



GLOBAL
NETWORK
INITIATIVE



LIFE INTERRUPTED

**CENTERING THE SOCIAL IMPACTS
OF NETWORK DISRUPTIONS IN
ADVOCACY IN AFRICA**

TOMIWA ILORI FOR THE GLOBAL NETWORK INITIATIVE



-
-
-
-
-
-

TABLE OF CONTENTS

ABOUT THE AUTHOR	3
ACKNOWLEDGEMENTS	3
ATTRIBUTION	3
EXECUTIVE SUMMARY	4
1. INTRODUCTION	5
2. UNDERSTANDING NETWORK DISRUPTIONS IN AFRICA	7
3. HUMAN RIGHTS IMPACTS OF NETWORK DISRUPTIONS IN AFRICA	9
4. SOCIAL IMPACTS OF NETWORK DISRUPTIONS IN AFRICA	11
5. THE AFRICAN HUMAN RIGHTS SYSTEM AND NETWORK DISRUPTIONS	17
African Charter on Human and Peoples' Rights (the African Charter)	19
Declaration of Principles on Freedom of Expression and Access to Information in Africa	20
Guidelines on Access to Information and Elections in Africa	21
Guidelines on Freedom of Association and Assembly in Africa	21
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol)	22
African Charter on Democracy, Elections, and Governance	22
Declaration on Internet Governance and Development of Africa's Digital Economy	23
African Declaration on Internet Rights and Freedom	23
Resolutions and press releases of the African Commission on Human and Peoples' Rights	23
6. ADVOCATING AGAINST NETWORK DISRUPTIONS IN AFRICA	25
Short-term strategies	25
Long-term strategies	27
Stakeholder responsibilities regarding network disruptions in Africa	28
Simple steps to follow for stakeholders, such as civil society, businesses and other interest groups, when advocating against network disruptions:	30
7. CONCLUSION	31
Annex 1: List of respondents	32



• • • ABOUT THE AUTHOR

• • • Tomiwa Ilori is a lawyer and researcher with particular focus on digital rights issues. He is currently an LLD Candidate at the Centre for Human Rights, University of Pretoria and a researcher at the Expression, Information and Digital Rights Unit of the Centre. His interests revolve around digital rights advocacy and research, international human rights law, the African human rights system, and ICT4D. His dissertation focuses on digital colonialism, online harms, platform governance, and the right to freedom of expression in the digital age. He has worked in various capacities with civil society organizations and private companies on how to advance human rights protection through new technologies.

ACKNOWLEDGEMENTS

The author wishes to thank Nikki Bourassa, Jason Pielemeier, Sarina Phu, and David Sullivan and other Global Network Initiative (GNI) staff for their support in developing this research report. In addition, the author is very grateful to all the respondents that provided important perspectives that shaped the outcome of the report. The author would like to thank David Sullivan and Sarina Phu again, for their “long suffering” by ensuring that the report is published and received the needed attention. The author also appreciates Jan Rydzak (Ranking Digital Rights), Felicia Anthonio (Access Now), and the GNI Policy Committee for their reviews at various times in developing the report. He fully appreciates everyone who have in one way or other made sure that the report is a success.

ATTRIBUTION

The content, analysis, and recommendations of this report are those of the author alone, and do not necessarily reflect the views of GNI.



-
-
-
-
-
-

EXECUTIVE SUMMARY

Network disruptions are a global challenge, and their repercussions vary across contexts. As the Internet has become an increasingly global resource, keeping access open and free will require more contextually relevant strategies. This research report highlights the social impacts of network disruptions in Africa. It provides a number of methods policy advocates can use to effectively strategize around and respond to disruptions in the region. In carrying out this research, the author considered available literature on network disruptions and key interviews with people who have experienced network disruptions in 11 African countries. The countries are Benin, Burundi, Cameroon, Egypt, Eritrea, Ethiopia, Democratic Republic of Congo (DRC), the Gambia, Kenya, Uganda, and Zimbabwe.

More than 30 African Countries have disrupted Internet access in the last 24 years.

This report groups the proximate causes for these disruptions into two categories: state-ordered and non-state-ordered network disruptions. State-ordered disruptions are intentional disruptions carried out at the behest of governments, while disruptions caused by non-state actors can either be intentional or accidental but are not ordered by governments. This report found that

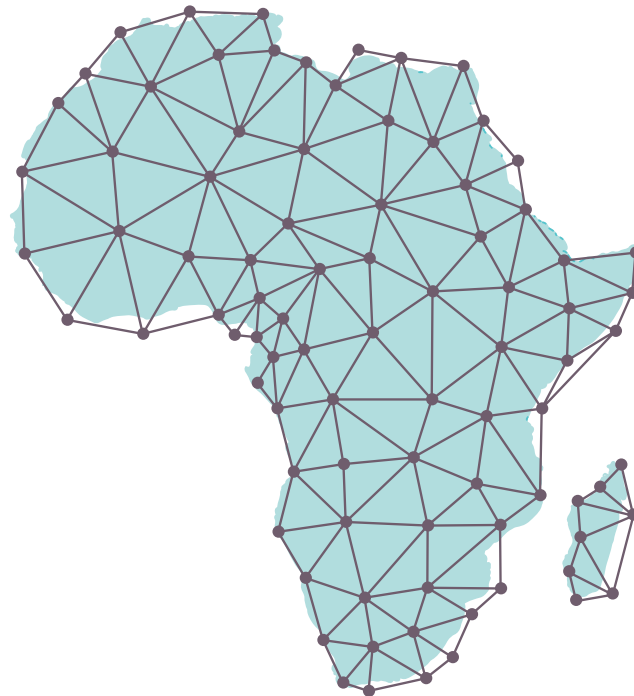
most network disruptions in Africa are ordered by governments. In addition to the already established fact that many African countries violate human rights when shutting off access to the Internet, this report finds that network disruptions have other debilitating social impacts. In considering how network disruptions impact individuals' lives, there are a number of factors at play, including Internet penetration rates, autocratic systems, lack of specific guidelines on network disruptions, and online harms.

In its recommendations for policy advocates, this report divides potential advocacy strategies into two broad categories — short-term and long-term. The short-term strategies are those that can be realized quickly when disruptions are imminent or ongoing. Longer-term strategies are best realized post network disruptions. In addition, the recommendations take into account the responsibilities of various stakeholders involved with network disruptions and include a simple guide for policy advocates before, during, and after network disruptions.

1. INTRODUCTION

Communication technologies have become the backbone of human interactions in the 21st century. Powered by the Internet, these technologies redefine space, publics, and democracies. As this report was being prepared in October 2020, Nigerians were protesting against police brutality and demanding police reforms by combining hashtags with placards.¹ Months before, citizens in both Algeria and Sudan took to the streets to protest against oppressive systems while utilizing the powers of the Internet.² Today in African countries, the Internet is power. It is not just a network or an infrastructure; it also repositions levers of power.

Recognizing this power, more than 30 African countries have disrupted Internet access in the last 24 years, even though studies have concluded that these shutdowns are ineffective at achieving their purported goals.³ Also known as network shutdowns, Internet kill switches, surgical bans, Internet blackouts, and disruptions, network disruptions do not impact everyday life the same way in every country or



1 Karen Attiah, “For the Sake of Democracy, Nigeria’s #EndSars Campaign against Police Brutality Must Prevail,” *Washington Post* (Oct. 14, 2020) <<https://www.washingtonpost.com/opinions/2020/10/13/sake-democracy-nigerias-endsars-campaign-against-police-brutality-must-prevail/>> accessed Oct. 20, 2020.

2 “Sudan: End Network Shutdown Immediately” (*Human Rights Watch*, June 12, 2019) <<https://www.hrw.org/news/2019/06/12/sudan-end-network-shutdown-immediately>> accessed Oct. 15, 2020; Abdi Latif Dahir, “Algeria Has Blocked the Internet Days before Its Ailing President Files to Run for a Fifth Term” (*Quartz Africa*, March 2, 2019) <<https://qz.com/africa/1563958/algeria-shuts-internet-amid-anti-bouteflika-election-protests/>> accessed Sept. 15, 2020.

3 George Ogola, “Shutting Down the Internet Doesn’t Work but Governments Keep Doing It” (*The Conversation*, Feb. 19, 2019) <<https://theconversation.com/shutting-down-the-internet-doesnt-work-but-governments-keep-doing-it-111642>> accessed Sept. 22, 2020; Jan Rydzak, Moses Karanja and Nicholas Opiyo, “Dissent Does Not Die in Darkness: Network Shutdowns and Collective Action in African Countries” (2020) 14 *International Journal of Communication* 24.

even across different disruptions in the same country.⁴ Most studies on network disruptions are government-focused, as the majority of shutdowns are ordered by governments, and most of these studies highlight the impact of Internet interruptions on human rights and the economy.⁵ In contrast, relatively few studies focus on the social impacts of these shutdowns in Africa.

This report examines the social impacts of network disruptions in 11 African countries: Benin, Burundi, Cameroon, Egypt, Eritrea, Ethiopia, Democratic Republic of Congo, The Gambia, Kenya, Uganda, and Zimbabwe. For the purpose of this report, social impacts are defined as the lived realities and day-to-day ramifications of various violations of human rights that occur during network disruptions. These direct impacts, which can be collective or individual, are often overlooked. The report identifies the various regional human rights instruments that may be useful for advocacy and considers how policy advocates can effectively strategize against network disruptions, especially in Africa. It does this by combining key interviews with a review of the available literature. The report is divided into six sections, including the Introduction and Conclusion. The second section provides a contextual perspective on network disruptions in Africa, while the third section focuses on their social impacts. The fourth section considers the African human rights system and highlights the legal provisions of various regional instruments that are applicable to network disruptions. The fifth section suggests different ways for policy advocates to strategize against indiscriminate network disruptions by drawing on lessons learned from previous shutdowns and collaborating with various stakeholders in the region.

4 For this report, “Internet shutdowns” will be used interchangeably with “network disruptions.”

5 Deloitte, “The Economic Impact of Disruptions to Internet Connectivity: A Report for Facebook” (2016) <<https://www2.deloitte.com/global/en/pages/technology-media-and-telecommunications/articles/the-economic-impact-of-disruptions-to-internet-connectivity-report-for-facebook.html>> accessed Sept. 15, 2020.

2. UNDERSTANDING NETWORK DISRUPTIONS IN AFRICA

Since 1996, when Zambia became the first African country to carry out a surgical ban,⁶ more than half of the countries in the region have experienced network disruptions.⁷

Ben Wagner, an Associate Professor at the Faculty of Technology, Policy and Management at the Delft University of Technology, defines them as “intentional disconnections of digital communications by government authorities.”⁸ This definition does not cover the full scope of network disruptions. In addition, as will be discussed further, network disruptions are not always ordered by states. However, when they are state-ordered, they have been described as an extreme method of rendering control over digital information and communication.⁹ Access Now, a digital rights organization that advocates against these disruptions, refers to them as “the intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable for a specific population within a location.”¹⁰ In a report prepared by Jan Rydzak for the Global Network Initiative, the conceptualization of network disruptions seems to

A shutdown may be limited to a few social media platforms, or it may apply to Internet access as well as other communication channels.

accommodate a more practical dynamic. It defines network disruptions as “the intentional, significant disruption of electronic communication within a given area and/or affecting a predetermined group of citizens.”¹¹ The differences are due to several contextual factors, which can facilitate a more nuanced approach to understanding network disruptions and help determine the best advocacy strategies to prevent them from happening.

6 Sally Burnheim, “The Right to Communicate: The Internet in Africa” (Article 19 1999) <<https://www.article19.org/data/files/pdfs/publications/africa-internet.pdf>>; Software Law Centre, India (SFCL) <<https://internetshutdowns.in/about>> accessed Sept. 26 2020. The SFCL described surgical bans as “where access to particular online access/content is disabled.”

7 As at the time of the report, 31 African countries are confirmed to have disrupted Internet access in Africa. They are: Algeria; Benin; Burundi; Cameroon; Central African Republic (CAR); Chad; Congo (Brazzaville); Democratic Republic of Congo (DRC); Egypt; Equatorial Guinea; Ethiopia; Gabon; Guinea; Liberia; Libya; Madagascar; Malawi; Mali; Mauritania; Morocco; Nigeria; Sierra Leone; Somalia; Sudan; the Gambia; Togo; Tunisia; Uganda and Zambia; Zimbabwe.

8 Benjamin Wagner, “Understanding Internet Shutdowns: A Case Study from Pakistan” (2018) 12 *International Journal of Communication* 3917, 3918 <<https://ijoc.org/index.php/ijoc/article/view/8545/2465>> accessed Sept. 26, 2020.

9 Philip N Howard, Sheetal D Agarwal and Muzammil M Hussain, “When Do States Disconnect Their Digital Networks? Regime Responses to the Political Uses of Social Media” (2011) 14 *The Communication Review* 216, 224 <<https://www.tandfonline.com/doi/abs/10.1080/10714421.2011.597254>> accessed Sept. 12, 2020.

10 “KeepItOn” (*Access Now*, Oct. 15, 2020) <<https://www.accessnow.org/keepiton/>> accessed Sept. 20, 2020.

11 Jan Rydzak, “Disconnected: A Human Rights-Based Approach to Network Disruptions” (Global Network Initiative 2018) <<https://globalnetworkinitiative.org/wp-content/uploads/2018/06/Disconnected-Report-Network-Disruptions.pdf>> accessed Sept. 17, 2020. Rydzak’s definition differs from Access Now’s in that the disruption is required to be significant and includes other forms of electronic communications.

For example, some disruptions last only hours,¹² while others, in extreme cases, last for several months.¹³ In some instances, disruptions occur by throttling (slowing down) Internet access, and in others, by totally shutting it off. Sometimes, the former leads to the latter.¹⁴ In many situations the disruptions are countrywide, and sometimes they are limited to specific regions or provinces. A shutdown may be limited to a few social media platforms, or it may apply to Internet access as well as other communication channels. The factors that influence the social ramifications of network disruptions in each case are elaborated upon in Section 4 below.

Broadly speaking, there are two major types of network disruptions according to the proximate actors responsible in African countries — state- and non-state-ordered network disruptions. State-ordered disruptions are intentional and ordered by governments in the interest of preserving national security, public order and the integrity of school examinations, among other reasons. Non-state-ordered network disruptions may be intentional or accidental. Examples include attacks on telecommunications infrastructure¹⁵ or accidental cable cuts.¹⁶ The most common are those ordered by governments. It is also worth noting that in many cases, governments initially deny responsibility for these disruptions, sometimes blaming non-state or natural causes until evidence emerges to the contrary.¹⁷

12 Interview with Basiru Bah, Assistant Lecturer, Faculty of Law, University of the Gambia (Online correspondence, Oct. 6, 2020).

13 Abdi Latif Dahir, “After a Record 16-Month Ban, This President Has Unblocked Social Media Access” (*Quartz Africa*, July 16, 2019) <<https://qz.com/africa/1667263/chads-idriss-deby-unblocks-social-media-after-record-shutdown/>> accessed Sept. 12, 2020.

14 “Internet Slowdowns Are the New Shutdowns” (*The Internet Health Report 2019*, April 2019) <<https://internethealthreport.org/2019/internet-slowdowns-are-the-new-shutdowns/>> accessed Sept. 14, 2020.

15 See Marchant and Strelau (n 6).

16 Paul Adepoju, “African Countries Affected by FALCON Undersea Cable Cut” (*ITWeb Africa*, Jan. 16, 2020) <<https://itweb.africa//content/raYAyModyyAgJ38N>> accessed Oct. 15, 2020; Chris Baynes, “Entire Country Taken Offline for Two Days after Undersea Internet Cable Cut” (*The Independent*, April 10, 2018) <<https://www.independent.co.uk/news/world/africa/mauritiana-internet-cut-underwater-cable-offline-days-west-africa-a8298551.html>> accessed Oct. 9, 2020.

17 Access Now, “The State of Internet Shutdowns Around the World: The #KeepItOn Report 2018” <<https://www.accessnow.org/cms/assets/uploads/2019/07/KeepItOn-2018-Report.pdf>> accessed Nov. 6, 2020.

3. HUMAN RIGHTS IMPACTS OF NETWORK DISRUPTIONS IN AFRICA

The various human rights implications of network disruptions have been documented in the past.¹⁸ Human rights are generally categorized as civil and political rights, on the one hand, and socioeconomic rights, on the other. Civil and political rights are those contained in the International Covenant on Civil and Political Rights (ICCPR), while socioeconomic rights are described in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Examples of the rights provided for under the ICCPR are the rights to human dignity, privacy, freedom of expression, and freedom of assembly and association. The ICESCR describes rights as the rights to work, physical and mental health, education, and development. Under the African Charter on Human and Peoples' Rights (the African Charter), which is the primary human rights instruments in the region, these categories of rights are combined. This and a number of other features make the African human rights system unique.

During network disruptions, human rights are often the first casualties. For example, during an Internet shutdown, many are unable to express themselves online and do not have access to information depending on the depth of the disruption. The party, usually governments, imposing this kind of shutdown is therefore in violation of the right to freedom of expression and access to information online. This same example applies to the rights of association and assembly, equality, human dignity, and others. With respect to socioeconomic rights, network disruptions violate the rights to work, education, physical and mental health, development, and others. Rydzak has examined the various ways these rights are impacted during network disruptions.¹⁹ What makes these violations so dire is that they almost always result in the violation of multiple rights, some of which are themselves 'enabling rights' for other human rights.

For example, when an Internet shutdown occurs during an election, the right to participate in political activities is often the most affected right. However, upon closer inspection, while this right has been infringed upon, the ability to voice or form an opinion, which is central to the right to participate in an



¹⁸ See Rydzak (n 13).
¹⁹ Ibid.

electoral process, is also violated during network disruptions, and that, in turn, infringes upon the rights to a free press and freedom of expression. Further, the right to freedom of association and assembly online is violated as assemblies are no longer limited by physical space but also include online assemblies.²⁰

In another example, when network disruptions occur during a protest, the most affected right is freedom of association and assembly, both online and offline. This violation is closely tied to violations of other rights, including freedom of expression and human dignity. It is however important to note that the severity and context of a disruptions vary, as do their specific repercussions on various human rights.

Another important example of state-ordered network disruptions are those that occur during school examinations. Governments claim that their reason for limiting access is to reduce cheating during exams.²¹ Putting aside the impracticality of such measures, the disruptions are not limited to students. They also affect the general population. This suggests that such a disruption not only affects civil and political rights, such as freedom of expression, access to information, human dignity, freedom of assembly and association, and other civil and political rights, it also violates the right of such victims to participate in socioeconomic activities. While students are primarily denied the right to learn online, for example, the broader population is also denied the right to work online.

20 African Commission on Human and Peoples' Rights, "Guidelines on Freedom of Association and Assembly in Africa" <https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf> accessed Sept. 20, 2020.

21 Samuel Gebre, "Exam Cheats Cited in Three-Day Internet Shutdown in Ethiopia" Bloomberg (June 13, 2019). <<https://www.bloomberg.com/news/articles/2019-06-13/exam-cheats-cited-in-three-day-internet-shutdown-in-ethiopia>> accessed Sept. 12, 2020.



-
-
-

4. SOCIAL IMPACTS OF NETWORK DISRUPTIONS IN AFRICA

Given the nature of network disruptions, it is often difficult to measure subjective repercussions. Metrics like the number of people affected or the duration of a disruption offer some objective forms of measurement. But there are no specific methods for determining their broader social impacts. In considering the social impacts of network disruption, this report includes information from the available literature and interviews with 17 people from 11 countries.²²

In defining these social impacts, the interviews were designed by applying the Spectrum Approach. The Spectrum Approach, as developed by Stremmlau and Marchant in their research paper,²³ is a combination of four major factors — frequency and duration, depth, breadth, and speed. These factors were used to objectively assess the impact of Internet shutdowns in Africa. The frequency and duration factors refer, respectively, to how often and how long disruptions last. The depth factor refers to the nature of restricted content, while breadth examines the number of people affected by the disruptions. Speed focuses on the various methods through which the disruptions are implemented, e.g., throttling, recurring disruptions, or full blackout disruptions. In a series of semi-structured interviews conducted for this research, these four factors were incorporated into questions in order to identify the various ways network disruptions had an impact on respondents in 11 African countries.

The estimated total duration of the disruptions was 1,144 days.

88 percent of the respondents stated that the network disruptions in their countries were ordered by the government. Only 12 percent stated that Internet blackouts were the result of terrorist attacks or undersea cable cuts. The estimated total duration of the disruptions, according to all respondents, was 1,144 days.

This may be interpreted to mean that there was no Internet access for an average of 114 days in the 11 countries between 2011 and 2020, which was the period covered by their responses. This estimated duration is a combined result of those countries that had disruptions for as long as 472 days and other countries where disruptions lasted for a couple of hours. The respondents shared that social media platforms are the most targeted during network disruptions. **Only 25 percent of the respondents stated that the disruptions were limited to a geographic region, while the remaining 75 percent said they were nationwide.**

²² See Annex 1.

²³ See Marchant & Stremmlau (n 6).

All of the respondents identified that civil, political, and socioeconomic rights, were impacted during the various disruptions. For example, during the Arab Spring, the rights to freedom of expression, access to information, and assembly and association were most affected because protesters were immediately plunged into a “sudden darkness groping for each other.”²⁴ However, according to a respondent, “the gathering places were known in advance, so [protesters] succeeded in reaching those places without the Internet.”²⁵ Research by Rydzak et al. on the impacts of network disruptions on protests in Africa, concluded that:

“[E]vidence suggests that the 'effectiveness' of shutdowns is questionable at best, that shutdowns are frequently followed by an escalation in the momentum of preexisting protest, and that activists and citizens use a combination of strategies to continue mobilizing.”²⁶

A respondent who had experienced a more protracted disruption in Cameroon described the Internet shutdown in the following way:

“[It] has already lasted four years. It began with the ‘anglophone crisis’ where the government ordered that a certain part of the country who speak English and are calling for their own self-government should be cut off from Internet access. Basically, all conceivable forms of violations of human rights have taken place so far. No access to health information or to be able to freely express oneself on social media.”²⁷

Further explaining the social impacts of the disruptions in Cameroon, the respondent added that an “Internet shutdown is a very serious economic cataclysm for any country, as its negative impacts harm the economy in the long term.” Cameroonian digital rights advocate Avis Momeni also stated, after highlighting the various negative impacts of these disruptions on human rights in his country, that the social repercussions are the most pronounced among which are being:

“unable to work, gain access to crucial information on sexual and reproductive information online, use financial services, access social media platforms to air your views or participate in an ongoing public policy issue (among many other issues).”²⁸

In Ethiopia, with respect to the July 2020 Internet shutdown that occurred during a protest for justice in the killing of a popular musician Haacaaluu Hundeessaa, a respondent shared that:

“[T]he last shutdown, in particular, impacted the people’s access to COVID-19-related information. In general, Internet shutdowns highly impacted the people’s right to obtain relevant information. The shutdowns were triggered by a political event, and people did not have avenues to get information.

24 Interview with Respondent from Egypt (Online correspondence, Sept. 29, 2020)

25 Ibid.

26 See Rydzak, Karanja and Opiyo (n 4).

27 Interview with Charlie Martial Ngounou, Founder, Faculty of Law, AfroLeadership Cameroon (Online correspondence, Oct. 2, 2020).

28 Interview with Avis Momeni, Digital Rights Advocate, Cameroon (Online correspondence, Sept. 30, 2020).

In addition, many whose daily incomes were contingent upon Internet connectivity, such as Internet cafes (and) ride-hailing drivers, could not generate income to sustain themselves.”²⁹

Also sharing his experiences on the network disruptions in Zimbabwe, Kuda Hove, a lawyer and digital rights advocate, highlighted various negative human rights impacts of the disruptions. With respect to social impacts, he said, “People were unable to carry out their work or attend school.”

A respondent from the public sector in Eritrea specifically noted with respect to social implications that:

“I was unable to work on my online course provided by an international organization. Businesses were unable to advertise on social media platforms because they are no [longer] available. In addition, like most poor African countries, Eritrea’s Internet service retailers are small businesses which employ a number of low-skilled workers. The closure of such places resulted in unemployment and left people poorer.”

While the sociopolitical contexts are different in The Gambia, the lived experiences are similar. Basiru Bah, who lectures at the University of The Gambia, added that:

“[W]ith pending election results, the entire country was kept in the dark as to what is actually happening within and outside of the country. Financial bureaus which use the Internet were at [sic] standstill, and diaspora remittance could not reach families that heavily rely on [sic] same.”³⁰

This was also the case in other countries like the DRC. Trésor Makunya, a researcher at the Centre for Human Rights, shared his experience during an Internet shutdown, stating, “at the individual level, mobile money transfer activities were disrupted while several individuals gain their living from such activities. Nationwide, the disruptions impacted the country’s economy.” Respondents in Benin and Burundi shared similar perspectives.

Combining the respondents’ experiences in the survey with available research, there are at least four identified reasons why the impacts of network disruptions vary in the region. They are Internet penetration rates, systems of government, lack of specific guidelines on network disruptions, and online harms. While the responses varied on these various factors, a respondent from DRC had this to say about Internet penetration rates:

“In some instances, not having access to the local radio is worse compared to not having Internet access because people never had such access in the first place. DRC’s Internet penetration rate is 8.3 percent. But a breadwinner responsible for those without access whose source of livelihood is

29 Interview with Michael Tekie, CEO, AXIOM Technologies, Ethiopia (Online correspondence, Oct. 8, 2020). This claim is also supported by a CIPESA study on the economic impacts of network disruptions in Africa. See generally, CIPESA “A Framework for Calculating the Economic Impact of Internet Disruptions in Sub-Saharan Africa” (2017) <https://cipesa.org/?wpfb_dl=252> accessed Nov. 6, 2020.

30 Interview with Bah (n 14).

through rendering digital or online services will be unable to do so if there is an Internet shutdown. That way, there is both the direct and indirect impact of network disruptions.”³¹

Corroborating this participant’s perspective, Internet penetration in Africa is one of the lowest in the world at only 42.2 percent.³² While this might suggest that these disruptions only affect those with access, their impacts are broader. Considering this respondent’s point of view, the impact of cutting access in the region still reverberates beyond just those with access.

Most of the respondents also confirmed that network disruptions that result in violations of human rights are caused by either long-serving governments or autocratic governments, or both. According to them, the rights to work, freedom of expression, health, education, association, assembly, dignity, and many others are violated because the shutdowns are capricious and not backed by law. In a study carried out by Collaboration on International ICT Policy in East and Southern Africa (CIPESA) in 2019, of the 22 countries that have carried out network disruptions in the previous four years, 17 were autocratic systems.³³

COMPETING STRATEGIES FOR ADVOCATING AGAINST DISRUPTIONS

In recent years, advocates against disruptions have secured a number of important statements from international bodies. Such statements, however, reveal different approaches to advocating against network disruptions. Some actors have called on governments not to carry out disruptions at all, while others emphasize that they should only be used in a proportionate manner and only when justifiable under international law.

The question of whether to acknowledge that network disruptions could be justifiable under the right conditions poses a policy challenge for those advocating against network disruptions. In practice, a government looking to protect against plausible public security threats while respecting human rights may not have the specific guidelines on how to achieve such a balance. International human rights law on the limitation of freedom of expression does provide a three-part test in which any limitations on expression must meet conditions of legality, legitimacy, necessity, and proportionality, but there is no specific guidance from international legal experts or human rights groups that applies this framework to instances of government-ordered

31 Interview with Respondent from DRC (Online correspondence, Oct. 9, 2020).

32 “Africa Internet Users, 2020 Population and Facebook Statistics” (Sept. 6, 2020) <<https://www.internetworldstats.com/stats1.htm>> accessed Sept. 23, 2020.

33 CIPESA, “Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa” (2019) <<https://cipesa.org/2019/03/despots-and-disruptions-five-dimensions-of-internet-shutdowns-in-africa/>> accessed Oct. 15, 2020.

network disruptions.³⁴ This framework is made up of various treaties and mechanisms at the United Nations and other various regional human rights systems.

Further complicating this issue is the broad right to restrict communications provided to states by other international instruments. For example, the Constitution of international organizations, like the International Telecommunications Union (ITU), Chapter (IV)(A), Article 34(2), provides that:

“Member States also reserve the right to cut off, in accordance with their national law, any other private telecommunications which may appear dangerous to the security of the State or contrary to its laws, to public order or to decency.”³⁵

Although there has been no recorded case where an African government has relied on this provision to justify a disruption order, there would be value in articulating how any such disruptions should be carried out, if deemed necessary, in accordance with international human rights law.

In the same vein, the recently adopted Guidelines on Access to Information and Elections in Africa³⁶ state that any restriction on Internet access must comply with international human rights law principles of the three-part test. Government officials, however, have a weapon in the ITU constitution that can be used to justify cutting off access. Alternatively, it could use the Guidelines to consider human rights principles. Governments may nevertheless argue that the three-part test is not prescriptive enough to offer a specific guide for states faced with the stark reality of striking a balance between protecting human rights and ensuring national security. Therefore, there is a gap in policy that needs to be plugged by working toward an effective set of guidelines on network disruptions under international law.³⁷

34 “Internet Shutdowns” (Media Defence, Sept. 24, 2020) <<https://www.mediadefence.org/ereader/publications/advanced-modules-on-digital-rights-and-freedom-of-expression-online/module-2-restricting-access-and-content/internet-shutdowns/>> accessed Oct. 15, 2020; Yohannes Eneyew Ayalew, “Public International Law and Internet Shutdowns: Time to Unpack Emerging Norms?” (GroJIL, July 13, 2020) <<https://grojil.org/2020/07/13/public-international-law-and-internet-shutdowns-time-to-unpack-emerging-norms/>> accessed Oct. 17, 2020

35 International Telecommunication Union, *Collection of the Basic Texts of the International Telecommunication Union Adopted by the Plenipotentiary Conference* (2019) <<http://search.itu.int/history/HistoryDigitalCollectionDocLibrary/5.22.61.en.100.pdf>> accessed Sept. 13, 2020.

36 African Commission on Human and Peoples’ Rights, “Guidelines on Access to Information and Elections in Africa” (2017) s 27 <https://www.achpr.org/public/Document/file/English/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf> accessed Sept. 22, 2020. So far, the Guidelines, adopted by the African Commission are required to be complied with by all member states of the African Union. They have been used to measure compliance in South Africa. See generally, “Proactive Disclosure of Information and Elections in South Africa” (2020). <https://www.chr.up.ac.za/images/researchunits/dgdr/documents/reports/Proactive_Disclosure_of_Information_and_Elections_in_South_Africa.pdf> accessed Nov. 22, 2020; They have also been used for capacity building efforts for various stakeholders in Botswana. See generally, “Centre for Human Rights conducts an access to information and election preparedness workshop in Botswana” (2019) <<https://www.chr.up.ac.za/expression-information-and-digital-rights-news/1823-centre-for-human-rights-conducts-an-access-to-information-and-election-preparedness-workshop-in-botswana>> accessed Nov. 6, 2020.

37 Giovanni Gregorio “Internet Shutdowns and the Limits of Law’ Africa” (2020) 14 International Journal of Communication 18 4234 - 4326 <<https://ijoc.org/index.php/ijoc/article/view/13752/3183>> accessed Sept. 14, 2020.

The tension over whether there should be a zero-tolerance policy versus one that allows governments to disrupt network access when it's justified under international law requires a nuanced approach. On the one hand, it is difficult to argue that disruptions should never be employed when at least some sources of international law seem to expressly allow them. On the other hand, if advocates acknowledge that governments may have legitimate cause to shut down the Internet, it will undoubtedly provide cover to states to order more disruptions, whether justified or not.

In order to chart a path forward, it has become important to develop a detailed normative guidance like the Manila Principles on Intermediary Liability³⁸ that stress the exceptional situations where a disruption could be justified under human rights law, advocates could make the case that governments need to put human rights principles at the center of these decisions.

Further complicating matters, as one respondent pointed out, countries do have credible reasons for interfering in online communications that cause harm. The respondents noted that while network disruptions should be totally condemned, it is practically impossible to curb some of the challenges posed by Internet access, especially when social media platforms do not pay enough attention to content moderation in the region.³⁹ Several countries in Africa have cited these oversights as reasons for shutting down Internet access even though such disruptions have not been effective.⁴⁰ This also points to the important responsibilities of social media platforms in safeguarding human rights. When online platforms fail to carry out their responsibilities, governments are overly eager to step in and enforce “safeguards” that further infringe on human rights. For example, the Ethiopian government recently passed a law that requires social media platforms to disable access to harmful content online within 24 hours.⁴¹ Putting aside implementation challenges, this law puts undue pressure on social media companies to overly censor content that poses problems to online free speech.⁴²

Given this context, there are hardly any forward-looking laws in African countries that effectively offer prescriptive solutions to address network disruptions. The African Union's human rights system, however, has some human rights instruments that may be useful in advocating against network disruptions. How the system interacts with network shutdowns and protects human rights in the region is further discussed below.

38 Manila Principles <<https://www.manilaprinciples.org>> accessed Dec. 4, 2020.

39 Interview with Respondent from Ethiopia (Online correspondence, Oct. 9, 2020).

40 “Chad Slows down Internet to Curb “Hate Speech” on Social Media” (*Aljazeera*, Aug. 4, 2020) <<https://www.aljazeera.com/news/2020/8/4/chad-slows-down-internet-to-curb-hate-speech-on-social-media>> accessed Sept. 9, 2020.

41 Edrine Wanyama, “Ethiopia's New Hate Speech and Disinformation Law Weighs Heavily on Social Media Users and Internet Intermediaries” (July 21, 2020) <<https://cipesa.org/2020/07/ethiopias-new-hate-speech-and-disinformation-law-weighs-heavily-on-social-media-users-and-internet-intermediaries/>> accessed Sept. 17, 2020.

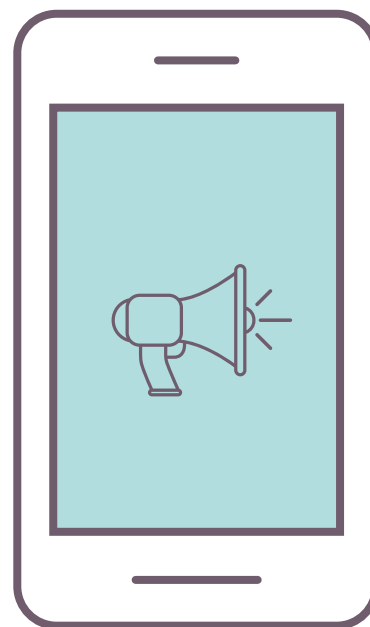
42 UN General Assembly “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” UN Doc A/HRC/38/35, April 6, 2018, paragraph 17 <<https://www.undocs.org/A/HRC/38/35>> accessed Nov. 6, 2020.

5. THE AFRICAN HUMAN RIGHTS SYSTEM AND NETWORK DISRUPTIONS

The African human rights system is made up of treaties and independent institutions within the African Union.⁴³ These treaties include various guidelines, declarations, resolutions, and directives from entities tasked with the responsibility of protecting and promoting human rights in the region. These instruments have direct and indirect relationships with the human rights challenges that may arise as a result of network disruptions, and assessing them is essential. Those with a direct relationship to network disruptions provide guidance, specifically on network disruptions and how they can be human rights compliant. Those with an indirect relationship, for example, provide for substantive rights that are often violated during network disruptions. In comparison to other regions where network disruptions are prevalent like Asia and the Middle East, Africa has one of the most developed human rights systems.

These instruments include:

- > *African Charter on Human and Peoples' Rights*,⁴⁴
- > *Declaration of Principles on Freedom of Expression and Access to Information in Africa*,⁴⁵
- > *Guidelines on Access to Information and Elections in Africa*⁴⁶
- > *Guidelines on Freedom of Association and Assembly*⁴⁷



43 International Justice Resource Center, *Advocacy before the African Human Rights System: A Manual for Attorneys and Advocates* (International Justice Resource Center 2017) <<https://ijrcenter.org/wp-content/uploads/2017/11/2.-African-Human-Rights-System-Manual.pdf>> accessed Sept. 20, 2020.

44 Organization of African Unity, “African Charter on Human and Peoples Rights” <https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf> accessed Sept. 19, 2020.

45 African Commission on Human and Peoples’ Rights, “Declaration of Principles on Freedom of Expression and Access to Information in Africa” <<http://achpr.org/presspublic/publication?id=80>> accessed Sept. 18, 2020.

46 African Commission on Human and Peoples’ Rights, “Guidelines on Access to Information and Elections in Africa” (n 31).

47 African Commission on Human and Peoples’ Rights, “Guidelines on Freedom of Association and Assembly in Africa” (n 18).

- > *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women*⁴⁸
- > *African Charter on Democracy, Elections and Governance*⁴⁹
- > *Declaration on Internet Governance and Development of Africa's Digital Economy*⁵⁰
- > *African Declaration on Internet Rights and Freedom*⁵¹
- > Various resolutions of the African Commission.

Each of these will be considered in turn.

There are three main institutions under the African human rights system: the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court), and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). At the sub-regional level, there are the Economic Community for West African States (ECOWAS),⁵² the East African Community (EAC)⁵³, and the Southern African Development Community (SADC).⁵⁴ While most of these sub-regional bodies were established primarily to foster economic development, they also have judicial institutions that have pronounced on the human rights responsibilities of their member states, including the impropriety of network disruptions.⁵⁵

The African human rights system is unique in a number of ways.⁵⁶ Among those are provisions of Articles 60 and 61 of the African Charter. Both articles provide for the direct application of the international human rights system to the development of human rights jurisprudence in Africa by the African Commission. It is also the only regional human rights instrument

48 African Union, "Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa" <https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf> accessed Oct. 15, 2020.

49 African Union, "African Charter on Democracy and Governance" <<https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf>> accessed Sept. 22, 2020.

50 African Union, "Declaration on Internet Governance and Development of Africa's Digital Economy" <https://www.afigf.africa/sites/default/files/DeclarationonInternetGovernance_adoptedAUSummit2018.pdf> accessed Sept. 13 2020.

51 "African Declaration on Internet Rights and Freedoms" (Oct. 15, 2020) <<https://africaninternetrightrights.org>> accessed Sept. 8 2020.

52 Established in 1975, the fifteen states that make up the ECOWAS are Benin, Burkina Faso, Cabo Verde, Côte D'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See ECOWAS member states <<https://www.ecowas.int/member-states/>> accessed Nov. 6 2020.

53 Established in 1967, the six partner states that make up the EAC are Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. See EAC Partner States <<https://www.eac.int/eac-partner-states>> accessed Nov. 6, 2020.

54 First established in 1980 but reformed in 1992, SADC has 16 member states. They are Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. See SADC member states <<https://www.sadc.int/member-states/>> accessed Nov. 6, 2020.

55 For example, with respect to network disruptions, the Court of Economic Community for West African States (ECOWAS Court) ruled against the Togolese government for unlawfully shutting Internet access during its general elections in 2017. See generally, Felicia Anthonio and others, "ECOWAS Court Upholds Digital Rights, Rules 2017 Internet Shutdowns in Togo Illegal" (Access Now, June 25, 2020) <<https://www.accessnow.org/internet-shutdowns-in-togo-illegal/>> accessed Sept. 14, 2020.

56 Centre for Human Rights, Faculty of Law, University of Pretoria, *A Guide to the African Human Rights System* (Pretoria University Law Press 2016) <<https://www.corteidh.or.cr/tablas/31712.pdf>>.

to include such provisions.⁵⁷ This is noteworthy in that it establishes a complementary relationship between the African human rights system and the other relevant international human rights systems for the protection and development of human rights.

These articles suggest that, rather than limit the scope of human rights exclusively to the African system, policymakers should make use of advancements in the international human rights system as well as the region-specific human rights instruments in Africa. Most of the instruments in the region that have provisions on network disruptions should be read together with the basics of international human rights law on the same subject. Some of the various regional instruments are considered below.

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (THE AFRICAN CHARTER)

The African Charter, which was adopted on June 1, 1981 and enacted on Oct. 2, 1986, is the most directly applicable human rights instrument in the region and has been ratified by all African countries.⁵⁸ It provides for different categories of rights like civil and political and socioeconomic rights while also providing for the implementation of the protection and promotion of these rights. The combination of both categories of rights has assisted in lending more credibility to an “African idea of human rights” that combines both community and individual interests. These rights include the rights to liberty and security of persons (Article 4), freedom of thought and conscience (Article 8), freedom of expression and access to information (Article 9), freedom of association and assembly (Articles 10 and 11), freedom of movement (12), freedom to participate in government (Article 13), work (Article 15), mental and physical health (16), education (Article 17), development (Article 22), and they include corresponding duties for individuals.

The African Charter, which was adopted on June 1, 1981 and enacted on Oct. 2, 1986, is the most directly applicable human rights instrument in the region and has been ratified by all African countries.

Consideration of how particular network disruptions may violate the rights provided for in the African Charter should be nuanced and take into account the impact on each individual right and all rights collectively. As discussed in earlier research by Rydzak, though not specific to the Charter, these substantive rights are

57 A Bolaji Akinyemi, “The African Charter on Human and Peoples’ Rights: An Overview” (1985) 46 *The Indian Journal of Political Science* 207, 237 <<https://www.jstor.org/stable/pdf/41855166.pdf?refreqid=excelsior%3A0f1dc6c29fdf527740bb2dc2fff3d6a6>> accessed Sept. 3, 2020
58 All the 55 African countries are party to the African Charter.

often violated through network disruptions.⁵⁹ Perhaps the most prominent of these violations pertain to the rights of freedom of expression, access to information, public participation, and association and assembly. Considering the rise of affective publics⁶⁰ who are networked through online spaces, the scope of expression, public participation, and association and assemblies has taken on new meaning that is no longer limited by physical space or rules. When disruptions occur, these publics' rights are violated as they are unable to exercise these rights.

While the region may currently have one of the lowest Internet penetration rates in the world, Africa's current Internet penetration rate is at 42.2 percent, which represents an increase in the number of Internet users by 12,447 percent in the last two decades and suggests that there are chances that this rate may increase exponentially in the coming decades.⁶¹ As this happens, violations of various economic rights like the right to work, education, development, and others will be exacerbated by these disruptions. When Internet disruptions occur, many whose livelihood depends on Internet access in rendering services and producing goods are unable to do so. Given the context of the COVID-19 pandemic, which has further demonstrated Internet access as a basic need rather than a luxury, work, education, and development in the region now increasingly depend on Internet access.

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

The revised Declaration was adopted in November 2019 pursuant to the provisions of Article 45 of the African Charter, which requires the African Commission to promote human and peoples' rights by formulating rules to solve legal problems relating to human rights. The Declaration applies specifically to Article 9 of the African Charter that provides for freedom of expression and access to information and is binding on all member states of the African Union. It replaces the previous Declaration adopted in 2002 to include the new realities of the digital age as they may impact freedom of expression and access to information. All state parties to the African Charter are bound by the various principles in the Declaration.

Among other applicable provisions, the Declaration specifically speaks to network disruptions. Principle 38(1) provides for non-interference with the right of individuals to seek, receive, or impart information through any means of communication or digital technologies. Such interference includes measures like "the removal, blocking or filtering of content" unless such interference is justified and complies with international law. Principle 38(2) provides that

59 See Rydzak (n 9). In addition, in an amicus curiae filed in support of the suit challenging the actions of the Cameroonian government and the Togolese government in shutting Internet access in 2018, it relied on various provisions of the African Charter including article 9, which provides for the right to freedom of expression and access to information. See Access Now, "Access Now & ISF file legal intervention against Cameroon shutdown" Jan. 24, 2018, <https://www.accessnow.org/access-now-isf-file-legal-intervention-cameroon-shutdown/> accessed Nov. 6, 2020; Access Now, "ECOWAS Court upholds digital rights, rules 2017 internet shutdowns in Togo illegal" June 25, 2020, <https://www.accessnow.org/internet-shutdowns-in-togo-illegal/> accessed Nov. 6, 2020.

60 As defined by Papacharissi, affective publics are networked publics that are mobilized and connected, identified and potentially disconnected through expressions of sentiment. See generally, Zizi Papacharissi "Affective publics and structures of storytelling: sentiment, events and mediality" (2015) *Information, Communication & Society* 5 <https://www.tandfonline.com/doi/abs/10.1080/1369118X.2015.1109697> accessed Nov. 6, 2020.

61 Interview with Respondent (n 28), n 33 above.

“States shall not engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population.”

GUIDELINES ON ACCESS TO INFORMATION AND ELECTIONS IN AFRICA

Network disruptions in African countries often occur during major political events like elections. The Guidelines on Access to Information and Elections in Africa are binding on member states and directly applicable to network disruptions, especially in the context of elections. The purpose of the Guidelines is “to provide guidance to States on the categories of information on the electoral processes that must, at the minimum, be proactively disclosed.” The Guidelines are stakeholder focused, i.e., they state in clear terms the various responsibilities of eight key stakeholders that are involved in the value chain of electoral processes in Africa. The stakeholders are authorities responsible for appointing political candidates and election observers/monitors as well as the members of election management bodies, political parties, law enforcement agencies, media regulatory bodies, and civil-society organizations as well as election observers and monitors and those at the helm of online and other media outlets.

Network disruptions in African countries often occur during major political events like elections.

Sections 26, 27, and 28 of the Guidelines specifically address the responsibilities of state-run media regulatory bodies when it comes to Internet disruptions during the electoral process. Section 26 provides that media and Internet regulatory bodies and “any other relevant national security, public or private body involved in the provision of telecommunications services” must refrain from shutting down the Internet.

Section 27 further provides that in the exceptional instances where Internet shutdowns must occur under international law, they must be proactively disclosed, and such limitations must be prescribed by law, serve a legitimate aim, and be necessary and proportionate in a democratic society. Section 28 subjects the decisions of such media and Internet regulatory bodies to judicial review with expedited hearing.

GUIDELINES ON FREEDOM OF ASSOCIATION AND ASSEMBLY IN AFRICA

The Guidelines on Freedom of Association and Assembly in Africa were adopted by the African Commission in May 2017. They were adopted in accordance with the provisions of Article 45 of the African Charter, and just like the revised Declaration of Principles on Freedom of Expression and Access to Information in Africa, the Guidelines strive to clarify how to protect the rights to freedom of association and assembly as provided for under Articles 10 and 11 of the African Charter. The Guidelines note in the preamble that the African Commission understands that both the rights of freedom and expression are intertwined. The preamble also notes how various political, technological, and security developments impact the enjoyment

of both rights and that the right to assembly includes the “use of online platforms or any other way people choose.”⁶²

PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN (MAPUTO PROTOCOL)

Women make up the most active workers in many African economies. Ensuring that their rights and the development of girls are prioritized requires access to technologies. This is one of the major purposes of the Maputo Protocol, which was adopted on July 1, 2003, and entered into force on November 25, 2005.⁶³ In this regard, Article 12(2)(b) calls on signatories to “promote education and training among women at all levels and in all disciplines, particularly in the fields of science and technology.”

Considering the effects of network disruptions, it has been found that vulnerable groups, including women, are often the worst hit.⁶⁴ This is often due to existing structural and institutional inequalities that work against women and are further deepened by network disruptions. For example, women who carry out their trade online will be unable to do so during a disruption, thereby setting back the course of their financial independence. Women and girls also rely on Internet access to engage in online learning related to a range of topics, including entrepreneurship and sexual and reproductive health.

AFRICAN CHARTER ON DEMOCRACY, ELECTIONS, AND GOVERNANCE

Considering the crucial nature of development in Africa and the recent gains through technological development and increased rates of Internet penetration in the region, network disruptions negatively impact democratic development, especially in places where democratic processes are recent. To a certain extent, the African Charter on Democracy, Elections and Governance makes references to the importance of technologies in advancing development. The Charter, which came into force in 2012, was adopted with a commitment “to promote the universal values and principles of democracy, good governance, human rights, and the right to development.” Under Chapter 9 of the Charter on Political, Economic, and Social Governance, Article 27(7) requires states to commit to development and utilization of information technologies in the advancement of political, economic and social governance. Article 27(8) further states that state parties shall commit themselves to “promoting freedom of expression, in particular, freedom of the press and fostering a professional media.”

62 See African Commission on Human and Peoples’ Rights, “Guidelines on Freedom of Association and Assembly in Africa” (n 18).

63 So far, 42 African countries have ratified the Protocol. Those who are yet to are Botswana, Burundi, Chad, Egypt, Eritrea, Madagascar, Morocco, Niger, Sahrawi Arab Democratic Republic, Sierra Leone, South Sudan and Sudan.

64 World Wide Web Foundation, “Women’s Rights Online: Closing the Digital Gender Gap for a More Equal World” <<http://webfoundation.org/docs/2020/10/Womens-Rights-Online-Report-1.pdf>> accessed Oct. 17, 2020; Sandra Aceng “Examining the Impact of Internet Shutdowns on Women’s Online Expression and Participation in Uganda,” July 17, 2020 <<https://medium.com/global-network-initiative-collection/examining-the-impact-of-internet-shutdowns-on-womens-online-expression-and-participation-in-uganda-500f15e6e25>> accessed Nov. 6, 2020.

DECLARATION ON INTERNET GOVERNANCE AND DEVELOPMENT OF AFRICA'S DIGITAL ECONOMY

In one of the most direct engagements with Internet governance in Africa, the Assembly of Heads of State and Government of the African Union adopted the Declaration on Internet Governance and Development of Africa's Digital Economy. Under its commitment to Internet governance principles, the declaration states that they “remain committed to facilitating a resilient, unique, universal and interoperable Internet that is accessible to all and will strive to ensure universal and affordable Internet access for all African citizens, including people with specific needs.”

AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOM

Even though it is not binding on states, the African Declaration on Internet Rights and Freedom, which was developed by civil society groups, is one of the most influential statements specific to the protection of online freedoms in Africa. It makes specific reference to network disruptions in the application of its 13 principles. Two principles – freedom of expression and freedom of association and assembly on the Internet – expressly discourage network disruptions. The first provision on freedom of expression states that such disruptions are “extreme measures” that can only be justified when they conform with international law. The latter provision states that such disruption “constitutes a direct interference” with the right to association and assembly.

RESOLUTIONS AND PRESS RELEASES OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission is a quasi-judicial body tasked with protecting and implementing the rights provided under the African Charter. It was established by the African Charter with specific responsibilities on how to protect and implement the human rights specified in the Charter. Some of them include receiving communications from individuals or organizations in member states about human rights violations and carrying out protective responsibilities

Even though it is not binding on states, the African Declaration on Internet Rights and Freedom, which was developed by civil society groups, is one of the most influential statements specific to the protection of online freedoms in Africa.

by passing and adopting resolutions on various human rights issues. The Commission carries out promotional duties through special mechanisms, including the designation of special rapporteurs on various thematic human rights issues. From time to time, the Commission, through its Special Rapporteur on Freedom of Expression and Access to Information, also releases press statements in order to guide member states.

One of the earliest resolutions by the African Commission on the importance of information technologies and freedom of expression, which is one of the rights most impacted by disruptions,

was passed in 2001.⁶⁵ It laid the foundation for the first declaration on freedom of expression by the Commission. Perhaps the most definitive resolution by the African Commission on network disruptions was the Resolution on the Right to Freedom of Information and Expression on the Internet in Africa (ACHPR/Res.362(LIX)2016).⁶⁶ One of the specific references it made with respect to network disruptions was its recognition of “the Internet in advancing human and peoples’ rights in Africa, particularly the right to freedom of information and expression.” It noted with concern the emerging and increasingly frequent practice by state parties of interrupting or limiting access to telecommunication services, such as the Internet, social media, and messaging services during elections.

In the past two years, the African Commission, through its Special Rapporteur on Freedom of Expression and Access to Information, has published two direct press releases on network disruptions in the region. The first of the two releases was in January 2020, which came in the wake of multiple disruptions carried out in Chad, DRC, Gabon, and Zimbabwe.⁶⁷ It states that:

“Internet and social media shutdowns violate the right to freedom of expression and access to information contrary to Article 9 of the African Charter on Human and Peoples’ Rights. The internet and social media have given voice to the people of Africa who may now discourse on social, economic and political issues far more than ever before, and states should not take away that voice. Citizens should not be penalized through shutdowns when they hold demonstrations calling for economic or political reforms or indeed during contested electoral campaigns or polling events as has happened most recently in countries such as the DRC, Sudan and Zimbabwe.”

Drawing on the provisions of the revised Declaration, the recent press release made reference to the importance of ensuring Internet access during the COVID-19 pandemic and provided copious examples from shutdowns that took place in 2020 in Ethiopia and Guinea. It specifically stated that:

“Any attempt by States to cut or restrict access to the Internet, to block social media platforms or other communications services, or to slow down internet speeds restricts the public’s access to health information that may be used not only to protect them from contracting the virus, but also to contain its spread.”⁶⁸

65 African Commission on Human and Peoples’ Rights, “Resolution on Freedom of Expression - ACHPR/Res.54(XXIX)01” <<https://www.achpr.org/sessions/resolutions?id=59>> accessed Sept. 20, 2020.

66 African Commission on Human and Peoples’ Rights, “Resolution on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res.362(LIX)2016” (Nov. 4, 2016) <<https://www.achpr.org/sessions/resolutions?id=374>> accessed Sept. 20, 2020.

67 African Commission on Human and Peoples’ Rights, “Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Continuing Trend of Internet and Social Media Shutdowns in Africa” (Jan. 29, 2019) <<https://www.achpr.org/pressrelease/detail?id=8>> accessed Sept. 23, 2020.

68 African Commission on Human and Peoples’ Rights, “Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Importance of Access to the Internet in Responding to the COVID-19 Pandemic” (April 8, 2020) <<https://www.achpr.org/pressrelease/detail?id=487>> accessed Sept. 24, 2020.



6. ADVOCATING AGAINST NETWORK DISRUPTIONS IN AFRICA

In advocating against network disruptions in Africa, it has become necessary to consider their various impacts. While we have identified that these disruptions have social impacts, which manifest in the lived experiences of people subjected to them, combating network disruptions will require a more nuanced approach that is not limited to human rights alone. In doing this, it is important to identify the various stakeholders that are often involved in network disruptions. Broadly, they are the governments, private sector, civil society, and research and development entities. Governments are usually the first to initiate network disruptions, typically citing national security risks or a desire to prevent students from cheating on tests. Another recurring stakeholder is the private sector, which often includes telecommunications service providers, social media platforms, etc. When the disruption is state ordered, the Internet Service Providers (ISPs) are often at the immediate receiving end of such orders, and they are required by law to comply with the orders, after which the citizens bear the full brunt of these disruptions.⁶⁹ Civil society also occupies a strategic position by providing best practices and ensuring that governmental compliance with rules and regulations is closely monitored. Due to their strategic position between the government of a country and its citizens, civil society advocacy on network disruptions is likely to present an objective assessment for public policy directives. Also, because there is no advocacy without evidence, research and development play an important role in determining the various repercussions of network disruptions by carrying out both qualitative and quantitative research. In order to ensure that policy advocates are able to combat network disruptions in the region, their objectives can be divided into short-term and long-term advocacy strategies.

SHORT-TERM STRATEGIES

Short-term strategies apply to methods that could be employed before or during a network disruption. They entail the monitoring of major public policy developments, asking questions and calling for a stop to network disruptions, and collaborating with other stakeholders.

MONITOR MAJOR PUBLIC POLICY DEVELOPMENTS

In the past, most network disruptions occurred when there were major political events, such as elections, protests, etc. These continue to be events during which governments may be especially prone to restricting Internet access. Therefore, policy advocates must watch out for early warning signs of Internet disruptions. In response, advocates can design alert levels for network disruptions that are communicated in a simple way that easily illustrates the severity of the problem. The alert system can be made available through an interactive website. (This,

⁶⁹ Ranking Digital Rights “Network shutdown (telecommunications companies)” (2019) <<https://rankingdigitalrights.org/index2019/indicators/f10/>> accessed Jan. 27, 2021. This provides information on how major telecommunications companies respond to network disruptions and whether they provide more contexts.

of course, would be less useful in the case of a complete disruption). Red, for example, might indicate that a given country is highly likely to shut down Internet access, and green might indicate that the chances of such a disruption is low. The alert system could be updated in real time, thereby allowing citizens of the country to be prepared and to come up with strategies for circumventing censorship whether it's imposed by Internet disruptions or other means.

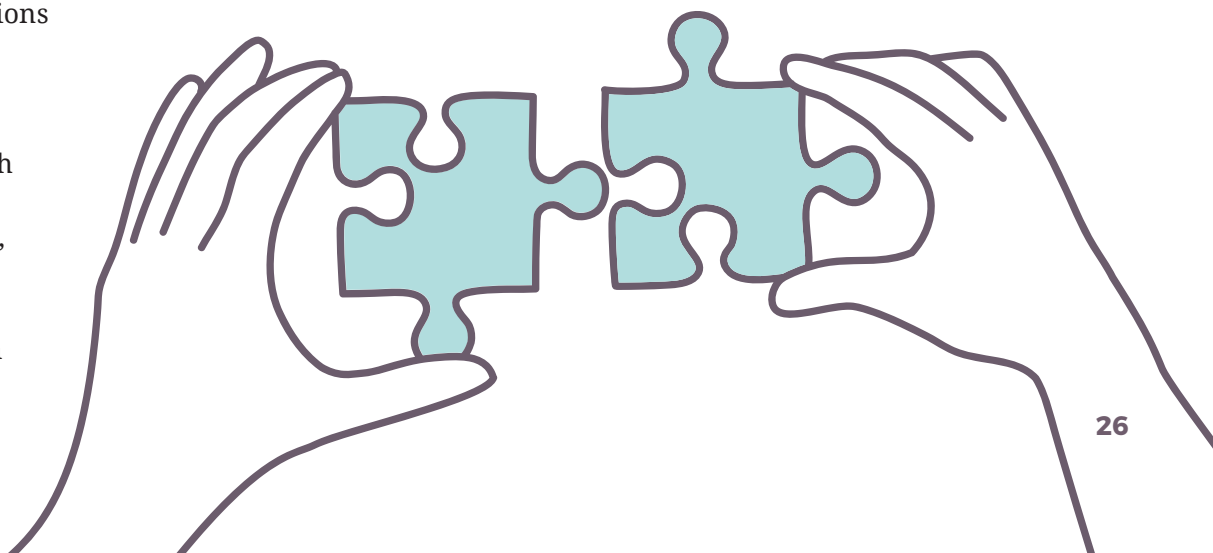
ASK QUESTIONS

Civil society is no longer the preserve of physical associations or assemblies to rally support behind a cause. Every person with Internet access now has the ability to make his or her voice heard, and advocates and citizens alike have the right to demand answers, as it has been deregulated both in concept and practice to include all individuals with Internet access. While advocates must demand proactive disclosure from governments on network disruptions, every citizen must be able to demand answers for the justification of such disruptions and an end to them.

Under international law, each state has obligations to comply with the three-part test, which is the only permissible basis for limiting derogable human rights like the rights to freedom of expression, association and assembly, and privacy. It is by demanding reasons for proposed state actions on these disruptions that this test can be complied with. For example, in making a law that impacts Internet access, citizens can get involved in the lawmaking process by actively demanding the provisions comply with the legal requirement of precision and clear culpability. When such laws are implemented, citizens can demand whether the limitation of rights is proportional to the objective pursued and whether it would have a realistic chance to prevent further harm. Governments must demonstrate, for example, that in the case of limiting expression, cutting access to a website will eliminate hate speech online or any other form of online harm. Also, for such disruption to be justified, it must be the only available option and be necessary. Restriction of such rights must be balanced with the rights of others. It is through asking questions that these applications of international law may be applied at a more granular policy level to combat network disruptions.

COLLABORATE WITH OTHER STAKEHOLDERS

Civil society often has the primary responsibility to rally common interests together to solve online human rights challenges. In order to effectively accomplish their goals, however, civil society organizations and policy advocates must work with other stakeholders, such as governments, the private sector, and academia, to create workable solutions that can



permanently solve the challenge of network shutdowns in Africa. Here, the multistakeholder approach – which brings together various interests – is useful in order to ensure that interests are managed with human rights forming the baseline for results. For example, these stakeholders can work together to adopt a set of guidelines on network disruptions following international human rights law.

LONG-TERM STRATEGIES

These advocacy methods can be achieved before, during, or after network disruptions and may include strategic litigation, ensuring meaningful Internet access, basic digital security training, and the adoption of guidelines on network disruptions.

STRATEGIC LITIGATION

Strategic litigation can be considered both as a short-term strategy and a long-term strategy.⁷⁰ Depending on the context, it is possible to seek summary judicial review of state-ordered network shutdowns to stop governments from infringing on the rights of citizens before a more substantive suit is filed. As a strategy, it becomes long-term when the matter is being fully heard, as it may take a while for courts to reach a decision on such disruptions. For example, in Cameroon and Zimbabwe,⁷¹ strategic litigation was useful as a short-term strategy to get the Internet back on when it was disrupted by the government, while in Togo, it took a longer time. In 2020, the Court of Economic Community for West African States (ECOWAS Court) ruled against the Togolese government for unlawfully shutting down Internet access during its general elections in 2017.⁷²

ENSURE ACCESS TO BASIC DIGITAL SECURITY TRAINING

Citizens should have enough digital literacy to know how to monitor Internet connectivity and how to circumvent network disruptions when they occur.

The most basic digital security skills are still out of reach for many Africans. As a basic skill, and as part of a long-term strategy, citizens should have enough digital literacy to know how to monitor Internet connectivity and how to circumvent network disruptions when they occur. This can be achieved by using the “train-the-trainer” method, which calls on professionals, such as journalists, human rights defenders, lawyers, and computer scientists, to be trained so that they can train others. In addition, the trainers can translate the

70 Tyler Walton and others, “Navigating Litigation during Internet Shutdowns in Southern Africa” (2019) <<https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/08/SALC-Internet-Shutdown-Guide-FINAL.pdf>> accessed Sept. 12, 2020.

71 AA Rathi & A Basu “Dialling in the Law: A Comparative Assessment of Jurisprudence on Internet Shutdowns” Oct. 30, 2020 *CYRILLA & Association for Progressive Communications* (APC) <https://www.apc.org/sites/default/files/Internet_Shutdowns_20.11.10.pdf> accessed Feb. 9, 2021.

72 See Felicia Anthonio (n 57).

training resources into African languages such as Amharic, Hausa, Oromo, and Swahili. This will help increase knowledge in regional areas about the basic workings of network disruptions and how to circumvent them.

COMMIT TO A SET OF RULES OR GUIDELINES ON NETWORK DISRUPTIONS

In order to fill the policy gap on the practical application of international human rights law to network disruptions, policy advocates need to commit to both global and regional standards on network disruptions. At the global and regional levels, a consortium of stakeholders in the Internet governance sector should devise a set of principles for states to follow before limiting Internet or telecommunication access of its citizens. For example, while applicable international human rights standards will be applied in the guidelines, it should also seek to balance the protection of human rights against credible threats to security. Given the increasing impacts of online harms, especially in causing offline harms, these sets of rules would identify the roles of both state and non-state actors in an instance of network disruption. This could be done by highlighting the various stakeholders involved in network disruptions and giving them specific responsibilities. Some of those responsibilities are discussed in the following section.

STAKEHOLDER RESPONSIBILITIES REGARDING NETWORK DISRUPTIONS IN AFRICA

GOVERNMENTS

- > National governments must carry out public early warning assessments with respect to network disruptions. These early warning assessments may be carried out periodically or when there are credible threats to the telecommunications infrastructure, and they must do the following:
 - Proactively disclose the justification for shutdowns and present opportunities for judicial review before and after a disruption.
 - Include a comprehensive review of various laws that impact Internet access as well as feasibility studies on human rights-based assessments of such laws.
 - Comply strictly with internationally laid down tests before carrying out any form of shutdown.
 - Commit to a global set of rules on network disruptions.

PRIVATE SECTOR

- > Businesses like telecommunication companies, Internet Service Providers (ISPs), and platforms should create sector-specific task forces on network disruptions to work towards various self-regulatory models that are made public and are human rights-compliant.

- > They should have policies and processes to assess the threats and risks posed to human rights by their internal or external business activities, recognizing, however, that the safety of their staff operating in the region is paramount.⁷³
- > They should consider sector-specific organizations to address major challenges applicable to their own specific fields. For example, the Association of Submarine Cable Owners could guard against the indiscriminate trawling by ships that damage undersea cables.
- > Businesses like telecommunication companies and social media companies can engage in and outside of their sectors to foster greater collaboration and advocate against these disruptions.

ENGAGEMENTS WITH THE AFRICAN UNION HUMAN RIGHTS SYSTEM

- > Both the African Union and interest groups should demand the fulfilment of states' obligations under the African Charter and other human rights instruments.
- > Civil society organizations and individuals can also file communications before the African Commission to set precedent on network disruptions.
- > Civil society organizations should continue to build capacity through research and advocacy engagements with the various departments of the African Union.

RESEARCH AND DEVELOPMENT

- > Organizations and institutions should carry out Africa-specific research on the impacts of network disruptions.
- > They should also commit to periodic reports based on the Spectrum Approach in measuring various impacts of network disruptions.

PHILANTHROPIC ORGANIZATIONS

- > Support strategic advocacy at various local levels to combat network disruptions.
- > Prioritize funding to address the various impacts of network disruptions.

⁷³ Global Network Initiative (GNI) "The GNI Principles" <<https://globalnetworkinitiative.org/gni-principles/>> accessed Feb. 9, 2021.

SIMPLE STEPS TO FOLLOW FOR STAKEHOLDERS, SUCH AS CIVIL SOCIETY, BUSINESSES AND OTHER INTEREST GROUPS, WHEN ADVOCATING AGAINST NETWORK DISRUPTIONS:

Before shutdown	During shutdown	After shutdown
Carry out threat and risk assessments and forecast the various debilitating impacts of network disruptions.	Identify the nature of the disruption. Is it, for example, state-ordered or non-state-ordered?	Conduct transparency reporting and engage in strategic litigation.
Be proactive with disseminating information on various circumvention tools and alert levels.	Intensify advocacy by applying pressure on the initiating actor of such disruption. For example, the government.	Conduct research on the various impacts of network disruptions.
Rally collaboration with various stakeholders for advocacy.	Document the various impacts of the disruptions. This includes nature, duration, depth, and frequency of the disruption.	Seek redress under various international law mechanisms.
Coordinate with national human rights institutions and civil society actors.	Coordinate advocacy activities among major stakeholders.	Continuously push for a set of guidelines on network disruptions to be consistent with international law.

7. CONCLUSION

This research considers the various contextual impacts of network disruptions in Africa. In considering these impacts in African countries, whether political, economic, or social, the main point established in this report is that everyone loses during network disruptions. By conducting interviews with experts from throughout the region and mining the available literature, which includes both academic studies and normative standards on network disruptions, this research report found that the social repercussions of network disruptions are both debilitating and far reaching. While the report identifies some factors that should be considered when assessing these repercussions, it also highlights the important roles of policy advocates in preventing network disruptions from happening and mitigating their impact. This can be done by familiarizing themselves with the various instruments under the African human rights system.

This report concludes that in order to effectively combat network disruptions in Africa, public policy advocacy initiatives must be collaborative and contextually relevant, in order to address challenges caused by these disruptions that are particular to the region. In addition, this report should serve as a springboard for an integrated approach that assesses the social impacts of network disruptions in Africa. This approach, which should involve both qualitative and quantitative methods, is necessary in order to achieve precise, accurate, and verified insight into the impact that network disruptions have on the region.



ANNEX 1: LIST OF RESPONDENTS

S/N	Country	Stakeholder group	Designation	Number of respondents
1	Benin	Civil society	Internet governance specialist	1
2	Burundi	Regional human rights institution	Human rights advisor	1
3	Cameroon	Civil society	Digital rights advocates	2
4	Egypt	Civil society	Human rights worker	1
5	Eritrea	Government	Policy advisor	1
6	Ethiopia	Academia/ Business/ Human rights worker/ Humanitarian	Digital rights researcher/ Executive Director/ Human Rights Advisor/ Advisor	4
7	Democratic Republic of Congo	Academia/ Human rights worker	Researcher/ Policy analyst	2
8	The Gambia	Academia	Lecturer	1
9	Kenya	Civil society	Fellow at a human rights organization	1
10	Zimbabwe	Civil society	Legal officer	1
11	Uganda	Academia/Civil society	Senior lecturer/ Executive Director	2