in charge of law enforcement, it was perceived that the action against him and his advocate – who was merely executing the instructions of his client – was politically motivated.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, it was not proportionate for the state to take such action. Furthermore, the High Court granted anticipatory bail to the accused, and the action has since been taken out of the criminal justice system, thus indicating that it was neither necessary nor proportionate in the circumstances.

Arrest of Activist Edwin Mutemi Kiama, April 2021

Activist Edwin Mutemi Kiama was arrested on 7 April 2021 in connection with a viral post on his Twitter profile criticising the government's handling of public funds. He was granted bail on 9 April upon payment of 500,000 Kenyan shillings (USD 4,330) and on the condition that he no longer use his social media accounts or speak about government loans related to COVID-19. The charges were dropped and restrictions lifted on 20 April, based on a lack of evidence.

Does the action have a legal basis?

Yes. Kiama was arrested based on suspected violation of Section 22 of the Computer Misuse and Cybercrimes Act, 2018.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. It is highly unlikely that any of the posts and images shared by Kiama criticising the government's handling of public funds caused objective or demonstrable risk to public order. It appears that the aim of the action was to silence criticism of the president and his deputy, which is not a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of Activist Edwin Mutemi Kiama, June 2020

Activist Edwin Mutemi Kiama was arrested on 9 June 2020 and detained overnight as part of an investigation into publishing false information using social media. It is not clear exactly which publications this action referred to, but sources indicate it may have been linked to a thread posted on Kiama's twitter account about Kenya's colonial history. He was released from police custody after 20 hours without charge.

Does the action have a legal basis?

Yes. Kiama was arrested for suspected violation of Sections 22 and 23 of the Computer Misuse and Cybercrimes Act, 2018.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There is no evidence that any of Kiama's publications, including the twitter thread that likely prompted the arrest, posed any concrete and objective public harm. The action appears to be politically motivated and a clear case of journalist intimidation.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

[Arrest of Cyprian Nyakundi over coronavirus post, March 2020](#)

In March 2020, blogger Cyprian Nyakundi was arrested for allegedly publishing false information related to the pandemic. This action was taken in response to a tweet made by Nyakundi questioning whether a government official had adhered to COVID-19 travel quarantine regulations. He was freed on bail of 50,000 shillings (USD 433) shortly after his arrest, on the condition that he made no further tweets on COVID-19, but a warrant for his rearrest was issued in April, as he had failed to present himself before the court.

Does the action have a legal basis?

Yes. Sources indicate that Nyakundi was charged under Section 22 of the Computer Misuse and Cybercrimes Act, 2018.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Nyakundi's post posed no

concrete, objective public harm, and this action is clearly taken in order to suppress political dissent and intimidate journalists.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, any action is unnecessary and disproportionate.

Arrest of Elijah Muthui Kitonyo, March 2020

Elijah Muthui Kitonyo was arrested on March 15, 2020, and charged with publishing false information about the coronavirus in Kenya. It is alleged that Kitonyo posted a tweet from a fake account stating that the Kenyan authorities lied about the first confirmed case in Kenya coming from the USA via London.

Does the action have a legal basis?

Yes. The individual was arrested and charged under Section 23 of the Computer Misuse and Cybercrimes Act, which prohibits individuals from knowingly publishing false information that is calculated or results in panic.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the individual was arrested and charged on the basis of protecting public order from “calculated” information at a time of a public health crisis. However, there is no indication that this post was intended to cause panic or that the authorities were concerned about it disrupting their efforts to combat the pandemic.

Is the action necessary and proportionate in all the circumstances?

No. This action is likely to be disproportionate as there is no evidence of an intention to cause harm, or of harm being caused. Using criminal law under these circumstances would—in and of itself—be disproportionate.

Arrest of Isaac Kibet Yego and Emanuel Kimutai Kosgei, July 2020

Freelance journalist Isaac Kibet Yego and 19-year-old Emanuel Kimutai Kosgei were arrested and detained for several days after they claimed that the Cabinet Secretary for the Interior, Fred Matiangi, had tested positive for COVID-19 and was in an intensive care unit, in Facebook posts.

Does the action have a legal basis?

No. While we are unable to obtain the charge sheet, statements by the authorities indicate that the action was taken under Section 29 of the Information and Telecommunications Act, 1998. However, the Kenyan High Court ruled in 2016 that Section 29 was unconstitutional because it unjustifiably limited freedom of expression and because it was worded in vague terms.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, authorities claimed that the rumours risked causing panic and devastation amongst the public and caused distress in Matiangi's family. However, it is unlikely that the social media posts had in fact posed any concrete, objective risk to public health or national security, indicating that the action may not have been legitimate.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

[Arrest of Robert Alai, March 2020](#)

Blogger Robert Alai was arrested and charged in March 2020 for publishing false information on his social media account. His posts accused the Kenyan government of concealing information about the extent of COVID-19 in the country.

Does the action have a legal basis?

Yes. The blogger was charged for violating Section 23 of the Computer Misuse and Cybercrimes Act, which prohibits individuals from knowingly publishing false information that is calculated or results in panic.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. The day before the blogger's arrest, the Health Cabinet Secretary warned of arrests and said that misinformation was jeopardising the government's efforts to fight Covid-19. However, reports do not indicate that the Alai's posts were likely to harm the government's response to the pandemic. It appears that this action was politically motivated and not directed at public health.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim. It is therefore unnecessary and disproportionate.

Country Analysis: Lesotho

Last updated: July 2022

Lesotho does not currently have specific legislation to counter disinformation. However, there are other laws that include restrictions on certain forms of disinformation: the Communications Authority (Internet Broadcasting) Rules, 2020, and the Public Health (COVID-19) Risk Determination and Mitigation Measures Regulations, 2021.

Both raise substantial concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they may pursue aims which would not be considered “legitimate” according to international human rights standards. These laws may also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below and provide some limited data on the enforcement of these laws in practice.

Contents

General Speech Legislation

1. Lesotho Communications Authority (Internet Broadcasting) Rules 2020
2. Public Health (COVID-19) Risk Determination and Mitigation Measures Regulations, 2021

Government Pressure

1. Communications Authority warns against fake news on COVID-19, April 2020

General Speech Legislation

Lesotho Communications Authority (Internet Broadcasting) Rules 2020

Is there clarity over the precise scope of the law?

No. Rule 6 of the 2020 Internet Broadcasting Rules requires that all internet broadcasts – defined as the public sharing of any message to more than 100 people in Lesotho – comply with the requirements of the [Lesotho Telecommunications Authority \(Broadcasting\) Rules 2004](#). Rule 8(2) of the 2004 Rules requires that news and information is presented “in the correct context and in a balanced manner without intentional or negligent departure from the facts, whether through (a) distortion, exaggeration or misinterpretation, (b) material omissions or (c) summarising or editing”. Rule 8(3) of the 2004 Rules further states that broadcasters “may only present as fact, matters which may reasonably be true, having regard to the source of the news or information”.

It is not clear how one would determine whether information was being presented in a “balanced” manner or what would constitute “intentional or negligent departure from the facts”, or the scope of what would be considered “distortion, exaggeration or misinterpretation”. It is also not clear what it would mean to “present matters as fact”. Neither the 2020 Internet Broadcasting Rules, nor the 2004 Telecommunications Authority Broadcasting Rules, therefore, provide clear guidance for individuals as to what expression is prohibited.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While the aims of the Broadcasting Rules seem directed at preserving a healthy information ecosystem and ensuring that individuals have access to accurate information, the lack of specification of particular circumstances in which distorted or misleading information can be restricted leaves this law open to abuse in pursuance of illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Unclear. Rule 8(2) of the 2004 Rules specifies that information must be presented without “intentional” departure from facts, and Rule 8(3) states that broadcasters “may

only present as fact, matters which may reasonably be true, having regard to the source of the news or information". While this would suggest there is some consideration for instances where the individual (or broadcaster) reasonably believed the information to be true, it is not a clear exemption or defence.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. The Lesotho Communications Authority (formerly called the Lesotho Telecommunications Authority) makes determinations. While this is intended to be an autonomous and independent body, government ministers appoint its members and the Minister of Telecommunications has considerable influence over its activities.

Are any responses or sanctions proportionate?

Potentially. Rule 7(2) of the 2020 Internet Broadcasting Rules states that, in the first instance, the Authority may investigate and order the removal of a prohibited internet post. Rule 8(1) of the 2020 Internet Broadcasting Rules states that if this remedial action is not sufficient, the Authority may order the offending party to broadcast a correction or an apology or both, or may impose a fine to be determined by the Authority, in accordance with Rule 26 of the 2004 Broadcasting Rules. In some instances, these responses would serve as proportionate responses; however, if the Authority chose to levy a particularly high fine without consideration for the circumstances of the offence or the actual harm caused, this would be disproportionate. It is worrying, therefore, that no maximum penalty is prescribed.

Are intermediaries liable for third party content?

Unclear. The Rules define "internet broadcasting" as posts available to over 100 individuals in Lesotho, or posts from an account with over 100 followers in Lesotho. It is not clear, in the case of a violation, whether the author of the broadcast or the platform that promotes it (or both) would be liable for any damages caused.

Public Health (COVID-19) Risk Determination and Mitigation Measures Regulations, 2021

Is there clarity over the precise scope of the law?

No. Regulation 14(7) prohibits the publication or spreading of “fake or false information”. It is not clear how to determine what information is false, or whether this offence extends to information regarding COVID-19, or more broadly. Regulation 14(7) thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Whilst the Rules as a whole appear to be aimed at protecting public health during the COVID-19 pandemic, Regulation 14(7) instead broadly prohibits the publication or spreading of false information under any circumstances. As such, this restriction would seemingly permit restrictions even where there was no concrete, objective harm to the public.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. It appears that persons would be held liable for spreading false information even in the event where they reasonably believed, or were led to believe, that the information disseminated was true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. Determinations will be made by a court.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. The offence of publishing false information is punishable by a fine of up to 5,000 Maloti (USD 340) or imprisonment of up to one month or both. If the maximum penalties were imposed without consideration for the circumstances of the offence or the actual harm caused, they may be disproportionate.

Are intermediaries liable for third party content?

N/A

Government Pressure

[Communications Authority warns against fake news on COVID-19, April 2020](#)

On 2 April 2020, the Lesotho Communications Authority warned licensees and the public to avoid distributing false information about the COVID-19 pandemic, and to be vigilant against such false information when consuming news. The Authority noted that the National Command Centre was available for free clarifications on COVID-19, and stated that it would take “tough measures” against broadcasters and individuals wilfully disseminating false news.

Does the action have a legal basis?

Potentially. The Authority pointed towards several legislative instruments that could be used to prosecute false news, including Regulation 10(5) of the Public Health (COVID-19) Regulations, 2020, which prohibited any person from publishing or spreading “fake or false information”. The Authority also mentioned Rule 8(2) of the 2004 Broadcasting Rules.

Is the action clearly directed to tackle an objectively legitimate aim?

Yes. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the actions were likely pursued in the name of public health, and the Authority stated its concern that COVID-19-related false news would undermine efforts to contain the pandemic and therefore jeopardise public safety.

Is the action necessary and proportionate in all the circumstances?

Potentially. The action itself was a warning to individuals and broadcasters of the risks and legal framework surrounding the publication of false information, which in itself is a necessary and proportionate response to the risks of COVID-19-related disinformation.

However, the necessity and proportionality of any individual enforcement actions would ultimately depend on whether penalties are levied while considering the circumstances of the offence or the actual harm caused.

Country Analysis: Liberia

Last updated: July 2022

Liberia currently has no specific legislation to counter disinformation. There is one existing law that includes a potential restriction on disinformation: the Penal Code.

This law raises concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it pursues aims which would not be considered “legitimate” according to international human rights standards. This law also carries penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess this law in detail below and provide an example of its enforcement.

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General Speech Legislation

1. Penal Code

Law Enforcement action

1. Arrest of opposition politician, October 2021

Government Pressure

1. Threats against media from Solicitor General, April 2020

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Section 17.4 of the Penal Code prohibits an individual from initiating or circulating “a report or warning of an impending bombing or other crime or catastrophe, knowing that he report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm”. It is not clear what is included in the scope of “other crime or catastrophe” or what threshold is required for the report or warning to be likely “to cause public inconvenience or alarm”. Section 17.4 therefore fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Section 17.4 appear to be targeted at public order and protecting the rights of others. However, the lack of clarity on what would be considered as causing “public inconvenience or alarm” suggests that not all restrictions would be made in pursuance of legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 17.4 prohibits an individual from disseminating a report or warning “knowing that the report or warning is false or baseless”. This would indicate that individuals would not be liable if they reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court.

Are any responses or sanctions proportionate?

Potentially. An individual that violates Section 17.4 will be guilty of a first degree misdemeanour. A misdemeanour is defined under Section 50 of the law and it provides

for a term of imprisonment of one year or less. If the maximum prison sentence is imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs.

Are intermediaries liable for third party content?

N/A

Law Enforcement action

Arrest of opposition politician, October 2021

In October 2021, the Liberia National Police arrested and charged the Assistant Secretary General of opposition party Alternative National Congress, Jethro Harris, over alleged “false public alarms” and making “false statements”. This action was taken in connection with a Facebook post he published on 27 September 2021 alleging that young people were at risk due to a series of ritualistic murders across the country. A court dismissed all charges and Harris was released in November 2021.

Does the action have a legal basis?

Yes. Harris was arrested and charged under Section 17.4 of the Penal Code of Liberia.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. Here, the Liberia National Police claimed that Harris’ post was false and caused public inconvenience and alarm. However, there is no evidence to support these claims and the Alternative National Congress Party maintains that the arrest was political in nature.

Is the action necessary and proportionate in all the circumstances?

No. Without a legitimate aim, no action would be considered necessary or proportionate.

Government Pressure

Threats against media from Solicitor General, April 2020

In April 2020, the Solicitor General of Liberia, Cllr. Sayma Syrenius Cephas, threatened to shut down media institutions and prosecute individuals that shared 'fake news' during the COVID-19 state of emergency.

Does the action have a legal basis?

No. While the Solicitor General did indicate that Article 86 of the Constitution enables the government to restrict some rights during the state of emergency, no specific provisions were provided to support the seizing of equipment, shutting down of media institutions, or prosecution of individuals.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, reports indicate that the threats were not made in pursuance of public health objectives or to ensure that accurate information was shared during the state of emergency. Instead, these threats came about after rumours emerged that the President had tested positive for Covid-19. This indicates that the threats were made for political purposes. There is no indication that the authorities feared that any particular posts or media institutions would complicate efforts to tackle the pandemic.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and is therefore unnecessary and disproportionate.

Country Analysis: Madagascar

Last updated: July 2022

Madagascar currently has no specific legislation to counter disinformation. However, there are laws that are used to prosecute individuals for the publication of false news: Law 2016-029 Establishing the Code of Media Communication and the Penal Code.

These laws raise significant concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech when it is likely to shake the discipline or morale of the armed forces or undermine public confidence in the strength of the currency (Law 2016-029 Establishing the Code of Media Communication).

These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below. We also assess the enforcement of Article 91, which has been used to restrict and punish those critical of the government under the guise of disinformation.

Contents

General Speech Legislation

1. [Law 2016-029 Establishing the Code of Media Communication](#)
2. [Penal Code](#)

Law Enforcement action

1. [Arrest of Arphine Helisoa, April 2020](#)
2. [Arrest of journalist Fernand Cello, May 2017](#)

General Speech Legislation

Law 2016-029 Establishing the Code of Media Communication

Is there clarity over the precise scope of the law?

No. Article 30 prohibits the publication, dissemination or production of false news which has or is likely to mislead the public, disturb public peace, undermine the discipline or the morale of armed forces, obstruct civil peace; undermine public confidence in the strength of currency, or cause withdrawals of public funds. It is not clear how to determine whether information is “false” or the scope of something that is likely to undermine the discipline or the morale of armed forces, obstruct civil peace; undermine public confidence in the strength of currency, or cause withdrawals of public funds. Article 30 therefore fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Some of the restrictions set out in Article 30 appear to be targeted at protecting public order and national security. However, while restrictions in the pursuance of these aims may be legitimate, the broad scope of this provision indicates that not all restrictions would be in the pursuance of them. This is particularly relevant for any restriction that is likely to undermine the discipline or the morale of the armed forces, or undermine public confidence in the strength of the currency.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

N/A

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Violation of Article 30 will result in a fine between 3,000,000 to 6,000,000 Ariary, which is a considerable amount when considering the average income for journalists in Madagascar. These minimum sanctions suggest that most sentences will be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Penal Code

Is there clarity over the precise scope of the law?

No. Article 91 of the Penal Code broadly criminalises any acts that are likely to compromise public security, cause serious political unrest, or provoke hatred of the government. It is unclear what types of statements would be included within the scope of this provision, or what threshold would need to be reached for an act to be likely to compromise public security, cause serious political unrest, or provoke hatred of the government. Article 91 has been used to restrict and punish those critical of the government under the guise of false news.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Article 91 appears to be targeted at protecting public order and national security. However, while restrictions in the pursuance of these objectives may be legitimate, the broad scope of Article 91 indicates that not all restrictions would be in the pursuance of these legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 91 will result in imprisonment for a term between one and five years. These minimum sanctions suggest that most sentences will be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Law Enforcement action

Arrest of Arphine Helisoa, April 2020

The publishing director of the newspaper Ny Valosoa Vaovao, Arphine Helisoa, was arrested in April 2020 for spreading fake news and inciting hatred towards the President of Madagascar. This arrest stems from a report that was critical of the government's response to COVID-19. The report questioned the use of excessive force in enforcing the government regulations and the rationale behind opening markets without putting in place any protective measures.

Does the action have a legal basis?

Yes. Arphine Helisoa was arrested for disseminating false news and inciting hatred of the President, which constitutes an offence under Article 91 of the Penal Code. Reports suggest that she is being charged with this particular offence, and not as a journalist, because it allows the authorities to detain her and seek a prison sentence.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, Arphine Helisoa's lawyer has argued that the actions are a political manoeuvre against his client because she is the publishing director of a newspaper that is closely aligned with the opposition. Other reports also indicate that the arrest was politically motivated and constitutes clear intimidation of the press.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and therefore both unnecessary and disproportionate.

Arrest of journalist Fernand Cello, May 2017

Fernand Cello, a journalist at *Radio Jupiter*, was arrested by police in May 2017 for alleged "propagation of false news". It is not clear which publication the action was in relation to, but sources indicate that he was targeted for his investigations into corruption and illegal mining. This charge was [dropped](#) in June 2017.

Does the action have a legal basis?

Unclear. We are unable to obtain the charge sheet. However, it is likely that the charge for propagation of false news would have been under Article 91 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. In this case, there is no evidence that the reporting had posed any concrete or objective risk of public harm, and sources indicate that the action was politically motivated to silence criticism of the authorities.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate, no action would be considered necessary or proportionate.

Country Analysis: Malawi

Last updated: December 2022

Malawi currently has no specific legislation to counter disinformation. However, there are three laws and policies under which someone could—theoretically—be prosecuted for spreading disinformation: the ‘Penal Code’, ‘Electronic Transactions and Cyber Security Act, 2016’ and ‘Public Security Regulations’.

All three laws raise substantial concerns from a human rights perspective. They are all ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they all appear to pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting content which “undermines confidence in the government” (see ‘Public Security Regulations’). Two of the laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in more detail below. We include two examples of enforcement of the prohibitions on sharing disinformation in the Penal Code, as well as an instance of government pressure on disinformation in the form of a public announcement from the Malawi Communications Regulatory Authority in 2019.

Contents

General Speech Legislation

1. Electronic Transactions and Cyber Security Act, 2016
2. Penal Code
3. Public Security Regulations

Law Enforcement action

1. Arrest of 38-year old woman, May 2021
2. Arrest of Raymond Siyaya, February 2021

Government Pressure

1. Public Announcement 20th May 2019: Use of the Social Media During the 2019 Tripartite Elections in Malawi

General Speech Legislation

Electronic Transactions and Cyber Security Act, 2016

Is there clarity over the precise scope of the law?

No. Section 87 of the Electronic Transactions and Cyber Security Act, 2016 makes it a misdemeanor for a person to “wilfully and repeatedly use electronic communication to disturb or attempts to disturb the peace, quietness or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues”. This criminal offence could be used to restrict disinformation due to its lack of clarity, particularly because there is no clear indication as to how someone could “disturb the peace”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Section 87 appear to be the maintenance of public peace, quietness and privacy. While restrictions made to protect the rights of others or in pursuance of public peace may be legitimate (if this term is considered synonymous with “public order”), quietness would not be considered as a legitimate aim if its scope is wider than public order.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. Section 87 is a criminal offence and determinations will therefore be made by a court.

Are any responses or sanctions proportionate?

No. Section 87 of the Act stipulates a fine of K 1,000,000 and imprisonment for twelve months.

Are intermediaries liable for third party content?

Yes, in some instances. Part IV dictates when intermediary service providers are to be held liable for third party content.

Section 25(1) protects an intermediary service provider from liability provided that they did not transmit the message, are unaware of an act or commission that attracts any liability as a result of the message, and are unaware of any information that would reasonably attract such liability. In the event that they have knowledge of any such information, they are required to remove it. The knowledge of content of such illegal nature may come through their own action or a takedown notice. The intermediary is also required to set up an easily accessible and visible system to allow for external notification of illegal content on his platform. (section 30(2)).

Section 26 protects intermediary service providers from liability for being a conduit provided that they do not monitor the communication, initiate the transmission, select the recipient, or select or modify the message.

Sections 27 and 28 provide further protection for intermediary liability against criminal or civil liability for offering caching or hosting services with largely similar conditions of knowledge of illegal content or taking such action in relation to the information that is deemed illegal.

Penal Code

Is there clarity over the precise scope of the law?

No. Section 60 of the Penal Code criminalises the publication of false news in a vague manner. It provides that “Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace shall be guilty of a misdemeanor.” It is not clear how to determine whether speech is “false” or “likely to cause fear and alarm to the public or to disturb the public peace”. Section 60 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Section 60 of the Penal Code appear to be the avoidance of public fear and alarm or the disturbance of public peace. However, while restrictions in the pursuance of “public order” may be legitimate, it is unclear whether public order is synonymous with “public peace”. If the scope of “public peace” is the same or narrower than “public order”, then restrictions may be in the pursuance of a legitimate aim. If the scope of “public peace” is broader than “public order” or requires a lower threshold, then it would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 60(2) of the Penal Code provides a defence for the accused if he or she can prove that, prior to publication, they “took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true”.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Section 34 of the Penal Code provides for the punishment of misdemeanours such as Section 60. It indicates that a person may be fined or imprisoned for a term not exceeding two years, or both. If large fines and long prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Public Security Regulations

Is there clarity over the precise scope of the law?

No. Regulation 4 of the Public Security Regulations prohibits any person from acting or publishing anything likely to: prejudice public security; undermine public confidence in the Government; promote a feeling of ill-will or hostility between any sections or classes or races of people in Malawi; or promote industrial unrest. However, it is unclear what types of publications are likely to be prejudicial to public security, undermine public confidence in the Government, or promote feelings of “ill-will or hostility”. The vague construction of this law fails to provide sufficient guidance to individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Some objectives mentioned in Regulation 4 include legitimate aims, particularly surrounding public security, hate speech or violence. However, restrictions that are likely to undermine public confidence in the government or foster industrial unrest are unlikely to be viewed as legitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. As Regulation 4 is silent on penalty, Regulation 14 provides for a punishment of “a fine of K 1000 and imprisonment for five years”. On its face, this fixed punishment is likely to be disproportionate if it doesn’t take into account the circumstances of the offence. However, if this is only a maximum sentence then the proportionality of sanctions would depend on how it is applied in practice.

Are intermediaries liable for third party content?

N/A

Law Enforcement action

Arrest of 38-year old woman, May 2021

Irene Chisulo Majiga was arrested in May 2021 for publishing a voice note on WhatsApp – which later went viral – alleging that a person detained on rape charges was released under questionable circumstances. She later pleaded guilty to disseminating false information and paid a fine of MK50,000 (USD 62).

Does the action have a legal basis?

Yes. Majiga was charged under Section 60(1) of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Speech may be restricted in pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the State Prosecutor argued that the woman's post had created public unrest. However, it is not clear whether the post had in fact caused any clear, objective public harm.

Is the action necessary and proportionate in all the circumstances?

Potentially. If the action was taken in pursuance of an illegitimate aim, no response would be necessary or proportionate. If the action was taken in pursuance of the legitimate aim of protecting public order, the small fine may indeed have been a proportionate response.

Arrest of Raymond Siyaya, February 2021

The police arrested Raymond Siyaya, a journalist from Chanco Community Radio, on allegations of reporting “fake news” on his Facebook page in February 2021. He had claimed that government officials had mismanaged COVID-19 emergency relief funds. He was later released and all charges against him were dropped.

Does the action have a legal basis?

Yes. The journalist was [charged](#) under Section 60(1) of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. Here, reports indicate that the Malawi Police Service (MPS) and Malawi Defense Force (MDF) were attempting to silence journalists who were critical of them and other government institutions. The action was therefore not in pursuance of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and is therefore both unnecessary and disproportionate.

Government Pressure

[Public Announcement 20th May 2019: Use of the Social Media During the 2019 Tripartite Elections in Malawi](#)

In May 2019, the Malawi Communications Regulatory Authority (MACRA) published a public announcement on the use of social media during the electoral period. The statement appealed to the public to exercise extra caution when sharing messages on social media and to verify their accuracy before sharing. The announcement reminded the public that “publication of false or misleading information may attract criminal as well as civil liability”.

Does the action have a legal basis?

Yes. The announcement warned the public of potential criminal liability for spreading false or misleading information. This likely refers to the prohibition on sharing false information laid out in Section 60 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially, depending on whether the prosecution of any individuals is considered to be within the scope of public order or another legitimate aim such as protecting the right to vote. However, if restrictions were applied to speech or content which did not threaten or pose risks to a clear, objective public harm, the restrictions would not be in pursuit of a legitimate aim. The legitimacy of each action should be evaluated as provided for in our analysis of Section 60 of Malawi's Penal Code.

Is the action necessary and proportionate in all the circumstances?

Potentially, depending on whether the prosecution of any individuals is in pursuance of a legitimate aim and whether the circumstances of the offence are considered when applying sanctions. If any individuals were ultimately prosecuted, the necessity and proportionality of the action should be evaluated as provided for in our analysis of Section 60 of Malawi's Penal Code.

Country Analysis: Mali

Last updated: July 2022

Mali currently has no specific legislation to counter disinformation. However, there are two laws that include restrictions on disinformation: Loi n° 00-046 du 07 juillet 2000 Portant régime de la presse et délit de presse, and Loi n°01-079 portant Code pénal, 2001.

These laws raise several concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech which is likely to shake the discipline or morale of the armed forces or undermine public confidence in financial institutions. These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

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1. [Loi n° 00-046 du 07 juillet 2000 Portant régime de la presse et délit de presse](#)
2. [Loi n°01-079 portant Code pénal, 2001](#)

Government Pressure

1. [Military junta suspends French radio and TV stations, March 2022](#)
2. [Press Release on the Circulation of False Information on Social Media, April 2020](#)

General Speech Legislation

[Loi n° 00-046 du 07 juillet 2000 Portant régime de la presse et délit de presse](#)

Is there clarity over the precise scope of the law?

No. Article 37 criminalises the dissemination of news that is false or falsely attributed to third parties when it is done in bad faith and disturbs the public peace. It also covers false information that is likely to undermine the discipline or morale of the armed forces. It is not clear how to determine whether speech is “false” or likely to undermine the discipline or morale of the armed forces and security. Article 37 thus fails to provide clear guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 37 appear to be in the pursuance of public order. However, while restrictions in the pursuance of “public order” may be legitimate, the scope of the discipline or morale of the armed forces is likely to be broader than “public peace”. If the scope of these terms is indeed broader than “public order” or requires a lower threshold, then a restriction would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 37 requires that the offence be committed in bad faith. The court would therefore make a determination on the knowledge or intention behind the action. It is likely that the accused would have an opportunity to establish the truth of the information or demonstrate that they had good reason to believe it to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

This is unclear. Violation of Article 37 may result in imprisonment between eleven days to six months, or a fine of CFA 50,000 to CFA 150,000, or both. If the largest fines and longest prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

N/A

[Loi n°01-079 portant Code pénal, 2001](#)

Is there clarity over the precise scope of the law?

No. Article 167(1) prohibits the spread or publication of false news that is likely to “directly or indirectly undermine [the public’s] confidence in the credit of the State”. It is not clear how to determine whether news or information is false or whether the sharing of such news or information would be likely to undermine the confidence of the public in the State. Article 167(1) therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The placement of Article 167(1) amongst wider provisions on economic security indicates that it is broadly aimed at preventing undue panic or alarm about financial systems, which may overlap with the legitimate aims of protecting public order and national security. However, the scope of protecting public confidence in the “credit of the State” is too broad and could be interpreted to permit restrictions in pursuance of aims which would not be considered legitimate under international human rights law.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Article 167(1) makes no reference to the knowledge of the truth or falsity of the statement or the intention to cause harm, meaning that individuals can be charged for publication of disinformation even when they believed the information to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. It will be decided by a court.

Are any responses or sanctions proportionate?

No. Article 167(1) imposes penalties of imprisonment for three months to two years and a fine of 24,000 to 240,000 CFA (USD 40 to 400). The mandatory minimums indicate that judges may not be able to fully take into account the circumstances of the offence and the actual harm caused. Moreover, if the maximum penalties were imposed without due consideration for these factors, the penalties would likely be disproportionate.

Are intermediaries liable for third party content?

N/A

Government Pressure

[Military junta suspends French radio and TV stations, March 2022](#)

Mali's military government banned Radio France Internationale (RFI) and France 24 television in the country, accusing them of reporting "false allegations" about human rights abuses by authorities in mid-March 2022. RFI had broadcast a series of testimonies from alleged victims who claimed they had been tortured by Malian soldiers and suspected Russian mercenaries operating alongside them.

Does the action have a legal basis?

No. No legal provisions were cited.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The allegations in question had been corroborated by the High Commissioner of Human Rights of the United Nations and prolific human rights advocacy organisations, indicating that the aim of the response was merely to suppress political criticism.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

[Press Release on the Circulation of False Information on Social Media, April 2020](#)

In response to a false document circulating on social media purporting to be an announcement from the Ministry of Health and Social Affairs, the government of Mali issued a press release reminding citizens that the intentional dissemination through the press and on social networks of false or misleading information is a criminal offence and punishable by law since the adoption of the Law on Cybercrime. The government indicated they would be pressing charges against an unknown individual found to be sharing false information online.

Does the action have a legal basis?

No. The government cited the [Law on Cybercrime](#) as that which criminalises the dissemination of false news in times of crisis. However, it is unclear which provision they are referring to as there is no equivalent prohibition within the cited law.

Is the action clearly directed to tackle an objectively legitimate aim?

Yes. Speech should only be restricted where some clear, objective public harm might be caused. In this case, the action appears to be directed at the legitimate aim of protecting public health and providing individuals with access to accurate information.

Is the action necessary and proportionate in all the circumstances?

Potentially. The press release is a proportionate response to the confusion about the false post; yet it is not clear whether the government did in fact press charges or

sentence the individual found to be responsible for the post, what law was cited, and whether the punishment took into consideration the circumstances of the offence.

Country Analysis: Mauritania

Last updated: July 2022

Mauritania has a specific law to tackle disinformation, Loi n° 2020-015 relative à la lutte contre la manipulation de l'information. It was adopted during COVID-19 as authorities sought to combat health-based disinformation during health crises; but the law also contains provisions addressing the manipulation of information during electoral periods.

This law raises considerable concerns from a human rights perspective. It pursues aims which are potentially illegitimate under human rights law, and does not provide for any exceptions for where the individual believed the information to be true. Decisions over what constitutes false news are not clearly outsourced to an independent judicial authority, opening the possibility for government interference with free speech. The penalties are potentially disproportionate, and internet intermediaries are not clearly exempt from liability for the dissemination of disinformation online, potentially incentivising proactive filtering and monitoring which may result in the removal of permissible content.

Contents

Disinformation (specific legislation)

1. Loi n° 2020-015 relative à la lutte contre la manipulation de l'information

Disinformation (specific legislation)

[Loi n° 2020-015 relative à la lutte contre la manipulation de l'information](#)

Is there clarity over the precise scope of the law?

Potentially. Article 3 prohibits the dissemination, via the internet, of misleading or false information, and Article 5 prohibits the dissemination of false news, manufactured or falsified information, and information falsely attributed to third parties, where such dissemination is likely to distort electoral processes or public peace, or to undermine the discipline or the morale of the armies or to hamper the war effort of the nation. Article 2 lays out definitions for each term, but each definition still relies on terms like “inaccurate” or “misleading” which are subject to interpretation.

Furthermore, Article 7 goes on to prohibit the publication of “montages” with the words or the images of a person. The term “montage” is not defined elsewhere in the law, and it is not clear whether this refers only to deepfakes – the manipulation of a video or soundtrack to make it seem that someone has said something – or whether this could also refer to image captioning, memes or other types of content. These prohibitions do not, therefore, provide clear guidance to individuals and give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The overall objectives of the law as laid out in Article 1 include the prevention of health crises and electoral crises, and Article 5 specifies that disinformation is only to be restricted where it is likely to distort electoral processes or disturb public peace, which may be considered legitimate aims. However, Article 5 also includes the aim of protecting the discipline or morale of the armies, which is likely to fall outside the legitimate aims of public order or national security. Furthermore, Articles 3 and 7 do not limit restrictions to any particular circumstances, meaning that disinformation could be restricted even where no legitimate aim is being pursued.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Article 7 does specify that the montage must be published with the intention to cause harm, indicating intention to deceive. However, Articles 3 and 5 make no reference

to the knowledge of the truth or falsity of the statement or intention to cause harm, meaning that individuals can be charged for publication of disinformation even when they believed the information to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. Determinations will be decided by a court.

Are any responses or sanctions proportionate?

No. Article 3 (prohibiting sharing false or misleading information via the internet) imposes a penalty of imprisonment for 3 months to 1 year and a fine from MRU 50,000 to 500,000 (USD 1,379 to 13,787). Article 7 (prohibiting montages) imposes a penalty of imprisonment for 3 months to 1 year, and a fine of MRU 60,000 to 100,000 (USD 1,648 to 2,255). Article 5 (prohibiting the sharing of false news) imposes a penalty of imprisonment for 2 to 4 years and a fine of MRU 50,000 to 200,000 (USD 1,379 to 5,495), where the sharing of false news threatens electoral integrity or public peace, or imprisonment for 3 to 5 years and a fine of MRU 100,00 to 500,000 (USD 1,648 to 13,787), where the sharing of false news undermines the discipline or morale of the armies or hinders the war effort.

The penalties therefore range from imprisonment from 3 months to 5 years and fines of MRU 50,000 to 500,000 (USD 1,379 to 13,787). Whilst these are differentiated somewhat according to the nature of the offence – for example, false news that threatens public peace carries a higher penalty than that false news that does not threaten public peace – the penalties are not clearly tied to the harm actually caused or the intent to cause it. Harsh penalties could therefore be applied even in instances where individuals were unaware that the information was false and without intent to harm, which would be disproportionate.

Are intermediaries liable for third party content?

Unclear. Article 3 states that legal persons as well as individuals are liable for the dissemination, via the internet, of misleading or false information, punishable with a fine of MRU 500,000 and suspension of operations for up to 5 years. It is not clear whether this would only apply to news organisations or online publishers, or whether this would also apply to internet intermediaries such as hosting websites, which do not intervene in or have editorial control over third party content.

Country Analysis: Mauritius

Last updated: July 2022

Mauritius currently has no specific legislation to counter disinformation. However, there are two laws that include potential restrictions on disinformation: the Criminal Code and the Information and Communication Technologies Act 2001.

Both raise concerns from a human rights perspective. They are both ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech which might cause “annoyance, humiliation, inconvenience, distress or anxiety to any person” (Criminal Code). These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below.

We also include some specific examples of how these laws are being enforced in response to disinformation.

Contents

General Speech Legislation

1. [Criminal Code](#)
2. [Information and Communication Technologies Act 2001](#)

Law enforcement action

1. [Arrest of activist Jahmeel Peerally, March 2020](#)
2. [Arrest of activist Raouf Khodabaccus, November 2021](#)
3. [Arrest of Naushad Lauthan, July 2020](#)
4. [Arrest of Rachna Seenauth, April 2020](#)

General Speech Legislation

Criminal Code

Is there clarity over the precise scope of the law?

No. Section 299 of the Criminal Code makes it an offence to publish, diffuse or reproduce “false news” or “news which though true in substance has been altered in one or more parts or falsely attributed to some other person” if it stands to “disturb public order or public peace”. It is not clear how to determine whether information is “false” or “true in substance” but “altered in one or more parts”. The scope of what is considered “public peace” is also unclear. Section 299 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 299 are aimed at protecting public order and public peace. While this may be legitimate, it is unclear whether “public peace” is synonymous with public order. If the potential scope of “public peace” is much broader than “public order”, then restrictions would be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 299 provides a defence for the accused when they are able to prove “that the publication, the diffusion or reproduction was made in good faith and after making sufficient inquiries to ascertain its truth”.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 299 may be punished by imprisonment for up to one year and a fine not exceeding Rs 10,000 (\$250) when committed verbally. An individual

may be punished by imprisonment for up to one year and a fine between Rs 20,000 (\$500) and Rs 50,000 (\$1200) when committed by any written means. If the maximum fines and prison sentences are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly relevant for instances where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

(N/A)

Information and Communication Technologies Act 2001

Is there clarity over the precise scope of the law?

No. Section 46(g) makes it an offence to knowingly send, transmit or cause to be transmitted a false or fraudulent message. Section 46(ga) makes it an offence to disseminate any message “which is obscene, indecent, abusive, threatening, false or misleading” or which is “likely to cause or causes annoyance, humiliation, inconvenience, distress or anxiety to any person”. It is not clear how to determine whether a message is “false” or “misleading”, and the scope of what is considered “obscene” or “indecent”. Further guidance is needed to clarify the threshold of what might cause “annoyance, humiliation, inconvenience, distress or anxiety” to any person. Section 46 does not, therefore, provide sufficient guidance for individuals and could provide an overly wide degree of discretion to those charged with its enforcement.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Here, restrictions appear to be aimed at the prevention of “annoyance, humiliation, inconvenience, distress or anxiety” to any person. While some restrictions made under Section 46 might be legitimately aimed at protecting the rights of others, the broad scope of this law suggests that not all restrictions would pursue a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Section 46(g) requires that the offence be committed “knowingly”. But it is unclear whether this means simply knowledge that the person is sending a message, or also knowledge that the message is false. Section 46(ga) does not require knowledge.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Section 47(1) indicates that a violation will result in a fine not exceeding Rs 1,000,000 (\$24,900) and imprisonment for up to 10 years. Section 47(2) further provides that the court may order additional punishments such as forfeiture of property, and cancellation or suspension of licences. If the maximum penalties are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly relevant for instances where no harm actually occurs, or if the court were to order additional punishments under Section 47(2). Still, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

(N/A)

Law enforcement action

Arrest of activist Jahmeel Peerally, March 2020

In March 2020, activist Jahmeel Peerally was arrested for spreading false news on Facebook. The post in question stated that there were riots in Mauritius following orders by the Prime Minister to close non-essential businesses during the COVID-19 pandemic. This post was shared over 10,000 times, but no violence had actually taken place. The activist later claimed that the post was false, removed it and apologised.

Does the action have a legal basis?

Yes. Jahmeel Peerally was arrested on the grounds that the post was false and in violation of the Information and Communication Technology Act. While the charge sheet is not publicly available, it is likely that they were charged under Section 46 of this law.

Is the action clearly directed to tackle an objectively legitimate aim?

This is unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the arrest appears directed at tackling legitimate aims relating to public health (COVID-19) and public order (potential riots). The post also contained an objectively false statement. However, even if objectively false, the circumstances do not seem to suggest that there was concern about the post causing further harm if not removed. There does not appear to be an intention to cause violence or undermine the government's effort to address the pandemic.

Is the action necessary and proportionate in all the circumstances?

Potentially. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. However, if made in pursuance of a legitimate aim, then the proportionality of the action would depend on the specific circumstances of the offence and decision of the court. Sources indicate that the individual shared the post online which he believed was true at the time, and then removed the post when he discovered it to be false. The post was shared over 10,000 times, but no harm or injury took place. In these circumstances, it is likely that a criminal conviction and penalty may be disproportionate. Further details are needed to fully assess the proportionality of the response.

[Arrest of activist Raouf Khodabaccus, November 2021](#)

On 11 November 2021, Raouf Khodabaccus was arrested in Port Louis by the Central Criminal Investigation Department (CCID) on the charge of knowingly transmitting a false message. This action was taken in response to a live video posted on his Facebook page, in which he claimed that "a hundred patients" were waiting at Jeetoo Hospital for COVID-19 symptoms and testing, and warned parents not to send their children to school the next day. Officials from the Ministry of Health had complained that the video was a fake news broadcast designed to create panic among the population.

Does the action have a legal basis?

Yes. Raouf Khodabaccus appeared in court in Port Louis on the provisional charge of “Knowingly Transmitting a False Message” under Section 46 of the Information and Communication Technology Act.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. The Mauritius Broadcasting Corporation argued that Khodabaccus’ video was designed to discourage people from going to Jeetoo hospital for tests, and to stir panic about COVID-19 and dissuade parents from sending their children to school. A doctor at the hospital subsequently complained that Khodabaccus had exaggerated the number of patients waiting for treatment. If true, the action would be legitimate on public health grounds. Yet, Khodabaccus argues that none of the content was fabricated and that the MBC was suppressing facts about COVID-19 and its impacts on the population.

Is the action necessary and proportionate in all the circumstances?

Potentially. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. Khodabaccus had to provide bail of Rs 8,000 (USD 180) and was ordered to pay a fine of Rs 100,000 (USD 2,250). This penalty is provided by the law, but may be disproportionate if Khodabaccus actually believed the information to be true, or if it was determined that there was no risk of harm.

Arrest of Naushad Lauthan, July 2020

On 29 July 2020, 39-year-old Naushad Lauthan was arrested for sharing false news on Facebook about a second government-mandated lockdown to circumvent COVID-19.

Does the action have a legal basis?

Yes. The police charged Lauthan under section 46 of the Information and Communication Technologies Act 2001.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. Here, the arrest appears directed at tackling legitimate aims relating to public health and public order with regard

to COVID-19 measures. However, even if objectively false, the circumstances do not seem to suggest that there was concern about the post causing harm if not removed. There does not appear to be an intention to cause violence or undermine the government's effort to address the pandemic. The government did indeed announce a second lockdown just a few days later.

Is the action necessary and proportionate in all the circumstances?

No. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. However, even if made in pursuance of a legitimate aim, the proportionality of the action would depend on the specific circumstances of the offence and decision of the court.

Here, sources indicate that Naushad Lauthan paid a fine of Rs 25,000 (USD 556) and signed an IOU of Rs 100,000 (USD 2,250). This penalty is provided by the law, but would appear disproportionate considering that the government did announce a second lockdown, and that no harm or injury took place.

Arrest of Rachna Seenauth, April 2020

In April 2020, Rachna Seenauth, an ex-assistant to the former Mauritian President, was arrested and charged for posting false news on Facebook. The post in question was political satire and related to the current Mauritian Prime Minister and the country's response to the COVID-19 pandemic. It pictured a newscaster making an announcement that several heads of state would be holding a conference call with the Mauritian Prime Minister. It joked that world leaders were interested in a miracle treatment for COVID-19, which had led to zero positive cases in Mauritius.

Does the action have a legal basis?

Yes. Ms. Seenauth was arrested on the grounds that her post was false and in violation of the Information and Communication Technology Act. While the charge sheet is not publicly available, it is likely that Ms. Seenauth was charged under Section 46 of this law.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the arrest was not directed to tackle

an objectively legitimate aim, and instead appears to be politically motivated or in pursuance of another illegitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. The arrest is not necessary or proportionate in any circumstance as it is not in pursuance of a legitimate aim.

Country Analysis: Mozambique

Last updated: December 2022

Mozambique currently has no specific legislation to counter disinformation. However, the Penal Code, the 1991 Press Law – which would be amended by a Proposed Social Communication Law – and the 2022 Law on the Prevention, Suppression and Countering Terrorism and Proliferation of Weapons of Mass Destruction include restrictions on disinformation. These laws raise concerns from a human rights perspective. They are loosely-defined in scope, giving authorities discretion to restrict a wide range of speech; and both pursue aims which may not be considered “legitimate” according to international human rights standards. They also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

Contents

General Speech Legislation

1. Penal Code
2. Press Law (Law no. 18/91, of 10 August, 1991)
3. Law on the Prevention, Suppression and Countering Terrorism and Proliferation of Weapons of Mass Destruction

Proposed Legislation

1. Proposed Social Communication Law

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 398 provides for an offence of disturbing public order or attempting to do so. It covers the instigation or provocation of collective disobedience against the laws of public order, essential public functions, or any attempt to disturb public order or peace by any means. Article 398(2)(a) and (b) include in this publishing false or biased news which may cause alarm or unrest, or distributing or attempting to distribute written material which lead to the same result. It is unclear how to determine what is “false” or “biased” news, and what is included in the scope of any attempt to disturb public order or peace. Article 398 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 398 may be targeted at legitimate aims of protecting public order and national security, in particular when the restrictions target speech which is likely to cause civil disobedience or violence. However, Article 398(1) is broadly worded and could potentially cover any attempt to disturb public peace. The broad scope of this provision makes it likely that some restrictions would be outside what is normally considered “public order” and therefore be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 398 will result in imprisonment for up to six months and a corresponding fine. Article 399 provides for additional punishments for accessories to the crime, which include prohibition or suspension of the exercise of certain functions, and confiscation of property or dissolution of business for legal entities. If the maximum penalties are imposed without taking into account the circumstances of the offence, then sanctions could be disproportionate. This is particularly the case where no harm actually occurs.

[Press Law \(Law no. 18/91, of 10 August, 1991\)](#)

Is there clarity over the precise scope of the law?

No. Article 48(4) states that media outlets and journalists can be punished for “publication of false news or unfounded rumours” with a penalty corresponding to that imposed for the crime of defamation, if such information impacts upon the public interest or law and order. It is not clear how to determine what constitutes “false news or unfounded rumours”, and as such an individual cannot reasonably be expected to know what speech is prohibited under the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Article 48(4) penalises the sharing of false news if it jeopardises the public interest or law and order. While this may be legitimate in some circumstances, the terms “public interest” and “law and order” are overly broad and would capture aims outside those considered legitimate under international human rights law.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 48(4) specifies that only intentional publication of false news is prohibited, indicating that the individual must have known of the falsity of the information in order to be liable.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Unclear. The publication of false news is a criminal offence and will be decided by a court (Article 42(2)). However, the Superior Council for Social Communication, which is a

state body, is also afforded certain powers under this law. Article 37(1)(b) states that the Superior Council may take “appropriate measures” with regard to violations of this law, and Article 37(5) states that the Council may initiate legal proceedings in cases of violations of this law “in the defence of public interest”. It is not clear in practice what such “appropriate measures” might include or whether the Council would conduct its own legal proceedings or simply refer violations to the appropriate court.

Are any responses or sanctions proportionate?

Potentially. Article 48(4) states that the punishment for the intentional sharing of false news is equal to that of sharing injurious or defamatory facts, which is a fine of up to 100,000 MT (1,566 USD) or up to 200,000 MT (3,133 USD) in case of recurrence. Whilst the law does not reference the actual harm that has occurred when determining such penalties, it does allow for discretion on behalf of the judge and limits the fine to a maximum amount. Furthermore, the media organisation and its editors can only be suspended or banned if they have been convicted of defamation or sharing false news three times within five years, and the suspension periods are proportionate to the frequency of the publication.

Are intermediaries liable for third party content?

(N/A)

[Law on the Prevention, Suppression and Countering of Terrorism and Proliferation of Weapons of Mass Destruction \(Law no. 13/22, of 8 July 2022\)](#)

Is there clarity over the precise scope of the law?

No. Article 20(2) makes it a crime for any Mozambican or foreigner living in Mozambique to intentionally disseminate information according to which a terrorist act was or is likely to be committed, knowing that the information is false or grossly distorted, with the intention of creating public panic, disturbance, insecurity and disorder. It is not clear how to determine what constitutes “false or grossly distorted” statements and what is included in the scope of intention to create public panic, disturbance, insecurity and disorder. As such an individual cannot reasonably be expected to know what speech is prohibited under the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Unclear. Speech should only be restricted where some clear, objective public harm might be caused. Article 20(2) appears to be directed at the aims of protecting public order and public safety, which would constitute legitimate aims. However, it is broadly worded, including restrictions on information which merely “disturbs” the public and thus potentially introducing a lower threshold for restrictions on speech than would be legitimate under international human rights law.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 20(2) explicitly requires knowledge of the falsity of the information.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. Article 20(2) is a criminal offence and would be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

No. Article 20(2) is punishable by a prison sentence of between 2 and 8 years. Even the minimum penalty of two years in prison is severe, and prevents the court from administering more lenient penalties in cases where no actual harm was caused. Furthermore, if the maximum prison sentence of eight years were imposed without taking into account the circumstances of the offence or the actual harm caused, this would be deemed disproportionate.

Are intermediaries liable for third party content?

N/A.

Proposed Legislation

Proposed Social Communication Law

Is there clarity over the precise scope of the law?

No. Article 52(4) states that media outlets and journalists can be punished for “publication of false news or unfounded rumours” with a penalty corresponding to that imposed for the crime of defamation, if such information impacts upon the public interest or law and order. It is not clear how to determine what constitutes “false news or unfounded rumours”, and as such an individual cannot reasonably be expected to know what speech is prohibited under the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Article 52(4) penalises the sharing of false news if it jeopardises the public interest or law and order. While this may be legitimate in some circumstances, the terms “public interest” and “law and order” are overly broad and would capture aims outside those considered legitimate under international human rights law.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 52(4) specifies that only intentional publication of false news is prohibited, indicating that the individual must have known of the falsity of the information in order to be liable.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. Article 8(1) would create a “regulatory entity for social communication”, which would have “legal personality and technical, administrative, financial and patrimonial autonomy.” However, Article 8(2) clarifies that it would be up to the government to define the powers, organisation and functioning of the regulator. It is not clear from this draft exactly what powers the regulatory entity would have, and how independent it would be from the government in practice.

Are any responses or sanctions proportionate?

Unclear. Article 52(4) states that the “publication of false news or unfounded rumours” is punishable with a penalty corresponding to that imposed for the crime of defamation. Yet the penalty for the crime of defamation is not clearly defined either; Article 52(3) states that those responsible for sharing injurious or defamatory facts will be punished “in accordance with the specific law”. It is not clear which “specific law” is being referred to here, and this is not clarified elsewhere in the text. In any case, heavy fines or long imprisonments for sharing disinformation are highly likely to be disproportionate, especially if penalties are imposed without due consideration for the particular circumstances of the offence or the actual harm caused.

Are intermediaries liable for third party content?

No. Article 50 states that all distributors, sellers and those who have a merely technical or routine role in the publication or distribution of prohibited material are exempt from liability.

Country Analysis: Namibia

Last updated: July 2022

Namibia currently has no specific legislation to counter disinformation. However, Regulations published in March 2020 to respond to the outbreak of COVID-19 (Proclamation No. 9 of 28 March of 2020) were amended in April 2020 to criminalise the dissemination of COVID-19 related disinformation.

This law raises concerns from a human rights perspective. It is loosely-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and they may pursue aims which would not be considered “legitimate” due to its vague construction.

We assess this law and examples of its enforcement below.

Contents

General Speech Legislation

1. Regulations published under Proclamation No. 9 of 28 March 2020 (as amended)

Law enforcement action

1. Man arrested for spreading false statements about COVID-19, April 2020

General Speech Legislation

Regulations published under Proclamation No. 9 of 28 March 2020 (as amended)

Is there clarity over the precise scope of the law?

No. Regulation 16(1)(e) makes it an offence to publish any false or misleading statement about or in connection with COVID-19, or any statement that is intended to deceive any other person about the COVID-19 status of any person, or measures to combat, prevent and suppress COVID-19. It is unclear how to determine whether a statement is “false” or “misleading” and the scope of something “about or in connection with COVID-19”. Regulation 16(1)(e) therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Unclear. Speech should only be restricted where some clear, objective public harm might be caused. It is unclear whether speech would only be restricted in the pursuance of protecting public health under Regulation 16. This depends on how the term “about or in connection with COVID-19” is interpreted. If the interpretation were to include speech relating to the government’s response to COVID-19, or speech relating to the economic impact of COVID-19, for example, then restrictions would go beyond the legitimate aim to protect public health.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. The offence under Regulation 16(1)(e)(ii) requires an intention to deceive other persons. In this case, a person who believed that what they were saying was true wouldn’t be guilty. However, the offence under Regulation 16(1)(e)(i) does not require an intention to deceive, and therefore would not exempt individuals who believed the information they were sharing to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Violation of Regulation 16 may result in a fine of N\$2,000 and up to six months in prison. If the maximum fines and prison sentences are imposed without taking into account the circumstances of the offence, then sanctions could be disproportionate. However, given the absence of information as to how these penalties would be imposed in practice, it is currently difficult to say.

Are intermediaries liable for third party content?

N/A

Law Enforcement Action

[Man arrested for spreading false statements about COVID-19, April 2020](#)

A man was arrested for spreading false statements about COVID-19 in April 2020. The statements relate to a WhatsApp voice note which alleged that employees of FP du Toit Transport, a trucking company, had tested positive for COVID-19. He later admitted guilt and was fined.

Does the action have a legal basis?

Yes. The man was arrested under the Regulations published under Proclamation No. 9 of 28 March of 2020 (as amended).

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the arrest was made because a company suffered damage as a result of a statement that the individual made on WhatsApp. There is no indication of any other harm being caused, which suggests that the aim of the arrest was not related to protecting public health.

However, the false statement did cause economic and reputational harm to the company and its employees, which is possibly covered by the legitimate aim of protecting the rights and reputations of others.

Is the action necessary and proportionate in all the circumstances?

No. This man was prosecuted and fined for N\$2,000. This is likely disproportionate as the company only suffered reputational harm and criminal law considers defamation offences to be disproportionate. The company could have instead sued the person under civil law for reputation damage, for example, which would be less severe than a criminal conviction.

Country Analysis: Niger

Last updated: July 2022

Niger currently has no specific legislation to counter disinformation. However, there is one law that includes a restriction on disinformation: the Cybercrime Law, 2019.

This law raises serious concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it may pursue aims which would not be considered “legitimate” according to international human rights standards. This law also carries penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess this law in detail below.

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General Speech Legislation

Cybercrime Law, 2019

Is there clarity over the precise scope of the law?

No. Article 31 broadly criminalises the dissemination of false news. It covers false information which is likely to disturb public order or infringe upon human dignity. It is not clear how to determine whether information is “false” and what is included in the scope of information that is likely to infringe upon human dignity. Article 31 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 31 appear targeted at public order or protecting the rights of others. However, it is unclear whether restrictions made to prevent the infringement of human dignity would fall within the scope of protecting the rights of others. As the scope of this term is likely broader than these legitimate aims, restrictions would not always be legitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

This is unclear. Article 31 does not specifically discuss intent or knowledge of the falsity of the information.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 31 may result in a fine between 1,000,000 CFA to 5,000,000 CFA, and imprisonment between six months to three years. These sanctions may be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly the case where no harm

actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Law Enforcement Action

Arrest of Ali Soumana, July 2020

In July 2020, Ali Soumana, editor of the newspaper Le Courrier, was detained for 2 days by police on charges of “writing and disseminating false information”. These actions stem from an article he published which discussed allegations of corruption within the country’s defence ministry.

Does the action have a legal basis?

No. No law was specified in the coverage of the arrest.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights or reputations of others. There is no indication that Soumana’s article posed any legitimate threats to public order, public health or to the rights or reputations of others. It would appear to be politically motivated.

Is the action necessary and proportionate in all the circumstances?

No. The arrest against Soumana was most likely politically motivated and therefore illegitimate. No response would be considered necessary or proportionate in these circumstances.

Arrest of Mamane Kaka Touda, March 2020

A journalist and human rights activist, Mamane Kaka Touda, was arrested and detained for three weeks in March 2020 for social media posts about a suspected case of

COVID-19 in a Nigerian hospital. He was given a three month suspended sentence and was ordered to pay one franc as symbolic compensation.

Does the action have a legal basis?

Yes. The journalist was arrested and detained for disseminating data that is likely to disturb public order, as provided for in the 2019 Cybercrime Law.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, the prosecution argued that the post caused some individuals to avoid going to the hospital. However, a spokesperson from the Ministry of Health confirmed that an Italian national was admitted to the hospital although later released after testing negative for COVID-19. There is no indication that there were any legitimate threats to public order or public health.

Is the action necessary and proportionate in all the circumstances?

No. The action was not made in pursuance of a legitimate aim, so any response (even the symbolic fine of one franc) would be unnecessary and disproportionate.

Country Analysis: Nigeria

Last updated: December 2023

Nigeria does have specific legislation to counter disinformation; the Code of Practice for Internet Intermediaries, 2022. In addition, Nigeria has two laws that include restrictions on disinformation: the Cybercrimes (Prohibition, Prevention, etc) Act 2015 and the Criminal Code, 1990.

These three laws raise significant concerns for freedom of expression in Nigeria. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech, and they pursue aims which would not be considered legitimate according to international human rights standards—for example, restricting speech which might be prejudicial to “public tranquillity or public finances” (Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill 2019). These laws also carry penalties which risk being disproportionate in their severity and resulting in a chilling effect on freedom of expression.

We assess these laws in detail below along with an example of their recent enforcement. We also include details of the Nigerian government’s 6-month ban on Twitter from June 2021 until January 2022; the government cited the violent consequences of fake news and disinformation spreading through the platform as a primary reason for the ban.

N.B. In 2020, the ECOWAS Court of Justice determined that Section 24 of Nigeria’s Cybercrimes Act violates the right to freedom of expression under regional and international human rights law and ordered the Nigerian government to either appeal or amend it. In March 2022, the ECOWAS Court of Justice again ordered the Nigerian government to amend this same section, ruling that it “is not in conformity with Articles 9 of the African Charter on Human and Peoples’ Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).”

N.B. The Protection from Internet Falsehoods and Manipulation and Other Related Matters Bill (2019) previously proposed making transmission of a harmful or malicious falsehood a criminal offence in Nigeria. The bill was subsequently [withdrawn](#).

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5. Arrest of poet Rotimi Jolayemi, May 2020

Government Pressure

1. Nigerian government bans Twitter for 6 months

General Speech Legislation

Criminal Code Act, 1990

Is there clarity over the precise scope of the law?

No. Section 59 of the Criminal Code creates a criminal offence of publishing or reproducing “any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false.” It is not clear how to determine whether information is “false” or the scope of what is considered “public peace”. Section 59 therefore does not provide clear guidance for individuals and could give an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 59 appear to be aimed at protecting public order and public peace. While this may be legitimate, it is unclear whether “public peace” is synonymous with public order. If the scope of “public peace” is interpreted as broader than “public order”, then restrictions would be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 59(2) provides that it shall be no defence to a charge that one did not know or did not have reason to believe that the statement, rumour or report was false, unless they are able to prove that, prior to publication, “reasonable measures to verify the accuracy of such statement, rumour or report”.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

No. Violation of Section 59 will result in three years of imprisonment upon conviction. This fixed penalty is disproportionate as it does not allow the court to consider the appropriateness of sanctions based on the particular circumstances of the offense. This is particularly relevant in circumstances where no harm took place.

Are intermediaries liable for third party content?

N/A

[Cybercrimes \(Prohibition, Prevention, etc\) Act, 2015](#)

Is there clarity over the precise scope of the law?

No. Section 24(b) of the Act creates a criminal offence of knowingly or intentionally publishing a message online when the individual knows the message “to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent”. It is not clear how to determine whether a message is “false” or the scope of what is considered to be “causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another”. Section 24(b) therefore does not provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

N.B. In 2020, the ECOWAS Court determined that Section 24 of the Act violated the right to freedom of expression under regional and international human rights law. While this legislation has not been considered by courts at the national level, the ECOWAS Court has ordered the Nigerian government to either appeal or amend this provision of the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 24(b) appear to be legitimately aimed at protecting public order and the rights of others. However, restrictions made to prevent annoyance, inconvenience, ill will or needless anxiety to another are unlikely to fall within the scope of these aims and would therefore be illegitimate

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 24(b) prohibits a person from knowingly or intentionally publishing a message online that “he knows to be false”. It may therefore be inferred that an individual would not be convicted when they were unaware of the false nature of a particular message.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

No. Violation of Section 24(b) may result in a fine of not more than N7,000,000 (USD 18,000) or imprisonment for a term of exceeding 3 years, or both. These sanctions would be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly true for instances where no harm occurred.

Are intermediaries liable for third party content?

N/A

[Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries](#)

Is there clarity over the precise scope of the law?

No. The Draft Code of Practice defines disinformation as “verifiably false or misleading information that, cumulatively, is created, presented, and disseminated for economic gain or to deceive the public intentionally and that may cause public harm.” It defines misinformation as “the unintentional dissemination of false information”. Part II requires platforms to inform their users through the terms of service not disseminate information that is false or misleading, and Part V requires platforms to take certain measures to address dis- and misinformation, including:

- Taking “adequate measures” to restrict dis- or misinformation and where necessary to provide corrections or alternative sources;
- Remove dis- and misinformation “as soon as reasonably practicable” where the information is likely to cause violence, public disorder, or exploitation of a child
- Trace, expose, penalise, and close accounts and sources that amplify disinformation and misinformation.

It is not clear how to determine whether a message is “false” or “verifiably false or misleading”, nor the scope of what is considered to be an intention to deceive the public or cause public harm or what information would be considered likely to cause violence, public disorder or exploitation of a child.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective harm might be caused. Platforms are explicitly required in Part V to remove dis- and misinformation where the information is likely to cause violence, public disorder or exploitation of a child, which may constitute legitimate aims. However, other Part V also requires platforms to take adequate measures to restrict dis- and misinformation and to penalise and close accounts that amplify such content, and as such Part V also requires platforms to restrict speech or content which, while false, may not pose any objective harm. Furthermore, under Part IV platforms are also required to remove content which is prohibited under the 2015 Cyber Crimes prevention act, which includes restrictions on sharing false information without legitimate aims (see analysis above).

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. The regulations differentiate between misinformation – defined as the unintentional sharing of false information – and disinformation, which is false information designed to deceive the public. Under Part V, individuals are not held liable, without intent, if they merely reshare content and do not modify or author it. But platforms are required to address and sometimes remove both dis- and misinformation, meaning that speech could be restricted even where an individual reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

No. The Code of Practice requires internet intermediaries to decide what speech or content is disinformation. It also requires platforms to act upon complaints or orders made by Government Agencies, such as the National Information Technology Development Agency (NITDA).

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Unclear. The Regulations state that platforms and internet intermediaries are subject to “disciplinary measures under civil service rules, prosecution and conviction for violation of NITDA Act 2007” if they violate the terms of the Code of Practice. The NITDA Act 2007 imposes a fine of N 200,000.00 and/or imprisonment of 1 year in the case for first offences under the act by “anybody corporate or person”, or a fine of N 500,000.00 and/or imprisonment of 3 years for second and subsequent offences. If the maximum fines or sentences were imposed without taking into account the particular circumstances of the offence or genuine attempts by the platform to limit harm to their users, the penalties are likely to be disproportionate.

Are intermediaries liable for third party content?

Yes. The Code of Practice only exempts platforms from liability for unlawful content where the platform has taken “all reasonable steps to ensure that an unlawful content is taken or stays down.” Platforms must remove prohibited content within 24 hours of notification by a court, government agency or user or face sanctions.

N.B. The draft Code of Practice also requires platforms to take a transparent, collaborative and context-sensitive approach to tackling disinformation on their services. For example, Part V requires them to grant researchers, CSOs and government departments access to data on dis- and misinformation spreading on their platform; to educate their users with media literacy training; to engage trained fact-checkers and to provide users with tools to report dis- and misinformation.

Law Enforcement Action

[Arrest of Journalist Agba Jalingo, March 2023](#)

Agba Jalingo, publisher for CrossRiverWatch, was arrested in August 2022 in connection with a story written by the outlet alleging that Ms Elizabeth Ayade, the sister-in-law of a

state Governor, had paid someone to take her law school exams for her. Ms Ayade's legal team had previously filed a complaint of defamation and cybercrime. Jalingo was charged in December 2022 and his detention ordered in March 2023.

Does the action have a legal basis?

Yes. The charges brought against Jalingo include contravention of Section 24(b) of Nigeria's Cybercrimes (Prohibition, Prevention etc.) Act 2015, which creates a criminal offence of knowingly or intentionally publishing a message online when the individual knows the message "to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent".

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Speech restrictions may be legitimate if made in the pursuance of public order, public morals, public health, national security, or to protect the rights and reputations of others. If the claims made by Mr Jalingo were false, restrictions may indeed be warranted because of the consequent damage done to Ms Ayade's reputation. However, Mr Jalingo has previously been arrested by police for sharing stories critical of state politicians, and it may be that the action was taken to deter or prevent political criticism, which would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. Even if the story was false, criminal charges and detentions are disproportionate penalties. If the story was true and the motivation for the legal action was illegitimate, it would not be considered necessary or proportionate in any circumstances.

Arrest of human rights activist, April 2020

Human rights activist Emperor Ogbonna, Esq. was arrested on 24 March 2020 by Nigeria's Department of State Services (DSS), allegedly on the orders of the governor of the Abia State, on suspicion of cyberterrorism and intentional publication of false and threatening messages through the internet. This action was taken in relation to a Facebook post criticising the governor that Ogbonna had re-shared. He was granted bail by the court on 28 April, but the DSS continued to detain him illegally. At his trial in

August, the court ordered the DSS to release him from custody unconditionally or charge him before a court of competent jurisdiction.

Does the action have a legal basis?

Unclear. The DSS arrested Ogbonna on suspicion of both cyberterrorism and intentional publication of false and threatening messages through the internet. However, reports indicated that Ogbonna was actually charged under Sections 27(1) (a) and 18(1) of the Cybercrimes (Prohibition, Prevention etc) Act 2015, neither of which refers to false messages.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. In this particular case, however, reports suggest that the law enforcement action was aimed at restricting criticism of the government.

Is the action necessary and proportionate in all the circumstances?

No. The action taken by the government was not in pursuance of a legitimate aim, but rather to restrict criticism. Therefore, any action taken by the government is unnecessary and disproportionate.

[Arrest of journalist Luka Binniyat, November 2021](#)

In November 2021, Nigerian authorities arrested and charged Luka Binniyat, a reporter for US-based newspaper The Epoch Times, on charges of sharing false information in connection to his article criticising the Kaduna authorities for their passive response to massacres of Christians.

Does the action have a legal basis?

Yes. Luka Binniyat was charged under Section 24(b) of the Cybercrimes (Prohibition, Prevention, etc) Act 2015.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national

security, public order, public health or morals. Here, reports suggest that law enforcement action was aimed at restricting criticism of the government and its response to violence in a specific part of the country.

Is the action necessary and proportionate in all the circumstances?

No. The action taken by the government was not in pursuance of a legitimate aim, but rather to restrict criticism. Therefore, any action taken by the government is unnecessary and disproportionate.

Arrest of Journalist Saint Meinpamo Onitsha, June 2020

In June 2020, authorities detained and charged journalist Saint Meinpamo Onitsha, founder of the privately owned Naija Live TV news website, after he was summoned for questioning for alleged violation of the Cybercrimes (Prohibition, Prevention etc) Act 2015. This action was taken in connection to his reporting on the alleged collapse of a COVID-19 isolation centre in Nigeria's northern Kogi State in early May 2020. He was released after 15 days in custody without charge

Does the action have a legal basis?

Yes. Onitsha was arrested for allegedly violating Section 24(b) of the 2015 Cybercrime Act which criminalises "sharing messages via a computer or network system which they know to be false for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another person".

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate pursuant to a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. In this particular case, however, Onitsha's article was not connected to any clear objective public harm, and reports indicate that the action appears to be a clear case of journalist harassment.

Is the action necessary and proportionate in all the circumstances?

No. Any action taken in pursuance of an illegitimate aim would be unnecessary and disproportionate.

Arrest of poet Rotimi Jolayemi, May 2020

Poet Rotimi Jolayemi was arrested and charged in May 2020 for sharing a poem that was critical of Lai Mohammad, Nigeria's Minister of Information and Culture. An audio recording of this poem was shared on WhatsApp and subsequently went viral. It referenced corruption by the government and was critical of the government response to COVID-19. He was later released on bail.

Does the action have a legal basis?

Yes. Rotimi Jolayemi was charged under Section 24(1)(b) of the Cybercrimes (Prohibition, Prevention, etc) Act 2015. The charge sheet noted that Rotimi posted the audio message with "the purpose of causing annoyance, insult, hatred and ill will to the current Hon. Minister of Information and Culture". An amended charge sheet was produced in June which expanded on the rationale for this charge.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security, public order, public health or morals. Here, reports and the charge sheets suggest that the poet was not arrested and charged for a legitimate aim. Instead, the action was aimed at restricting criticism of the government.

Is the action necessary and proportionate in all the circumstances?

No. This action was made in pursuance of an illegitimate aim and therefore both unnecessary and disproportionate.

Government Pressure

Nigerian government bans Twitter for 6 months

The Nigerian government banned Twitter from 5 June 2021 to 13 January 2022. This action was taken after Twitter removed some tweets from President Buhari which some viewed as incitement to genocide and which Twitter deemed abusive. Twitter also temporarily suspended President Buhari's Twitter account. A government spokesperson said that the ban was imposed not only because of this, but also because of "a litany of problems with the social media platform in Nigeria, where misinformation and fake news spread through it have had real world violent consequences".

Does the action have a legal basis?

No. The suspension of Twitter was not based on any law or court order, nor was it clear what law was breached by the company.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech may only be restricted if it poses some clear, objective public harm. The government claimed that the ban was imposed because misinformation and fake news were spreading through Twitter and inciting offline violence, which implies pursuit of the legitimate aim of protecting the rights and reputations of others and preserving national security and public order. However, it appears more likely that the ban was imposed in order to punish Twitter for restricting President Buhari's account, which is not a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. Even though some content on Twitter may have posed risks to public safety or human rights, blocking the whole platform was a highly disproportionate response. It is possible to address and mitigate the risks of harmful content without blocking the entire platform.

N.B. The ECOWAS Court [ruled](#) in July 2022 that the Twitter ban was "unlawful and inconsistent with the country's international obligations", in response to a lawsuit brought by four applicants. The Court explicitly stated that the ban had violated Applicants' rights to the enjoyment of freedom of expression, access to information and the media.

Country Analysis: Republic of Congo

Last updated: July 2022

The Republic of Congo currently has no specific legislation to counter disinformation. However, there is one law that includes potential restrictions on disinformation: Loi N°8-2001 du 12 Novembre 2001 sur la liberté de l'information et de la communication.

This law raises several concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it carries penalties which are potentially disproportionate in their severity.

We assess this law in detail below.

Contents

General Speech Legislation

1. Loi N°8-2001 du 12 Novembre 2001 sur la liberté de l'information et de la communication

General Speech Legislation

[Loi N°8-2001 du 12 Novembre 2001 sur la liberté de l'information et de la communication](#)

Is there clarity over the precise scope of the law?

No. Article 194 criminalises “the publication, dissemination or reproduction, by any means whatsoever, of false news, fabricated, falsified or misleading documents attributed to third parties, or defamatory imputations” when done in bad faith and when likely to disturb the public peace, to harm national interest or to undermine the morale of the nation. It is not clear how to determine what news or material is false or misleading or what material is “likely” to disturb the public peace. The scope of the terms “national interest” and “morale of the nation” are also unclear. This article therefore does not provide sufficient guidance for individuals to conform their behaviour and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Whilst the aims pursued by Article 194 include legitimate aims such as protecting public safety or national security, the broad terms used to define these aims could also encompass illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 194 prohibits the dissemination of false news when done in bad faith, which implies the intention to deceive.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. It will be decided by a court.

Are any responses or sanctions proportionate?

No. Article 194 imposes a fine of 300,000 to 3,000,000 CFA (510 to 5,100 USD) upon conviction, and – if it is a repeat offence – imprisonment of three months to two years in addition to the fine. Moreover, the court can order the confiscation, removal or destruction of the means used to commit the offence, and order, for a period of not less than two years and not more than five years, the suspension of all or part of the offender’s civil and family rights or a ban on residence for a period of up to two years. These punishments are unusually severe, and would be particularly concerning if they were imposed without consideration of the circumstances of the offence or the actual harm caused.

Are intermediaries liable for third party content?

N/A.

Country Analysis: Rwanda

Last updated: July 2022

Rwanda does not have specific legislation to counter disinformation. However, it has two laws that include restrictions on disinformation: Law N° 68/2018 of 30/08/2018 determining offences and penalties in general and Law N° 60/2018 of 22/8/2018 on prevention and punishment of cyber crimes.

Both raise substantive concerns from a human rights perspective. They are overly broad in scope, requiring further clarification for individuals and law enforcement alike. They also include restrictions which do not pursue aims considered legitimate according to international human rights standards – such as legitimate expression that could cause public disaffection. Both laws also allow for sanctions which stand to be unnecessary and disproportionate in their severity, resulting in a chilling effect on freedom of expression.

We assess these laws in more detail below.

Contents

General Speech Legislation

1. Law N° 60/2018 of 22/8/2018 on prevention and punishment of cyber crimes
2. Law N° 68/2018 of 30/08/2018 determining offences and penalties in general

Law Enforcement action

1. Arrest of journalist and six political figures, October 2021

General Speech Legislation

Law N° 60/2018 of 22/8/2018 on prevention and punishment of cyber crimes

Is there clarity over the precise scope of the law?

No. Article 39 prohibits individuals from knowingly publishing rumours via a computer that may incite fear, insurrection or violence amongst the population, or may make a person lose their credibility. It is unclear what is considered to be a rumour, and the scope and threshold of what may incite fear, insurrection or may cause a person to lose their credibility. Article 39 therefore fails to provide sufficient guidance for individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. Article 39 appears to be targeted at protecting the rights of others and upholding public order. However, the vague construction and broad scope of this provision, particularly with regards to avoiding the incitement of fear and defending the credibility of individuals, suggests that not all restrictions would pursue a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

It is unclear what is considered to be a “rumour” and whether falsity is an element of this offence.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and is determined by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 39 will result in imprisonment for three to five years and a fine between one million and three million Rwandan francs. These harsh sanctions are concerning as this provision may pursue illegitimate aims and appears to create a

criminal offence of defamation. These minimum jail sentences are likely to be disproportionate even if a criminal conviction is appropriate.

Are intermediaries liable for third party content?

No, unless the service provider fails to respond to a take-down request, in which case they would be guilty of a criminal offence.

[Law N° 68/2018 of 30/08/2018 determining offences and penalties in general](#)

Is there clarity over the precise scope of the law?

No. Article 194 criminalises the spreading false information or harmful propaganda with intent to cause public disaffection against the Government of Rwanda, or where such information or propaganda is likely or calculated to cause public disaffection or a hostile international environment against the Government of Rwanda. Article 221 criminalises the intentional spreading of false allegations in public that directly or indirectly discredit the value of the national currency or negotiable instruments. It is unclear how to determine whether information or allegations are “false” or “harmful propaganda”.

The scope of this provision is also unclear, particularly in regards to what might be considered to cause public disaffection against the government, likely to cause public disaffection or a hostile international environment against the government, or discredit the value of the national currency. This is an overly broad provision and requires further clarification.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Articles 194 and 221 do not appear to pursue legitimate aims such as public order, public health, or protecting the rights of others. Instead, this provision is aimed at restricting legitimate forms of expression which is unfavourable from the government’s perspective.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. These offences require intention, which suggests that the court would make a determination as to the knowledge and culpability of the accused.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 194 may result in seven to ten years in prison during peacetime and life imprisonment during wartime. Violation of Article 221 may result in imprisonment between one and two years, and a fine between one million and three million Rwandan francs. Any of these sanctions would be unnecessary and disproportionate as these provisions do not pursue legitimate aims.

Are intermediaries liable for third party content?

N/A

Law Enforcement action

Arrest of journalist and six political figures, October 2021

On October 13, 2021, Rwandan security personnel arrested and charged Théoneste Nsengimana, who runs the YouTube channel *Umubavu TV Online*, as well as six members of the opposition party, in connection with their promotion of an event commemorating the plight of political prisoners in Rwanda. Nsengimana was charged with alleged membership in a criminal group, dissemination of propaganda aimed at harming the Rwandan government abroad, spreading rumours, and inciting unrest.

Does the action have a legal basis?

Yes. Nsengimana and six others were charged for the dissemination of false information or propaganda with intent to cause a hostile international opinion against Rwanda's government under Article 194 of Law N° 68/2018 of 30/08/2018 determining offences and penalties in general.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, reports indicate that the charges stem from a video published on Nsengimana’s YouTube channel publicising an event commemorating the plight of political prisoners in Rwanda. The post clearly posed no tangible threat to public order or safety, and the action appears to be aimed at silencing political opposition and dissent.

Is the action necessary and proportionate in all the circumstances?

No. Any action taken in pursuance of an illegitimate aim would be necessary and disproportionate.

Country Analysis: São Tomé and Príncipe

Last updated: July 2022

Sao Tome and Principe currently has no specific legislation to counter disinformation, and we are not aware of any instances of law enforcement action taken against individuals or media organisations on the basis of disseminating disinformation.

Country Analysis: Senegal

Last updated: December 2023

Senegal currently has no specific legislation to counter disinformation. However, there is one law and one proposed law that include restrictions on disinformation: the Penal Code and the Draft Bill on the Framework of the Use of Social Networks.

These laws raise concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech, and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech which might cause damage to the morale of the population or discredit public institutions. These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws in detail below. We also include some specific examples of how these laws are being enforced in response to disinformation.

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General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 255 of the Penal Code criminalises the publication, dissemination, disclosure or reproduction of false news (“nouvelles fausses”) when it causes, or is likely to cause disobedience of the country’s laws, damage to the morale of the population or discredits public institutions. It is not clear how to determine whether news is “false”. It is also unclear what threshold is required for damaging public morale or discrediting public institutions. Article 255 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 255 may be targeted at public order and national security, in particular when restrictions target speech which is likely to cause civil disobedience. However, restrictions in pursuance of avoiding damage to public morale or bringing public institutions into disrepute are outside the scope of what is considered “public order” and therefore illegitimate objectives.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. Article 255 of the Penal Code criminalises the publication or dissemination of false news whether committed in good or bad faith.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Article 255 may result in a fine of FCFA 100,000 to FCFA 1,500,000 and between one to three years of imprisonment. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then

sanctions may be disproportionate. This is particularly the case where no harm actually occurs. However, as we currently lack information as to how these penalties are imposed in practice, it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

Proposed Legislation

A Draft Bill on the Framework of the Use of Social Networks

Is there clarity over the precise scope of the law?

No. Article 15 would prohibit the disclosure or publication of sensitive or prohibited data through social networks, and Article 16 would prohibit anyone who conveys or popularised sensitive, misleading, defamatory or insulting computerised data, regardless of whether the sender is the original author of the information. The scope of what would be considered sensitive, prohibited, misleading or insulting is not clear. Articles 15 and 16 would thus fail to provide sufficient guidance for individuals and give an overly wide degree of discretion to those charged with the enforcement of that law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Articles 15 and 16 may be targeted at protecting the rights and reputations of others as they address “prohibited” or “defamatory” material. However, the broad nature of these offences, including the inclusion of misleading or insulting data, would suggest that restrictions may be used in pursuance of illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. These are criminal offences and would be decided by a court.

Are any responses or sanctions proportionate?

No. Articles 15 would penalise the disclosure or publication of sensitive or prohibited data with imprisonment from one to three years and a fine of up to 1 million francs CFA

(USD 1,718); it appears that this is the same penalty that applies to the offence in Article 16, which includes the publication of “misleading” information. The minimum penalties, including one year of imprisonment, are likely to be disproportionate as they would not allow a judge to take into account the degree of harm caused by the sharing of misleading information in the sentencing.

Are intermediaries liable for third party content?

N/A.

Law enforcement action

Arrest of Journalist Abdou Khadre Sakho, August 2023

Senegalese journalist Abdou Khadre, reporter for Senego news website, was arrested and detained for two days in August 2023 on grounds of dissemination of false news. This action was taken because of an article he published about alleged secret negotiations for the release of an opposition politician who had been charged with insurrection. Khadre was released without charge.

Does the action have a legal basis?

Yes. Khadre was summoned and questioned for potential violation of Article 255 of the Penal Code, which prohibits the spreading of false information.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. In this case, whether true or false, Khadre’s story posed no clear, objective harm to the public. It is more likely that the action was taken to quell commentary about the controversial detention of the opposition politician.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Arrest of Journalist Pape Ndiaye, March 2023

Journalist Pape Ndiaye (*Walf TV*) was arrested on March 3 2023 after sharing erroneous information on live TV on the judgment of a rape case involving politician and opposition leader, Ousmane Sonko. He was kept in custody for four days and then charged and placed under arrest warrant for several charges including spreading false news.

Does the action have a legal basis?

Yes. Ndiaye was charged with six offences under the Penal Code, including spreading false news (Article 255) provocation of a crowd, contempt of court, intimidation and reprisals against a member of the judiciary, speech discrediting a judicial act and endangering the lives of others.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. It is highly unlikely that Ndiaye's erroneous claim about the decision of assistant public prosecutors in relation to the rape charges faced by the opposition leader posed any clear, objective public harm. Furthermore, *Walf TV* was also suspended for 7 days by the National Audiovisual Regulatory Council only one week before this case in relation to coverage of clashes between law enforcement and Ousmane Sonko's supporters, and another journalist – Pape Ale Niang – has already been imprisoned for commenting publicly on the allegations of rape against Sonko. Reports also clearly indicate that Ndiaye had believed the information he shared to be true. These circumstances indicate that his arrest was politically motivated and designed to suppress commentary favouring the opposition politician.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, any response would be unnecessary and disproportionate.

Arrest of Former Prime Minister Cheikh Hadjibou Soumaré, March 2023

Senegal's former prime minister, Cheikh Hadjibou Soumaré, was arrested and charged with defamation and sharing false information on 9 March 2023, in relation to an open

letter he wrote to the President questioning him about whether he had provided funds to French far-right leader Marine Le Pen. He was kept in custody for one day and then released on bail under judicial supervision.

Does the action have a legal basis?

Yes. Reports indicate that Soumaré was arrested for sharing false information, prohibited under Article 255 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. There is no indication that the questions posed by Soumaré in his open letter (which were not even claims of fact) posed any concrete risk to the rights and reputations of others, to public order or national security. It is likely that his arrest was politically motivated to suppress criticism of the President, which would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

[Arrest of rapper and activist Nit Doff, January 2023](#)

Rapper and social justice advocate Mr Mor Tallah Gueye – popularly known by his stage name, “Nit Doff” – was arrested in mid-January 2023 in connection with statements he made on a Facebook Live video and held in custody for over two months. His trial began in late March 2023.

Does the action have a legal basis?

Yes. Mr Gueye was reportedly charged with dissemination of false news, contempt of court and death threats against judicial authorities under Articles 194, 255 and 290 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. No reports indicate that any information, true or false, shared by Nit Doff during his Facebook live video posed any clear, objective public harm and therefore the action is likely not to be in pursuance of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. If made in pursuance of a legitimate aim, it is still unlikely that imprisoning Mr Gueye for over two months is a proportionate response. The proportionality of the final penalty depends on the final decision of the authorities.

Three individuals questioned for spreading false information, March 2020

Three individuals were summoned by the gendarmerie in March 2020 for making false statements on social media that denied the presence of COVID-19 in Senegal. Reports indicate that the individuals were released after questioning.

Does the action have a legal basis?

Yes. The three individuals were summoned and questioned after being accused of spreading false information, which is punishable under Article 255 of the Penal Code. The Minister of Health and Social Action also announced that individuals who make posts on social media denying the existence of COVID-19 will be prosecuted under Article 255 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, reports indicate that the summons were made in pursuance of false statements. However, there is no indication that the authorities feared these posts would cause disorder or further public health issues.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. However, if made in pursuance of a legitimate aim, then the summoning may have been proportionate as the individuals were questioned and then released. Still, the proportionality of the action would depend on the final decision of the authorities.

Arrest of MP Abdou Bara Dolly, June 2022

On 10 June, 2022, Abdou Bara Dolly, a Member of Parliament, was arrested following critical remarks he made against President Macky Sall during a demonstration by the two coalitions of the opposition (Yewi Askan and Wallu) in Dakar. After almost a month in detention, Abdou Bara Dolly was finally granted provisional freedom on 8 July 2022, pending trial. The Constitutional Court banned him, along with other opposition figures, from taking part in the elections.

Does the action have a legal basis?

Yes. Dolly was charged and placed under a detention order for the offences of insulting the head of state under Article 80 of the Penal Code, dissemination of false news under Article 255 of the Penal Code and defamation under Article 258 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. It is not clear exactly what Dolly said to prompt this action and whether his speech could be considered to pose some clear, objective, public harm, but it seems more likely that this action was politically motivated.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. Even if made in pursuance of a legitimate aim, it is likely that the detention of the MP for nearly one month was disproportionate to the actual harm caused by his remarks.

Arrest of activist Pape Ibra Guèye, August 2022

On 3 August 2022, Pape Ibra Guèye, also known as Papito Kara, a social media activist, was arrested for disseminating false news, and for hacking media outlets and newspapers to publish headlines ahead of official publication.

Does the action have a legal basis?

Unclear. It is likely that Guèye was charged under Section 255 of the Penal Code and relevant provisions of Senegal's Law on Cybersecurity 2008. However, without obtaining a copy of the charge sheet we are unable to verify this.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Without further information as to the nature of the “false news” disseminated by Guèye, it is not possible to determine whether his speech was restricted because it posed a clear, objective public harm.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. Even if made in pursuance of a legitimate aim, reports indicate that Guèye was detained for at least six weeks, which may be a disproportionate penalty.

Arrest of Outmane Diagne, August 2022

In August 2022, activist Outmane Diagne was arrested and detained for spreading false news, and for deleting and modifying newspaper data. This happened after he shared the front pages of satirical newspapers on his Facebook page, along with 3 smiley face emojis.

Does the action have a legal basis?

Unclear. It is likely that Diagne was charged under Section 255 of the Penal Code. However, without obtaining a copy of the charge sheet we are unable to verify this.

Is the action clearly directed to tackle an objectively legitimate aim?

Unclear. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. It is unlikely that the satirical newspaper articles shared by Diagne on his Facebook page posed any clear, objective public harm and therefore the action is likely not to be in pursuance of a legitimate aim. This also follows previous arrests and police action taken against Diagne for criticising political figures.

Is the action necessary and proportionate in all the circumstances?

Unclear. If the action was made in pursuance of an illegitimate aim then any response would be unnecessary and disproportionate. Even if made in pursuance of a legitimate aim, [reports](#) indicate that Diagne remained in custody as of January 2023, and six months imprisonment is highly likely to be a disproportionate penalty.

Arrest of Abdou Gueye and Cheikh Diagne, September 2022

On 8 September 2022, activist Abdou Karim Gueye and Professor Cheikh Oumar Diagne were placed in police custody following remarks made after the death of an Imam, Alioune Badara Ndao, during a TV programme. Ndao was preventatively detained for three years from 2015–2018 before he was acquitted of charges of acts of terrorism. Gueye and Diagne accused the state of being the root cause of Imam Ndao's subsequent illness, and were charged with disseminating false news. After more than six months of detention, they were conditionally released on 10 January, 2023.

Does the action have a legal basis?

Yes. Gueye and Diagne were charged with disseminating false news under Article 255 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. There is no indication that Gueye and Diagne's remarks posed concrete risk to the rights and reputations of others, to public order or national security, and it is likely that their arrest was politically motivated to suppress criticism of the state, which would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate. Furthermore, reports indicate that the two individuals were kept imprisoned for over six months, which is likely to be a disproportionate penalty considering the actual harm caused by their remarks.

Arrest of Journalist Pape Alé Niang, November 2022

Pape Alé Niang, a journalist and administrator for the *Dakarmatin* website, was arrested on 6 November 2022 in relation to an article he published about rape charges faced by Senegal's main opposition leader, Ousmane Sonko. He spent three days in police custody and was then charged with revealing information "likely to harm national defence," "receiving confidential administrative and military documents" and disseminating "false news likely to discredit state institutions" and transferred to prison. Niang was provisionally released on 14 December, but was rearrested six days later for allegedly violating a prohibition on communicating in any form about the case against him. He was provisionally released on 10 January, but remains under judicial control in

line with a set of measures that include the obligation to hand over his passport, to report to the office of the investigating magistrate once a month, to not to leave the territory, and to refrain from speaking to the media about his case.

Does the action have a legal basis?

Yes. Niang was charged under Articles 64, 255, 370 and 430 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. It is highly unlikely that Niang's reporting on the rape charges faced by the opposition leader posed any clear, objective public harm, and it seems that this arrest was largely politically motivated.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate. Furthermore, Niang was imprisoned for several weeks, which is likely to be a disproportionate punishment considering the actual harm caused by his speech.

Country Analysis: Seychelles

Last updated: July 2022

Seychelles does not have any disinformation specific legislation. However, it does have legislation which criminalises the dissemination of false information: the Penal Code.

This law raises concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; it may also pursue aims which would not be considered “legitimate” due to its vague construction.

We assess this law in detail below.

Contents

General Speech Legislation

1. Penal Code

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Section 62 of the Penal Code criminalises the publication of false statements, rumours and reports where they are likely to cause fear and alarm to the public or to disturb the public peace, and when the person who makes the statement knows or has reasons to believe that it is false. It is not clear how to determine whether speech is “false” or the scope of “public peace”. As such, Section 62 doesn’t provide clear guidance for individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The aim pursued by Section 62 appears to be to protect public order. However, while restrictions in the pursuance of protecting “public order” may be legitimate, the scope of “public peace” may be broader than “public order”. If it is either broader than “public order”, or requires a lower threshold, then any restriction would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 62(2) provides a defence for the accused when they are able to prove that, prior to publication, they took reasonable measures to verify the accuracy of any statement, rumour or report.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 62 may result in imprisonment for 3 years. If this maximum sentence is imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. Furthermore, any sanction would be disproportionate if made in pursuance of an illegitimate aim. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate or not.

Are intermediaries liable for third party content?

N/A

Country Analysis: Sierra Leone

Last updated: July 2022

Sierra Leone currently has no specific legislation to counter disinformation. There is one existing law that includes a potential restriction on disinformation: the Cyber Security and Cyber Crime Act, 2021.

This law raises serious concerns from a human rights perspective. It is ill-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it pursues aims which would not be considered “legitimate” according to international human rights standards. This law also carries penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess this law in detail below.

NB: Section 32 of the Public Order Act of 1965 previously included potential restrictions on disinformation. This law was [repealed](#) in November 2020 through the Independent Media Commission (IMC) Act.

Contents

General Speech Legislation

1. [The Cyber Security and Crime Act, 2021](#)

General Speech Legislation

The Cyber Security and Crime Act, 2021

Is there clarity over the precise scope of the law?

No. Section 44(2)(b) states that it is an offence for any person, corporation, partnership or association to “recklessly or intentionally sends a message or other matter by means of a computer system or network that [...] he knows to be false, for the purpose of causing danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent”. It is not clear how to determine whether a message is “false” or the scope of what is considered to be “causing danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another”. Section 44(2)(b) therefore does not provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Restrictions made under Section 44(2)(b) appears to be aimed at protecting public order and protecting the rights or reputations of others. However, restrictions made to prevent insult, ill will or needless anxiety to another are unlikely to fall within the scope of these legitimate aims and would therefore be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 44(2)(b) prohibits a person from recklessly or intentionally sending a message that “he knows to be false”. Therefore, an individual who reasonably believed the information to be true would not be held liable.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court.

Are any responses or sanctions proportionate?

Unclear. Section 44(2)(b) provides that individuals who commit the offence shall be liable on conviction to a fine not less than Le 30,000,000 (USD 2,500) and not more than Le 50,000,000 (USD 4,115) or to a term of imprisonment not less than two years and not exceeding five years or to both such fine and imprisonment. In the case of a corporation, partnership, or association, the penalty will be a fine not less than Le 100,000,000 (USD 8,230) and not exceeding Le 250,000,000 (USD 20,600). If the fines and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs.

Are intermediaries liable for third party content?

N/A.

Country Analysis: Somalia

Last updated: December 2023

Somalia currently has no specific legislation to counter disinformation. However, there is one law that includes restrictions on disinformation: the Penal Code.

This law raises serious concerns from a human rights perspective. It is loosely-defined in its scope, meaning that authorities could interpret it as giving them power to restrict a wide range of speech; and it pursues aims which would not be considered legitimate according to international human rights standards—for example, restricting speech which might cause harm to “the reputation of the state”. It also carries penalties which can be disproportionate in their severity and result in a chilling effect on freedom of expression.

We assess this law in detail below, along with an example of its enforcement in practice.

Contents

General Speech Legislation

1. Penal Code

Law Enforcement Action

1. Arrest of Journalist Mohamed Ibrahim Osman Bulbul, August 2023

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 208(1) prohibits the spreading of false, exaggerated or misleading rumours or news which may create “public alarm or despondency” or negatively impact “national interest” or “lessen the resistance of the nation to the enemy” during a time of war. Article 212 prohibits any citizen from circulating false, exaggerated or misleading rumours or news concerning the internal conditions of the state whilst abroad, where such rumours have a negative impact on the reputation of the state or its national interests. Article 328 prohibits the publication or circulation of “false, exaggerated or tendentious news” which disturbs “public order”.

It is not clear how one would determine whether information or news is false, exaggerated or misleading, nor the scope of information which would be considered to negatively impact the reputation of the state, national interest or lessen the resistance of the nation to the enemy. Articles 208, 212 and 328 therefore fail to provide clear guidance for individuals and provide an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. While the aims of Articles 208, 212 and 328 seem to be directed at the protection of national security and public order, only Article 328 sets out purely legitimate aims – based solely on protection of public order. Articles 208 and 212 restrict false information where it may cause “public alarm or despondency” or harm to the “national interest” and “the reputation of the state”. These terms could be interpreted more broadly than the legitimate aims of public order and national security, and therefore the restrictions would be considered in pursuance of illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. The offences make no reference to the knowledge of the truth or falsity of the statement or intention to cause harm, meaning that individuals can be charged even when they believed the information to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court.

Are any responses or sanctions proportionate?

No. The offence of sharing false information during a time of war under Article 208 is punishable by five years' imprisonment, or – in the case of false communications addressed to soldiers or designed in collaboration with the enemy – at least 15 years' imprisonment. The offence of sharing false information abroad during a time of war under Article 212 is punishable by at least five years' imprisonment. The offence of sharing false information which disturbs public order under Article 328 is punishable with up to six months' imprisonment or a fine of up to 3,000 Somalian shillings (USD 5). These are strict penalties and it is unlikely that any of them, with the potential exclusion of the latter, could be considered proportionate. However, this would still require due consideration for the circumstances of the offence and the harm caused.

Are intermediaries liable for third party content?

N/A.

Law Enforcement Action

Arrest of Journalist Mohamed Ibrahim Osman Bulbul, August 2023

Journalist Mohamed Ibrahim Osman Bulbul, Secretary of Information and Human Rights for the Somali Journalists Syndicate, was arrested by plain-clothed security personnel in an unmarked vehicle in August 2023. They did not have an arrest warrant and were physically violent towards Bulbul as they detained him, and initially did not grant him access to a lawyer or to his family. A court later approved a police request to detain him for seven days without charge, pending investigation – he was later charged with several offences. These actions were taken in relation to Bulbul's news report exposing allegations of corruption by Somali police officers. At the first hearing the judge dismissed all criminal charges on the grounds that journalism is not a crime, but Bulbul remains in detention.

Does the action have a legal basis?

No. Bulbul was eventually charged in September for offences under the Somali Penal Code, including Article 328 which prohibits the publication or circulation of false, exaggerated or tendentious news capable of disturbing public order. However, his arrest without a warrant by security personnel, the physically abusive treatment he received while in custody, and his continued detention after the dismissal of criminal charges by a judge are all actions taken without a legal basis.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. There is no evidence that Bulbul's report posed any genuine risk to the public, and it seems that the action was instead taken to silence criticism of the police and public interest reporting.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered legitimate or proportionate.

Country Analysis: South Africa

Last updated: July 2022

South Africa does not currently have specific legislation to counter disinformation. However, there are two laws that include restrictions on certain forms of disinformation: the Regulations Issued in Terms of Section 27(2) of the Disaster Management Act, 2002, and the Electoral Act, 1998.

These laws raise substantial concerns from a human rights perspective. They are ill-defined in scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they may pursue aims which would not be considered “legitimate” according to international human rights standards. These laws may also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws in detail below and examine examples of their enforcement.

Two broadcasters were also [suspended](#) in 2020 for airing interviews with individuals denying the existence of COVID-19; however this action was taken under contravention of Clause 28.2.2 of the Subscription Broadcasting Code and Clause 13 of the Free-to-Air Broadcasting Code.

Moreover, the government established a multi-stakeholder [monitoring and evaluation platform](#) and [Digital Complaints Committee](#) to monitor and respond to COVID-19 misinformation, to assess misinformation complaints, and forward cases to the police for investigation and prosecution.

N.B. The [Cybercrimes and Cybersecurity Bill, 2017](#), previously contained provisions criminalising the spread of false news in Clause 17(2)(d). However, these provisions were not included in the final text of the [Cybercrimes Act, 2020](#).

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General Speech Legislation

1. Regulations Issued in Terms of Section 27(2) of the Disaster Management Act, 2002
2. The Electoral Act, 1998

Law enforcement action

1. Arrest of Stephen Birch, April 2020

General Speech Legislation

Regulations Issued in Terms of Section 27(2) of the Disaster Management Act, 2002

Is there clarity over the precise scope of the law?

No. Section 11(5) of the Regulations criminalises the publication of any statement made “with the intention to deceive any other person” about COVID-19, the infection status of any person, or any measure taken by the government to address COVID-19. While the offence does not explicitly require the statement to be false, the “intention to deceive” suggests that the publication would need to be false or misleading. However, it would be difficult to determine what is false or misleading. The exact scope of what is considered to be “about COVID-19” or “any measure taken by the Government is also unclear.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective public harm might be caused. The speech restricted here appears to be in pursuance of public health, which would be a legitimate aim. It is, however, unclear whether speech would only be restricted in the pursuance of public health under Section 11(5). This depends how the term “any measure taken by the Government to address COVID-19” is interpreted, as it could go beyond what would be considered measures to address “public health

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 11(5) requires “the intention to deceive any other person”. An individual would therefore not commit the offence when they reasonably believed the information to be true because they would lack the necessary intent.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. The penalty for violation of Section 11(5) is a fine or imprisonment for a period not exceeding six months, or both. If the maximum fines and prison sentences were imposed without taking into account the circumstances of the offence, then sanctions could be disproportionate. However, given the absence of information as to how these penalties would be imposed in practice, it is currently difficult to say.

Are intermediaries liable for third party content?

N/A

[The Electoral Act, 1998](#)

Is there clarity over the precise scope of the law?

No. Section 89(2) prohibits any person from publishing any “false information” with the intention of (a) disrupting or preventing an election; (b) creating hostility or fear in order to influence the conduct or outcome of an election; or (c) influencing the conduct or outcome of an election. It is not clear how one would determine what is “false information” or what type of behaviour would be considered to meet the threshold of creating hostility or fear in order to influence the conduct or outcome of an election. Section 89(2) therefore fails to provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Speech should only be restricted where some clear, objective harm might be caused. The aims pursued in Section 89(2) seem directed at protecting individuals’ right to free and fair elections, their right to access accurate information, and protecting democracy and democratic procedures, which are legitimate aims. However, Section 89(2) is broadly worded, particularly in “creating hostility or fear in order to influence the conduct or outcome of an election”. If Section 89(2) is interpreted to apply to speech which does not pose any concrete threats to democracy or to the rights of others, it would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Section 89(2) appears to prohibit the dissemination of false information with the intention to disrupt or influence the election, which implies knowledge of the falsity of information.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. Determinations will be decided by the Electoral Court, which has final jurisdiction over all disputes and infringements of the Code.

Are any responses or sanctions proportionate?

Potentially. Section 98(a) provides that any person convicted of an offence under Section 89(2) is liable to a fine or to imprisonment not exceeding ten years. No maximum fine is provided. If heavy fines or the maximum imprisonment is imposed without consideration of the circumstances of the offence or the actual harm caused, penalties are likely to be disproportionate.

Are intermediaries liable for third party content?

N/A

Law enforcement action

[Arrest of Stephen Birch, April 2020](#)

A man in Cape Town was arrested and charged in April 2020 for spreading false news about COVID-19. This individual posted a video on Facebook where he claimed that COVID-19 test kits were contaminated. He warned people against getting tested and said that the medical swabs used by fieldworkers were already contaminated with the virus. This video was widely shared online.

Does the action have a legal basis?

Yes. The individual was arrested and charged under Regulation 11(5) of the Disaster Management Act.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the actions were likely pursued in the name of public health. A government spokesperson commented on this arrest and noted that disinformation was unacceptable and dangerous to society. This would suggest that the government was concerned with the public health ramifications of the video.

Is the action necessary and proportionate in all the circumstances?

Potentially. The man was arrested and charged, but quickly released pending his return to court. If ultimately convicted, he could face a fine and up to six months in jail. The proportionality of these actions will ultimately depend on whether the court considers the particular circumstances of the offence.

Country Analysis: South Sudan

Last updated: July 2022

South Sudan currently has no specific legislation to counter disinformation. However, there are two laws that include potential restrictions on disinformation: the Penal Code and the Anti-Cybercrime Law, 2018.

Both raise important concerns from a human rights perspective. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered legitimate according to international human rights standards—for example, restricting speech which might alarm the public worry them, or provoke them “against the established powers” (Penal Code). These laws also carry penalties which can be disproportionate in their severity and result in a chilling effect on freedom of expression.

We assess these laws individually in detail below. We have limited data on their enforcement in practice.

Contents

General Speech Legislation

1. Penal Code
2. The Anti-Cybercrime Law, 2018

Law enforcement action

1. Activist Kuel Aguer Kuel arrested for false statements, August 2021

General Speech Legislation

Penal Code

Is there clarity over the precise scope of the law?

No. Article 75(a) prohibits the publication or communication of a statement which is wholly or materially false with the intent of causing real or possible risk of (i) “inciting or promoting public disorder or public violence or endangering public safety; (ii) adversely affecting the defence or economic interests of Southern Sudan; (iii) undermining public confidence in a law enforcement agency, or Defence Forces of Southern Sudan; or (iv) interfering with, disrupting or interrupting any essential service”, whether or not the publication actually resulted in one of these consequences. Article 75(b) prohibits the publication or communication of false statements which the individual knows or suspects to be false and which results in one of the four consequences, regardless of the intent of the individual.

It is not clear how to determine whether a statement is “wholly or materially false” or the scope of what is considered to be “undermining public confidence in a law enforcement agency, or the Defence Forces of Southern South” and “interfering with, disrupting or interrupting any essential service”. Article 75 therefore does not provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued under Article 75 appear partly directed at public order and national security, which are legitimate aims. However, there is a lack of clarity on terms such as “adversely affecting the defence or economic interest”, “undermining public confidence in a law enforcement agency, or the Defence Forces” and “interfering with, disrupting or interrupting any essential services”. If these terms are interpreted more broadly than public order and national security then restrictions would be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 75(a) requires an intention to cause harm. Article 75(b) does not explicitly require intention to cause harm, but it does require knowledge or suspicion of the falsity

of the information. As such, if an individual reasonably believed the information to be true, it appears they would not be liable under either article.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Article 75 may result in a fine or imprisonment for a term not exceeding 20 years, or both. The maximum imprisonment sentence is disproportionately high, and the lack of specification of a maximum fine is concerning. Furthermore, Article 75(b) explicitly states that the penalty applies even if the individual did not intend to cause any objective public harm. If penalties were imposed without proper consideration of the circumstances of the offence or the actual harm caused, they would be disproportionate.

Are intermediaries liable for third party content?

N/A

[The Anti-Cybercrime Law, 2018](#)

Is there clarity over the precise scope of the law?

No. Article 24 prohibits the use of information and communications networks to publish news, rumours or reports, knowing them to be false and with the intent to cause “fear or panic to the public, or to threaten public peace or tranquillity, or to diminish the prestige of the state”. It is not clear how one would determine that a report is “false”, or what may be considered “to damage public peace or tranquillity, or to diminish the prestige of the state”. Article 24 therefore fails to provide clear guidance for individuals and risks giving an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where it may cause objective public harm. Article 24 appears to be directed at the protection of public order and national security. While

speech or content restricted in pursuance of these aims may be legitimate, the scope of what is considered to “fear or panic to the public, or to threaten public peace or tranquillity, or to diminish the prestige of the state”, is potentially much broader than “public order”. If so, restrictions would not pursue a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 24 specifies that the individual must know of the falsity of the information and intend to cause harm.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Unclear. Article 35 stipulates that a new specialised court will be established to examine the offences set forth in this law, and Article 36 stipulates that the Public Prosecutor may establish specialised prosecutions for these crimes, which would suggest the creation of an independent and impartial judicial authority. However, Article 37 states that the Interior Minister may also establish a specialised police force for these offences, and the minister would have oversight over these newly created entities. As such, it is not clear how independent the courts would be in practice.

Are any responses or sanctions proportionate?

No. Article 24 imposes a penalty for sharing false information of imprisonment of up to one year, or flogging, or both; and in the [3 July 2021 amendment](#) to this law the maximum prison sentence for this offence was raised to four years. Physical harm is never a necessary or proportionate sanction. Furthermore, if the maximum imprisonment were imposed without consideration of the circumstances of the offence, this penalty too would be disproportionate.

Are intermediaries liable for third party content?

N/A.

Law enforcement action

Activist Kuel Aguer Kuel arrested for false statements, August 2021

Authorities arrested political activist Kuel Aguer Kuel in August 2021 and charged him with five separate offences, including publishing or communicating false statements prejudicial to Southern Sudan. This was reportedly due to his role in co-founding the People's Coalition for Civil Action, an opposition political group, and his predictions that the president and vice president would be removed from power. He has been detained without trial for 7 months as of March 2022.

Does the action have a legal basis?

Unclear. Whilst we were unable to obtain a copy of the charge sheet, Kuel was reportedly charged with publishing or communicating false statements prejudicial to Southern Sudan, which would correspond to Article 75 of the Penal Code.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, reports clearly indicate that law enforcement was not concerned about public safety or security, but instead sought to silence political criticism and disable a political opponent.

Is the action necessary and proportionate in all the circumstances?

No. No action would be considered necessary or proportionate in the absence of a legitimate aim.

Country Analysis: Tanzania

Last updated: December 2022

Tanzania currently has no specific legislation to counter disinformation. However, there are several laws that include potential restrictions on disinformation: the Cybercrimes Act, 2015, the Electronic and Postal Communications Act, 2010 and the Media Services Act No.12 of 2016, and the Electronic and Postal Communications (Online Content) Regulations, 2020 (which replaced the Electronic and Postal Communications (Online Content) Regulations, 2018).

These laws raise several concerns from a human rights perspective. They are loosely-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech when it is intended to threaten or insult a person or the public (Cyber Crimes Act No. 14 of 2015) and prohibiting “rumors for the purpose of ridicule” (Electronic and Postal Communications Regulations, 2020). These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below. We also assess the enforcement of these laws in response to disinformation.

N.B. In March 2019, the East African Court of Justice (EACJ) [directed](#) Tanzania to amend the Media Services Act. The EACJ noted that the wording in section 50(1)(c) of the Act – “threatening the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health” – was too broad and imprecise to enable a journalist or other person to regulate their actions, and held that this section as well as many others violated the Treaty for the Establishment of the East African Community and the right to freedom of expression. In August, three Tanzanian human rights organisations [filed](#) a lawsuit against the government of Tanzania for contempt of court at the EACJ for its failure to amend the Media Services Act.

Contents

General Speech Legislation

1. Cybercrimes Act, 2015
2. Electronic and Postal Communications (Online Content) Regulations, 2020
3. Electronic and Postal Communications Act, 2010
4. Media Services Act, 2016

Law enforcement action

1. Arrest of Journalist Joseph Gandye, August 2019
2. Arrest of journalist Sebastian Atilio, September 2019
3. Newspaper banned from publishing online, April 2020
4. Web TV outlet suspended for 11 months, July 2020
5. Suspension of Uhuru Newspaper, August 2021
6. Suspension of Mwema newspaper, September 2021

General Speech Legislation

Cybercrimes Act, 2015

Is there clarity over the precise scope of the law?

No. Section 16 of the Act creates a criminal offence of publishing information or data in a computer system, knowing that it is false, deceptive, misleading or inaccurate, and where they have an intention to defame, threaten, abuse, insult or otherwise deceive or mislead the public, or to counsel the commission of an offence. It is not clear how to determine whether information is "false". Section 16 therefore does not provide sufficient guidance for individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Section 16 appears to be targeted at protecting the rights of others and upholding public order, which are legitimate aims. However, this provision also appears to pursue illegitimate aims as it restricts speech which is intended to mislead or deceive without any other harm being caused

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 16 explicitly limits liability to instances where the individual knew that the information was false, deceptive, misleading or inaccurate. The individual would not be liable if they reasonably believed the information to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

No. Violation of Section 16 will result in a minimum fine of five million shillings and a minimum prison sentence of three years, or both. There does not appear to be a maximum penalty imposed. These penalties are likely to be disproportionate, particularly for less serious offences where little or no harm actually occurs.

Are intermediaries liable for third party content?

Yes, but only under certain circumstances. Section 40 provides that access providers will not be liable for third party content in electronic communications when they do not initiate the transmission, do not select the receiver of the transmission, and do not select or modify the information contained in the transmission. Section 41 provides that a hosting provider is not liable for illegal information stored at the request of a user if they immediately remove it upon receiving a removal order from a competent authority, or immediately inform the relevant authority when otherwise made aware of illegal information. Section 44 provides that a search engine provider is not liable for search results, on condition that the search engine provider does not initiate the transmission, does not select the receiver of the transmission, and does not select or modify the information contained in the transmission.

Section 45 indicates that a service provider who fails to take action on a take-down notification received shall be charged as a person who initiated the contents. These take-down notifications may come from individuals, and if a service provider fails to act upon the notification, then the individual may notify a "competent authority". That competent authority may then order the service provider to act on the notification or take any other measure to resolve the matter.

It therefore would appear that intermediary liability is not limited to circumstances where an intermediary has intervened in content moderation, or refused to obey a court order. These provisions go beyond such requirements and extend liability in other circumstances. It is also unclear whether the "competent authority" referenced in Section 45 is limited to an independent and impartial body such as a court.

[Electronic and Postal Communications \(Online Content\) Regulations, 2020](#)

Is there clarity over the precise scope of the law?

No. Regulation 16 prohibits persons from publishing any “prohibited content” or facilitating user access to prohibited content. “Prohibited content” includes, amongst other types of content:

- content which threatens public security and national safety, including rumors for the purpose of ridicule, abuse or harming the reputation, prestige or status of the United Republic, the flag or national anthem;
- false content which is likely to mislead or deceive the public, except where it is clearly pre-stated that the content is satire and parody, fiction, and preceded by a statement that the content is not factual.

It is not clear how to determine whether information is “false” or a “rumor”. As such, regulation 16 fails to provide clear guidance for online service providers or users, and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Some of the aims pursued by Regulation 16 appear targeted at the legitimate aims of protecting public order, public health, and protecting the rights of others. However, there are broad categories of speech or content prohibited under Regulation 16 which are not aimed at pursuing these. Restrictions on content that ridicule the country or are likely to mislead or deceive the public, for example, do not pursue legitimate aims according to international human rights standards.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

No. Violation of these regulations are dealt with by the Tanzania Communications Regulatory Authority. They are charged with taking action against non-compliance, including to order removal of or bar access to prohibited content.

Are any responses or sanctions proportionate?

This is unlikely. Regulation 21 provides that a person who violates any regulation, including Regulation 16, will be liable for a minimum fine of five million Tanzanian shilling or a minimum prison sentence of one year, or both. These minimum sanctions are likely to be disproportionate in most circumstances, particularly when no harm actually occurs.

Are intermediaries liable for third party content?

Yes. Regulation 9 provides that all online content providers must ensure that online content does not contravene the provisions of any written law, and Regulation 20 requires online content providers to ensure that all prohibited content is removed within twelve hours of being notified.

[Electronic and Postal Communications Act, 2010](#)

Is there clarity over the precise scope of the law?

No. Section 118(a) of the Electronic and Postal Communications Act, 2010 creates a criminal offence of using network or content services to knowingly create, solicit or initiate the transmission of communication which is, among other things, false with intent to annoy, abuse, threaten or harass another person. It is not clear how to determine what is considered "false". This provision is also very broad in scope. Section 118(a) does not provide sufficient guidance for individuals and gives an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Section 118(a) may be targeted at protecting the rights of others. However, the vague construction of this provision, including its broad scope and lack of clarity on thresholds, indicates that not all restrictions would pursue legitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 118(a) requires an individual to knowingly transmit false information.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

This is unlikely. Violation of Section 118(a) will result in a fine not less than five million Tanzanian shillings or imprisonment for a term not less than twelve months, or both. Individuals will continue to be liable for a fine of seven hundred and fifty thousand Tanzanian shillings for every day during which the offence is continued after conviction. These minimum sanctions are likely to be disproportionate in most circumstances, particularly when no harm actually occurs. Furthermore, any sanction would automatically be disproportionate if made in pursuance of an illegitimate aim.

Are intermediaries liable for third party content?

N/A

[Media Services Act, 2016](#)

Is there clarity over the precise scope of the law?

No. The applicable provisions are vague and broadly constructed. Section 50(1)(a) of the Act makes it an offence for any person to use a media service for the purposes of publishing information which is intentionally or recklessly falsified in a manner which threatens the interests of defence, public safety, public order, the economic interests of the country, public morality or public health; or is injurious to the reputation, rights and freedom of other persons. Section 50(1)(b) prohibits the use of a media service to publish information which is maliciously or fraudulently fabricated. Section 50(1)(d) makes it an offence to publish a statement when knowing it to be false or without reasonable grounds for believing it to be true. Section 50(2) further criminalises, inter alia, disseminating false information without justification.

Section 54 criminalises the publication of any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace.

Each of these provisions requires further clarification. For instance, it is difficult to determine what information is “false”, “falsified”, or the scope of what is considered to be in the interests of defence, public safety and the economic interests of the country.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Some of the restrictions in Sections 50 and 54 appear to be targeted at protecting national security, public order, public health, public morals and protecting the rights of others. However, the broad scope of these offences means that other restrictions would be in pursuance of other aims which are not legitimate. For example, the scope of Section 50 covers information which is merely false, without any harm having been caused.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Section 50(1)(d) limits liability to the publication of false statements when the publisher knew it to be false. Section 54(2) provides a defence if the accused is able to prove that, prior to publication, they took measures to verify the accuracy of the statement and this led them to reasonably believe that the publication was true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 50 will result in a fine between five and twenty million shillings or imprisonment for three to five years, or to both. Violation of Section 54 will result in a fine between ten and twenty million shillings or imprisonment for four to six

years, or to both. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. The minimum sanctions are also likely to be disproportionate in most circumstances, particularly when no harm actually occurs. Any sanction would be disproportionate if made in pursuance of an illegitimate aim.

Are intermediaries liable for third party content?

N/A

Law enforcement action

Arrest of Journalist Joseph Gandye, August 2019

On 22 August 2019, Joseph Gandye, an investigative journalist at Watetezi TV, was arrested for allegedly disseminating false information. The action stems from reporting on police brutality against young people in police custody, which included accusations against police officers of having forced six young people in custody to “sodomize each other”. He was reportedly released several days later and it is unclear whether any official charges had been filed.

Does the action have a legal basis?

Yes. The arrest was reportedly based on suspected violation of Section 16 of the Cybercrimes Act, 2015.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the arrest does not seem to be in pursuance of a legitimate aim, but instead to discredit and discourage his reporting on wrongdoing by law enforcement. This would therefore not constitute a legitimate aim under international human rights law.

Is the action necessary and proportionate in all the circumstances?

No. The action taken by the government was not in pursuance of a legitimate aim and was therefore unnecessary and disproportionate.

Arrest of journalist Sebastian Atilio, September 2019

Journalist Sebastian Atilio was arrested in September 2019 for allegedly spreading false news on a WhatsApp group popularly known for commentary on politics and social issues. The information in question related to a claim that villagers in the Iringa region of Tanzania were potentially facing eviction and relocation to pave way for the Unilever Tea Tanzania Company Limited. The journalist was held for nearly three weeks until released on bail. The charges were later withdrawn in March, 2020.

Does the action have a legal basis?

Yes, the journalist was arrested and charged with publishing false information contrary to Section 16 of the Cyber Crimes Act, 2015, and for performing journalist activities without a permit from the Tanzania Journalists Board contrary to Section 50(2)(b) of the Media Services Act, 2016.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Here, the restriction does not seem to be in pursuance of a legitimate aim. Instead, reports suggest that the journalist was being prosecuted for spreading information damaging to investors and to Tanzania's ruling party.

Is the action necessary and proportionate in all the circumstances?

No. The action was unnecessary and disproportionate as it pursued illegitimate aims.

Newspaper banned from publishing online, April 2020

The *Mwananchi* newspaper was banned from publishing online for six months and fined five million Tanzanian shillings over alleged publication of false news in April 2020. It was alleged that the newspaper had circulated an online video in which Tanzanian President

John Magufuli was shown buying fish in an open market. His act was considered irresponsible given the prevalence of the COVID-19 pandemic.

Does the action have a legal basis?

Yes, the action was based on a violation of Regulation 12(I) of the [Electronic and Postal Communications \(Online Content\) Regulations, 2018](#). Regulation 12 contained a similar prohibition against “prohibited content” as per Regulation 16 in the 2020 Regulations.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or moral. Here, reports do not suggest that the authorities were concerned about ramifications of this video for public health and it appears that this restriction was politically motivated.

Is the action necessary and proportionate in all the circumstances?

No. The action was likely made in pursuance of an illegitimate aim, so any response would be unnecessary and disproportionate. Even if this action were to be in pursuance of a legitimate aim, the heavy fine and long publication ban would be disproportionate.

Web TV outlet suspended for 11 months, July 2020

On 6 July 2020, the Tanzania Communication Regulatory Authority announced the suspension of *Kwanza Online TV* for 11 months for allegedly “generating and disseminating biased, misleading and disruptive content”. This action was taken in connection to the outlet’s sharing of a US embassy health alert on Instagram about the Tanzanian’s government’s failure to publish any Covid-19 figures. This follows a previous suspension of *Kwanza Online TV* by the authorities in September 2019 for six months, also for allegedly publishing misleading information.

Does the action have a legal basis?

Yes, the action was based on a violation of Regulation 12(I) of the [Electronic and Postal Communications \(Online Content\) Regulations, 2018](#). Regulation 12 contained a similar prohibition against “prohibited content” as per Regulation 16 in the 2020 Regulations.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. The Vice-President of the Tanzania Communication Regulatory Authority claimed that the offending content was designed to cause panic and damage the national economy. However, reports suggest that the action was aimed at suppression of *Kwanza Online TV's* criticism of the government's handling of COVID-19. This would therefore not constitute a legitimate aim under international human rights law.

Is the action necessary and proportionate in all the circumstances?

No. The action was likely made in pursuance of an illegitimate aim, so any response would be unnecessary and disproportionate. Even if this action were to be in pursuance of a legitimate aim, the long-term ban constitutes a considerable and disproportionate restriction on freedom of expression.

Suspension of Uhuru Newspaper, August 2021

On August 11, 2021, Tanzania's Information Services Department issued a 14-day suspension of *Uhuru*, a newspaper owned by the Chama Cha Mapinduzi (CCM) ruling party, following allegations that the paper had published a false and seditious report about the country's president, Samia Suluhu Hassan. Earlier that day, *Uhuru* had published a front-page story alleging that Hassan did not intend to run for office during the next general election in 2025. The CCM distanced itself from the article, saying that it was false and that three senior managers at *Uhuru* had been suspended pending an investigation.

Does the action have a legal basis?

Yes. The suspension was [made](#) under 50(1)(a),(b),(d) and 52(d) of the 2016 Media Services Act, referring to the publication of false, falsified or fabricated information raising discontent or disaffection amongst the people of Tanzania.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There are no indications that the story published about Hassan posed any concrete harm to her rights or reputation, nor that the story posed any clear, objective public harm. It is more likely that the suspension was politically motivated and therefore was not in pursuance of a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. The action was likely made in pursuance of an illegitimate aim, so any response would be unnecessary and disproportionate.

[Suspension of Mwema newspaper, September 2021](#)

On 5 September 2021, Tanzania's Information Services Department issued a month-long suspension of the *Raia Mwema* newspaper, citing several articles they had published relating to government figures or policies.

Does the action have a legal basis?

Yes. The suspension was [made](#) under Section 52 of the Media Services Act relating to seditious intent and Section 54 relating to the publication of false statements or rumours likely to cause public disturbance.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There are no indications that the stories published by *Raia Mwema* cited in the suspension decision posed any clear, objective public harm, and reports indicate that the suspension was aimed at suppressing political criticism, which would not constitute a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, any action taken would be unnecessary and disproportionate.

Country Analysis: Togo

Last updated: May 2023

Togo currently has no specific legislation to counter disinformation. However, there are three laws that include restrictions on disinformation: the Penal Code, Loi N° 2018-026 sur la cybersécurité et la lutte contre la cybercriminalité, and Loi n°2020-001 relative au code de la presse et de la communication.

These laws raise substantial concerns from a human rights perspective. They are all ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech, and they pursue aims which would not be considered legitimate according to international human rights standards—for example, restricting speech which might disturb the discipline or morale or the armed forces (Penal Code). These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below, as well as an example of the enforcement of the provisions in the Penal Code.

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General Speech Legislation

1. [Loi N°2015-010 du 24 Novembre 2015 portant nouveau code pénal](#)
2. [Loi N°2018-026 sur la Cybersécurité et la lutte contre la Cybercriminalité](#)
3. [Loi N°2020-001 du 7 janvier 2020 relative au code de la presse et de la communication](#)

Law enforcement action

1. [Arrest of three journalists, December 2021](#)

General Speech Legislation

[Loi N°2015-010 du 24 Novembre 2015 portant nouveau code pénal](#)

Is there clarity over the precise scope of the law?

No. Article 497 of the Penal Code broadly criminalises the dissemination of news that is false or falsely attributed to third parties when done in bad faith and when it disturbs public peace or is likely to do so. It also prohibits false news that disturbs or is likely to disturb the discipline or morale of the armed forces, or obstruct a war effort.

It is not clear how to determine whether information is “false” or the scope of something that is likely to disturb the discipline or morale of the armed forces, or obstruct a war effort. Article 497 thus fails to provide clear guidance for individuals to conform their behaviour and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Whilst restrictions made under Article 497 that are aimed at public order and national security could be legitimate, it is unlikely that restrictions relating to the discipline or morale of the armed forces would be. The potential scope of these latter objectives is likely to be much broader than what is normally considered to fall under public order.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. Article 497 requires that the offence be committed in bad faith. The court could therefore make a determination on the knowledge or intention behind the action. It also is likely that the accused would have an opportunity to establish the truth of the information or demonstrate that they had good reason to believe it to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 497 may be punished by imprisonment for six months to two years, and a fine between CFA 500,000 to CFA 2,000,000, or both. If the court determines that the individual is the original author of the false news, then they could be punished by imprisonment for one to three years, and a fine of CFA 1,000,000 to CFA 3,000,000, or both. This same penalty applies for violations of Article 497 that are likely to disturb the discipline or morale of the armed forces, or obstruct a war effort.

If the maximum fines and prison sentences are imposed without taking into account the circumstances of the offence, then sanctions could be disproportionate. Any sanction would be disproportionate if made in pursuance of an illegitimate aim. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

[Loi N°2018-026 sur la Cybersécurité et la lutte contre la Cybercriminalité](#)

Is there clarity over the precise scope of the law?

No. Article 25 criminalises the electronic dissemination of false information which would make it appear that the destruction of property or harm to another person has been (or will be) committed, or regarding an emergency situation. It is not clear how to determine whether information is "false". It is also unclear what is included in the scope of information which would make it appear that the destruction of property or harm to another person has been (or will be) committed. Article 25 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Article 25 would appear to be targeted at public order and therefore legitimate. However, it is unlikely that anything which would make it appear that the destruction of property or harm to another person has (or will) take place would

fall within this aim. The potential scope of these terms is therefore much broader than what is normally considered to fall under public order and would thus be illegitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Article 25 may result in a fine between CFA 1,000,000 and CFA 3,000,000, or imprisonment between one and three years, or both. These penalties also apply to accomplices. If content or speech is restricted in pursuance of an illegitimate aim, then any response would be disproportionate. If legitimate aims are pursued, the proportionality of the sanctions would depend on the specific circumstances of the offence. If the maximum fines and longest prison sentences, or both, are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate.

In the absence of information as to how these penalties are imposed in practice, it is difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A

[Loi N°2020-001 du 7 janvier 2020 relative au code de la presse et de la communication](#)

Is there clarity over the precise scope of the law?

No. Article 153 prohibits the dissemination or publication of information “contrary to reality” for the purpose of manipulating consciences or to distort information or facts. It is not clear how one would determine whether information is “contrary to reality”, or

whether it was shared with intent to manipulate consciences or distort facts. Article 153 thus fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Whilst Article 153 appears to be directed at the aim of ensuring that individuals have access to accurate information, the potential scope of its objectives is much broader than what would be permitted under international human rights law and makes no reference to any clear, objective public harm being caused. Article 153 could therefore potentially permit restrictions made in pursuance of illegitimate aims.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Potentially. Article 153 specifies that false information is prohibited when disseminated “for the purpose of manipulating consciences or to distort information or facts”. This would imply that intention to deceive is a prerequisite to the offence.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This will be decided by a court.

Are any responses or sanctions proportionate?

Potentially. Article 153 imposes a fine of 500,000 CFA to 1,000,000 CFA (USD 850 to 1,700). The same fine and a temporary suspension of a broadcasting or publishing licences of between 15 days and three months can be levelled against a national media body that “reproduces information at variance with reality, published or broadcasted by foreign media sources”. These penalties can be doubled in the case of a repeat offence. If the maximum fine and suspension were imposed without taking into account the circumstances of the offence, the sanctions are likely to be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

No. Article 139 states that legal entities hosting or making accessible information or messages online are only criminally or civilly responsible for their content if they have failed to act “promptly to prevent access to such content” once notified of its illicit nature by a judicial authority. Furthermore, Article 3 explicitly exempts social networks from the provisions of the law.

Law enforcement action

Arrest of three journalists, December 2021

Ferdinand Ayité and Joel Eghan, the publishing directors for news outlets L’Alternative and Fraternité, were arrested and detained in December 2021 on grounds of defamation, outraging authority and dissemination of false news. Isidore Kouwonou, a third journalist, was placed under judicial control following complaints from two government ministers about critical remarks made by the journalists during the YouTube programme “L’Autre Journal”. Ayité and Egan were released after three weeks and placed under judicial supervision. In March 2023, Ayité and Kouwonou were summoned to court for sentencing in relation to this case, and both fled the country and went into hiding. Both were sentenced in absentia to three years in prison and ordered to pay a fine of 3 million CFA Francs (about USD \$5000); the journalists’ legal counsel has appealed the court decision.

Does the action have a legal basis?

Unclear. Reports indicate that the journalists were originally prosecuted under articles 490, 491, 492 and 497 of the Penal Code. However, the authorities later changed these charges and made reference to the Loi n°2020-001 du 7 janvier 2020 relative au code de la presse et de la communication, which only imposes civil penalties. Lawyers for the three journalists and civil society maintain that there is an absence of a legal basis in this case. In March 2023, Ayité and Kouwonou were summoned to court for sentencing in relation to this case, and both fled the country and went into hiding. Both were sentenced in absentia to three years in prison and ordered to pay a fine of 3 million CFA Francs (about USD \$5000); the journalists’ legal counsel has appealed the court decision.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. In this case, reports indicate that the arrests were politically motivated and reflect a sustained effort to silence legitimate criticism of the government. L'Alternative was suspended for four months in early 2021 after allegedly publishing false news which exposed embezzlement in the Togolese oil sector. The action therefore did not have a legitimate aim.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no response would be necessary or proportionate.

Country Analysis: Uganda

Last updated: May 2023

Uganda currently has no specific legislation to counter disinformation. However, there are several laws that include restrictions on disinformation: the Penal Code, the Uganda Communications Act, 2013 and the Computer Misuse Act, 2011, which was amended in October 2022 by the Computer Misuse (Amendments) Act 2022.

These laws raise some concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards. These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below. We also assess the enforcement of these laws in response to disinformation.

N.B. Previously, Section 25 of the Computer Misuse Act 2011 criminalised the wilful and repeated use of electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person. However, in January 2023 the Constitutional Court of Uganda [nullified](#) this section on the basis that it is overly broad and vague and curtails inherent freedoms of speech and expression that are guaranteed in the Ugandan Constitution.

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1. Computer Misuse Act, 2011
2. Penal Code
3. Uganda Communications Act, 2013

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1. Arrest of Adam Odec, April 2020
2. Arrest of Jamilu Ssekyondwa, July 2021
3. Arrest of Pastor Augustine Yiga, March 2020
4. Suspension of 39 journalists, May 2019

General Speech Legislation

Computer Misuse Act, 2011 (as amended by the Computer Misuse (Amendments) Act 2022)

Is there clarity over the precise scope of the law?

No. Under the new amendments, Section 26(C) prohibits individuals from sharing “malicious information” about another person through a computer; but malicious information is not defined in the law. It is unclear how “malicious information” under Section 26(C) would be defined or measured in practice.

Section 26(D) further creates an offence of “misusing social media”, which is defined as using social media to publish, distribute or share information prohibited under the laws of Uganda under a disguised or false identity. It is unclear whether this Section in practice could be used to prosecute an individual for sharing false information online.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by Section 26(C) appear to be directed at protecting public order and the rights of others. However, preventing disturbances of an individual’s peace or quiet, or preventing malicious information about another person being shared online may fall outside the scope of protecting public order and the rights of others, in which case the restriction would not be in pursuance of a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. It is unclear whether the definition of “malicious information” in section 26(C) would only refer to false information.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. Violations of these offences will be determined by a court of law. However, it is unclear if Section 26(C) and 26(D) requires a determination on whether the speech or content is disinformation.

Are any responses or sanctions proportionate?

Potentially. Section 26(C) is punishable by a fine not exceeding 750 currency points or imprisonment not exceeding seven years, or both. These sanctions may be

proportionate if the court considers the circumstances of the offense and takes into account whether any harm occurred. Otherwise, they are likely to be disproportionate.

Are intermediaries liable for third party content?

N/A

Penal Code

Is there clarity over the precise scope of the law?

No. Section 50 of the Penal Code, which criminalised the publication of false statements, rumours or reports which were likely to cause fear and alarm to the public or to disturb the public peace was declared null and void by the Supreme Court in 2002 (Charles Onyango & Anor v Attorney General – Supreme Court Constitutional Appeal No. 2 of 2002).

However, since the beginning of the COVID-19 pandemic, Section 171 of the Penal Code has been used to prosecute individuals for dissemination of false information. Section 171 prohibits an individual from unlawfully or negligently doing anything which they know or have reason to believe is likely to spread the infection of any life-threatening disease. The scope of this offence is quite broad, particularly as it covers any act which might contribute to the spread of infection of a deadly disease. Further guidance is needed on the scope of this provision.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

This is unclear. Speech should only be restricted where some clear, objective harm might be caused. Here, there is a clear objective of protecting public health. However, the broad scope of the provision makes it likely that restrictions could be pursued for aims outside of what is normally considered protecting “public health”.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Knowledge of the falsity of the information is not a requirement of this offence.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Violation of Section 171 may result in a prison sentence of up to seven years. These sanctions are likely to be disproportionate if the maximum penalties are imposed without taking into account the circumstances of the offence. This is particularly the case where no harm actually occurs.

Are intermediaries liable for third party content?

N/A

Uganda Communications Act, 2013

Is there clarity over the precise scope of the law?

No. Section 5 of the Uganda Communications Act, 2013 sets out the functions of the Uganda Communications Commission (UCC), which includes a mandate to license, monitor, regulate and set standards for communications services in Uganda. Section 31 prohibits a person from broadcasting any programme unless it complies with Schedule 4, which sets out the “minimum broadcasting standards”. One of these is that news broadcasts must be “free from distortion of facts”. Violations of these minimum broadcasting standards may lead to sanctions as provided for under Section 41. What constitutes a “distortion of facts” is not set out in the law.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Potentially. Schedule 4 of the Act prohibits broadcasters and license holders from broadcasting news which distort facts. While the broad aim of ensuring that news broadcasts are accurate is legitimate, the lack of clarity over what will constitute a “distortion of facts” could mean that some broadcasts could be prohibited without any legitimate aim being pursued.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

No. News broadcasts which are considered to contain a “distortion of facts” are prohibited, regardless of the beliefs of those who produce and broadcast the relevant news.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. Determinations are decided by the Uganda Communications Tribunal as provided for under Section 64.

Are any responses or sanctions proportionate?

Potentially. Section 31 requires that all broadcasters comply with Schedule 4 of the Act. Violation of Schedule 4 may result in an order to remedy the situation, which may be a proportionate response. However, Section 41 also allows for the UCC to fine an operator for up to ten percent of its gross annual revenue, and suspend or revoke a licence. These sanctions are likely to be disproportionate under most circumstances and a serious violation of freedom of expression.

Are intermediaries liable for third party content?

N/A

Law Enforcement Action

Arrest of Adam Odec, April 2020

Adam Odec, a former employee of Kampala Capital City Authority, was arrested on 13 April 2020 for disseminating false information about COVID-19. Odec allegedly circulated information on social media claiming that Uganda had recorded its first COVID-19 death the previous week.

Does the action have a legal basis?

Yes. The individual was arrested for violation of Section 171 of the Penal Code, which prohibits an individual from unlawfully or negligently doing anything which they know or have reason to believe is likely to spread the infection of any life-threatening disease.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Here, a police spokesperson indicated that Odec's action triggered fear and panic in the public and undermined the efforts of the Health Ministry and government to contain the spread of the deadly coronavirus pandemic. However, there is no evidence to support this claim.

Is the action necessary and proportionate in all the circumstances?

No. Adam Obec was arrested in pursuance of an illegitimate aim. This action is neither necessary nor proportionate regardless of the final sentence provided by the court.

Arrest of Jamilu Ssekyondwa, July 2021

Jamilu Ssekyondwa, a 23-year old man, was arrested on 11 July 2021 and charged 4 days later for spreading false and offensive communication. This was in relation to messages he had sent to friends from his phone indicating that President Museveni had died. He was refused bail and detained on remand until 17 March 2022 when he was released on grounds of a defective charge sheet.

Does the action have a legal basis?

Yes. Ssekyondwa was charged under section 25 of the Computer Misuse Act, 2011, which criminalises the wilful and repeated use of electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. While it may be true that rumours that the president had died may pose a risk to national security and public order, there is no evidence that Ssekyondwa's individual private communications with his friends posed any clear, objective public harm. It seems instead that law enforcement sought to make an example of Ssekyondwa in order to dispel the rumours circulating about Museveni's death at that time and quash political dissent.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of Pastor Augustine Yiga, March 2020

Pastor Augustine Yiga was arrested on March 28, 2020 for spreading false information regarding the COVID-19 Pandemic. These charges stem from comments he made about there being no COVID-19 cases in Africa and that it being similar to the flu.

Does the action have a legal basis?

Yes. The individual was arrested for violation of Section 171 of the Penal Code, which prohibits an individual from unlawfully or negligently doing anything which they know or have reason to believe is likely to spread the infection of any life-threatening disease.

Is the action clearly directed to tackle an objectively legitimate aim?

Potentially. Restricting speech may be legitimate if made in the pursuance of protecting public health, among other aims. Here, a Kampala Metropolitan police spokesperson said that Pastor Yiga's comments undermined government efforts to fight the pandemic and exposed the public to dangers of laxity in observing the guidelines issued by the Ministry of Health. The spokesperson also stated that Yiga's actions were a direct attack on the people of Uganda. However, reports do not suggest that these claims were likely to undermine government efforts to combat the pandemic nor cause individuals to flout guidelines.

Is the action necessary and proportionate in all the circumstances?

No. While efforts to ensure that the public follow public health guidelines are legitimate, using the criminal law to charge an individual where there is no evidence of harm caused (and jailing him for two months before bail was finally granted on grounds of ill health) are disproportionate.

[Suspension of 39 Journalists, May 2019](#)

In May 2019, the Uganda Communications Commission ordered the suspension of 39 journalists at 13 media houses over alleged unbalanced broadcasting, sensational, false and misrepresentative coverage. The reports in question related to the arrest of an opposition figure and protests that followed.

Does the action have a legal basis?

Yes. The reporting was considered a breach of Section 31 of the Uganda Communications Act, and the suspension was done under Section 41.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of protecting public order, among other aims. The UCC considered these reports to be misleading, alarming, inciting violence based on political, cultural, religious and tribal affiliations, and a threat to public security. If true, then these restrictions are likely to be in pursuance of a legitimate aim of protecting public order. However, reports indicate that the suspension of journalists and media houses was due to coverage of an opposition figure. Journalists from the Uganda Parliamentary Press Association issued a statement condemning these actions. Their chairperson further noted that live broadcasts and breaking news are a way to keep the public informed, not to incite violence or unlawful acts. This action is thus likely to have been politically motivated and illegitimate.

Is the action necessary and proportionate in all the circumstances?

No. The mass suspension of journalists is likely a disproportionate response as it is not in pursuance of a legitimate aim.

Country Analysis: Zambia

Last updated: July 2022

Zambia currently has no specific legislation to counter disinformation. Section 67 of the Penal Code previously criminalised the publication of false news with intent to cause fear and alarm to the public. However, in 2014, the High Court of Zambia considered the constitutionality of section 67 in *Chipenzi v The People* and held it to be null and void.

The High Court ruled that section 67 was not “reasonably justifiable in a democratic society” and that the provision went far beyond the permissible restrictions that may be imposed upon the right to freedom of expression and freedom of the press. The court specifically noted that “the danger of applying section 67 in the present form is that the prohibition against publishing false news affects not only those caught and prosecuted, but also those who may refrain from saying what they would like to because of the fear that they will be caught”. Despite this ruling, Zambian authorities continue to reference section 67 of the Penal Code.

Country Analysis: Zimbabwe

Last updated: December 2023

Zimbabwe currently has no specific legislation to counter disinformation. However, there are two laws that include potential restrictions on disinformation: the Criminal Law (Codification and Reform) Act (amended in 2021 by the Cyber and Data Protection Act, 2021), and the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020. The Criminal Law (Codification and Reform) Act was [amended](#) by the Criminal Law (Codification and Reform) Amendment Bill in July 2023.

These laws raise substantial concerns from a human rights perspective. They are ill-defined in their scope, meaning that authorities could interpret them as giving them power to restrict a wide range of speech; and they pursue aims which would not be considered “legitimate” according to international human rights standards—for example, restricting speech which might adversely affect the economic interests of the country (Criminal Law (Codification and Reform) Act). These laws also carry penalties which are potentially disproportionate in their severity, and may result in a chilling effect on freedom of expression.

We assess these laws individually in detail below, along with two examples of law enforcement under the Criminal Law (Codification and Reform) Act.

N.B. Section 50(2)(a) of the Law and Order (Maintenance) Act, 1960, previously made it an offence to make, publish or reproduce any “false statement, rumour or report which (a) is likely to cause fear, alarm or despondency among the public or any section of the public or (b) is likely to disturb the public peace”. The Supreme Court of Zimbabwe [declared](#) the provision unconstitutional due to lack of clarity in 2000. The Law and Order (Maintenance) Act was later replaced by the Public Order and Security Act, 2002, which includes no provisions on disinformation.

N.B. Section 31(a)(iii) of the [Criminal Law \(Codification and Reform\) Act](#) was struck down by the Zimbabwe Supreme Court in 2014, meaning that the sharing of false information which may undermine public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe is no longer an offence. The other prohibitions on false news in Section 31 remain in force.

N.B. Sections 64 and 80 of the Access to Information and Protection of Privacy Act of 2003 included restrictions on mass media owners and journalists publishing intentionally falsified information with intention to cause harm. This law has now been

repealed and replaced by the Freedom of Information Act, 2020, Zimbabwe Media Commission Act, 2020 and Cyber and Data Protection Act, 2021.

N.B. The [Cyber and Data Protection Act](#) was formerly called the Data Protection Act. Its title was changed in February 2022 along with other amendments to the law. It repealed sections 163–166 of the Criminal Law (Codification and Reform) Act and replaced them with new provisions, which are analysed below.

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1. [Criminal Law \(Codification and Reform\) Act](#)
2. [Public Health \(COVID-19 Prevention, Containment and Treatment\) \(Amendment\) Regulations, 2020 \(No. 1\)](#)

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1. [Arrest of Journalist Garikai Mafirakureva, January 2023](#)
2. [Activist Hopewell Chin'ono arrested for false news, Jan 2021](#)
3. [Arrest of man for spreading fake news about COVID-19, April 2020](#)
4. [Arrest of Prisca Gumbo and Rena Takudzwa Muhambi](#)
5. [Arrest of Vongai Chiminya and Devine Panashe Maregere](#)
6. [Arrest of journalists Desmond Chingarande and Wisdom Mdzungairi](#)

General Speech Legislation

Criminal Law (Codification and Reform) Act

Is there clarity over the precise scope of the law?

No. Section 31 criminalises publication or communication of false statements that are prejudicial to the state. It covers false statements that are “wholly or materially false”. Statements are considered prejudicial to the state when they either risk or cause public disorder, adversely affect the defence or economic interests of the country, or interfere with any essential service. It is not clear how a statement would be determined “wholly or materially false” or what the threshold is for deciding whether there is a “real risk” of “adversely affecting the defence or economic interests of Zimbabwe”. Section 31 thus fails to provide clear guidance for individuals to conform their behaviour and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Furthermore, under section 164C (introduced by the [Cyber and Data Protection Act \(2021\)](#)) “any person who unlawfully and intentionally by means of a computer or information system makes available, broadcasts or distributes data to any other person concerning an identified or identifiable person knowing it to be false with intent to cause psychological or economic harm shall be guilty of an offence”. It is not clear how it would be determined whether a message was “false” or the scope of “psychological or economic harm”. Additional guidance is also needed on whether this provision applies to legal or natural persons. Section 164C therefore fails to provide clear guidance for individuals and provides an overly wide degree of discretion to those charged with the enforcement of this law.

Finally, under Section 22A (introduced by the [Criminal Law \(Codification & Reform\) Amendment Act 2022](#)) criminalises attending a physical or online meeting with representatives of a foreign government and sharing information potentially detrimental to any trade activities in Zimbabwe or may lead to the imposition of economic sanctions on Zimbabwe. Section 22A(4(b)) in particular would attach an aggravating circumstance where there is evidence showing beyond a reasonable doubt that, though the meeting in question did not result in economic sanctions against or a trade boycott of Zimbabwe, the person made or submitted for consideration or endorsed any statement which he or she knew to be false or had no reasonable basis for believing to be true. Here, there is a weak link between the harm and the expression. The criminalisation of both intentional falsity and lack of a reasonable basis for believing a statement to be true is broad in its phrasing and may cover both misinformation and disinformation. The law may be used to disproportionately target journalists, whistle-blowers, and human rights defenders

who may conduct meetings, whether online or physically, with members of foreign governments in the course of their work.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. The aims pursued by section 31 are to protect public safety, public order, and essential services, and Section 164C appears to be targeted at protecting the rights of others by protecting their psychological and economic well-being. While speech or content restricted in pursuance of these aims may be legitimate, particularly with regards to public order and safety, it is unclear whether broader economic interests or any essential service would be considered a legitimate aim, or what the scope of “psychological or economic harm” would include. Further clarification on the scope of these aims is necessary to determine whether they are legitimate.

With respect to new Section 22A, the purpose is to prevent the undermining of national sovereignty, dignity and independence, which may be linked with the protection of the rights of others, and national security. While these may be interpreted as legitimate aims in the general public interest because trade boycotts and economic sanctions negatively impact the public, there is potential for abuse. It means that individuals or organisations that have meetings such as those discussing impunity and human rights violations by the state and seek to rely on the international community support may be held liable for violating the section. Further clarification on the scope of these aims is necessary to determine whether they are legitimate.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. The offences in Sections 31(b), 164C and 22A (4)(b) require knowledge of the falsity of the information, or that the person did not have reasonable grounds for believing the information to be true. While Section 31(a) does not specify knowledge of the falsity of the information, it creates an offence where a person intends to cause harm (or knows there is a real risk of harm being caused), regardless of whether any harm has actually materialised.

Are determinations of whether speech or content is disinformation (or other relevant determinations) made by an independent and impartial judicial authority?

Yes. These are criminal offences and will be decided by a court of law.

Are any responses or sanctions proportionate? (Heavy fines, imprisonment, and the blocking of websites, for example, are all likely to be disproportionate.)

Potentially. Section 31 may result in a fine up to or exceeding the maximum financial penalty, or imprisonment for a period not exceeding twenty years, or both. Section 164C would impose a fine not exceeding level 10 (ZWD 70,000, approximately USD 220) or imprisonment for a period not exceeding five years or both. Section 22A would impose imprisonment for up to ten years and/or a level 12 fine (approximately USD 2,000). If the maximum fines and prison sentences are imposed without taking into account the circumstances of the offence, then sanctions would be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

No, provided that certain conditions were satisfied. For example, under Section 379C(1) of the Act, an electronic communications network or access service provider shall not be criminally liable for providing access or transmitting information when it has not initiated the transmission, selected the receiver of the transmission or selected or modified the information contained in the transmission.

Section 379C(3) provides that a hosting provider shall not be criminally liable for the information stored at the request of a user of the service if the hosting provider promptly removes or disables access to the information after receiving an order from any court of law to remove specific stored illegal information; or in any other manner, obtains knowledge or becomes aware of any illegal information stored, promptly informs the appropriate authority to enable it to evaluate the nature of the information and if necessary, issue an order for its removal. Under Section 379C(6), failure to do so would result in a fine not exceeding level 8 or to imprisonment for a period not exceeding two years or to both for the hosting provider.

Section 379C(9) provides that an internet service provider who enables access to information provided by a third person by providing an electronic hyperlink shall not be criminally liable with respect to the information if they promptly remove the information after receiving an order from an appropriate public authority, or through other means, obtain knowledge of the specific illegal information and promptly inform the appropriate authority.

Public Health (COVID-19 Prevention, Containment and Treatment) (Amendment) Regulations, 2020 (No. 1)

Is there clarity over the precise scope of the law?

No. Section 14 of this law states that publishing false news about any public official involved with enforcing or implementing the national lockdown, or about any private individual “that has the effect of prejudicing the State’s enforcement of the national lockdown” should be considered as “a false statement prejudicial to the State” for the purposes of Section 31 of the Criminal Law (Codification and Reform) Act.

It is not clear how to determine whether a statement is “false news”. It is also unclear what is required for a statement to have “the effect of prejudicing the State’s enforcement of the national lockdown”.

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Yes. Speech is restricted only where it is in pursuance of public health, which is a legitimate aim.

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

Yes. However, this is only relevant for Section 14 statements that fall within the offence established in Section 31(b) of the Criminal Law (Codification and Reform) Act. Section 31(a) creates an offence where a person intends to cause harm (or knows there is a real risk of harm being caused), regardless of whether any harm has actually materialised. If harm does occur, the offence provided for in Section 31(b) requires the person to know that the information is false or not have reasonable grounds for believing it to be true.

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

Yes. This is a criminal offence and will be decided by a court of law.

Are any responses or sanctions proportionate?

Potentially. Section 31 may result in a fine up to or exceeding the maximum financial penalty, or imprisonment for a period not exceeding twenty years, or both. If the maximum fine and prison sentence are imposed without taking into account the circumstances of the offence, then sanctions may be disproportionate. This is particularly the case where no harm actually occurs. However, there is an absence of

information as to how these penalties are imposed in practice, which makes it difficult to determine whether they are proportionate.

Are intermediaries liable for third party content?

N/A.

Law Enforcement Action

Arrest of Journalist Garikai Mafirakureva, January 2023

Journalist Garikai Mafirakureva was arrested and charged in January 2023 for publishing or communicating false information prejudicial to the state. This action was taken in connection to a story he published about alleged connections between Officers with the Criminal Investigations Department and two suspects in a recent murder. He is awaiting trial.

Does the action have a legal basis?

Yes. This action was taken under Section 31 the Criminal Law (Codification and Reform) Act, which criminalises publication or communication of false statements that are prejudicial to the state.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of public health, public order, or to protect the rights of others. Mafirakureva's article was unlikely to cause any objective public harm, and he was told by police during questioning that the story would "tarnish the image of the police service", indicating that the action was motivated by a desire to suppress criticism of the police.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Activists Hopewell Chin'ono, Fadzayi Mahere and Job Sikhala arrested for false news, Jan 2021

Hopewell Chin'ono, a prominent political activist, was arrested in January 2021 on charges of sharing false information. This action was taken after Chin'ono tweeted that Zimbabwean police had beaten an infant to death while enforcing COVID-19 lockdown rules, which the police denied. Two other political activists – Fadzayi Mahere (spokesperson for the opposition Movement for Democratic Change Alliance) and Job Sikhala (opposition legislator and vice chairperson of the Alliance) – were also detained by the police for posting the same story Chin'ono had shared on social media. Chin'ono was initially denied bail, but charges against him were dropped in April 2021 on grounds that the section of the Criminal Law (Codification and Reform) Act that he had been charged with – Section 31(a)(iii) – had been struck down by the Supreme Court in 2014. Sikhala is still under trial on the same charges, and Mahere was [convicted](#) on 5 April 2023 and fined USD 500 or faces 3 months imprisonment. Mahere's case was closed in August 2022.

Does the action have a legal basis?

No. Chin'ono was charged under Section 31(a)(iii) of the Criminal Law (Codification and Reform) Act, which prohibits false information which may undermine public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe. However, Section 31(a)(iii) had been struck down by the Supreme Court in 2014 in [Madanhire & Another v The AG](#). Despite this, Fadzayi Mahere was convicted on a 'non-existent' law while acquitted on an existing provision that is section 31(a)(i). The reasoning by the Court and the prosecution is that 31(a)(iii) was rendered unconstitutional in the previous Constitution and is yet to be tested in the 2013 Constitution. Further, the [General Laws Amendment Act No. 3 of 2016](#) that was enacted post the Constitutional Court judgement did not repeal section 31 as directed.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. All three political activists were not the original authors of the tweet. In convicting Mahere, the Court [stated](#) that her actions undermined the police and were detrimental to the state. The timing of the conviction, in the leadup to the 2023 elections, and imposed on a prominent opposition candidate, may have a chilling effect on freedom of expression, meaningful political discourse, and media freedom.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered legitimate or proportionate. The political motivations behind the prosecution and conviction of Mahere also cannot be ignored. More so, in this case where there has been a conviction and a fine of USD 500 on a provision that was struck down as unconstitutional.

Arrest of man for spreading fake news about COVID-19, April 2020

Lovemore Zvokusekwa was arrested and charged in April 2020 for publishing or communicating false statements prejudicial to the state. He was allegedly the instigator of a rumour that the president would be extending the COVID-19 lockdown by 13 days, which the president later denied. However, the lockdown was indeed extended by 14 days a short time later. Zvokusekwa was released on bail in May.

Does the action have a legal basis?

Yes. Zvokusekwa was charged under Section 31 of the Criminal Law (Codification and Reform) Act.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Whilst the authorities claimed that the rumour was causing distress and unrest amongst the population and that it posed a threat to public health, there is no evidence that the statement did pose any concrete threat to public order or public health; and indeed, the rumour was later proven to be true.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of Prisca Gumbo and Rena Takudzwa Muhambi, May 2020

Prisca Gumbo and Rena Muhambi were arrested in May 2020 for sharing the same false press document that was shared by Lovemore Zvokusekwa (see above). They were accused of forwarding the statement via WhatsApp to several contacts.

Does the action have a legal basis?

Yes. Gumbo and Muhambi were charged under Section 31 of the Criminal Law (Codification and Reform) Act relating to “publishing or communicating false statements prejudicial to the State.”

Is the action clearly directed to tackle an objectively legitimate aim?

No. Speech should only be restricted where some clear, objective public harm might be caused. Whilst the authorities claimed that the rumour was causing distress and unrest amongst the population and that it posed a threat to public health, there is no evidence that the statement did pose any concrete threat to public order or public health; and indeed, the rumour was later proven to be true.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be necessary or proportionate.

Arrest of Vongai Chiminya and Devine Panashe Maregere, January 2021

Vongai Chiminya and husband Devine Panashe Maregere were arrested in January 2021 for sending an audio message in a WhatsApp group claiming that President Mnangagwa had succumbed to COVID-19. Chiminya received the message via one WhatsApp group and allegedly sent the message to Maregere, who in turn forwarded it to another WhatsApp group.

Does the action have a legal basis?

Yes. The couple were charged with violation of section 31 (a)(i) of the Criminal Law (Codification and Reform) Act, relating to publishing or communicating false statements prejudicial to the State.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. Neither Chiminya nor Maregere were the original creators of the audio message, and there is no evidence that the sharing of the message posed any clear, objective public harm.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.

Arrest of journalists Desmond Chingarande and Wisdom Mdzungairi, August 2022

The editor-in-chief and senior reporter of *Alpha Media Holdings*, Wisdom Mdzungairi and Desmond Chingarande, were arrested and questioned on 3 August 2022 in relation to a story they published about a local cemetery that was allegedly run without government approval.

Does the action have a legal basis?

Yes. The two were accused of contravening Section 164C of the Criminal Law (Codification and Reform) Act, as amended through the Cyber and Data Protection Act, which relates to publishing false data messages intending to cause harm.

Is the action clearly directed to tackle an objectively legitimate aim?

No. Restricting speech may be legitimate if made in the pursuance of a legitimate aim, including for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals. There is no evidence that the news story about the cemetery posed any clear, objective public harm.

Is the action necessary and proportionate in all the circumstances?

No. In the absence of a legitimate aim, no action would be considered necessary or proportionate.