

Why Access to Information is Essential for Democratic Elections in Africa

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Though Africa has developed several normative frameworks and legal instruments defining democratic elections, the wider dissemination of relevant information during the electoral process remains a challenge, putting the credibility of the process into question.

For elections to be free, fair, and credible, [voters must have access to information](#) at all stages of the electoral process. Access to information enables voters to be educated and informed about political processes so that they can have a basis upon which to vote for political office holders and to hold public officials responsible for their acts or oversights in the implementation of their actions. Access to information is [necessary](#) for the realisation of the rights to freedom of opinion and expression that are provided in the United Nations (UN) Declaration on Human Rights, subsequent human rights instruments, and many domestic constitutions.

The importance of access to information in the electoral process and for democratic governance is documented in the African Charter for Democracy, Elections and Governance, and other sub-regional treaties and standards. Without access to reliable information about a wide-range of issues prior, during and after elections, it is difficult for citizens to eloquently exercise their right to vote in a manner envisioned by [Article 13 of the African Charter](#).

Access to information is further guaranteed by [Article 9 of the African Charter on Human and Peoples' Rights \(the Banjul Charter\)](#) as an important component of democracy, as it promotes participation in public issues.

Access to Information and ICT



Over the past few years, access to information has further been made easier through advances in information and communications technology (ICT), especially the internet, which have expanded the avenues through which people can access and share news and information.

During the drafting process of [Article 19](#) of the International Covenant on Civil and Political Rights (ICCPR), [the Human Rights Committee elaborated](#) that state parties should take account of [the extent to which developments in ICT](#) have substantially changed communication practices around the world.

States undertook to respect, protect, and fulfill freedom of expression both offline and online since the UN Human Rights Council adopted its [landmark resolution in 2012](#) affirming that the same rights people have offline must also be observed online. [The UN Committee on Civil and Political Rights \(CCPR\)](#) has also stressed that the internet is one means of expression since paragraph 2 of article 19 protects all forms of expression and the means of their dissemination. In 2013, [the UN Human Rights Council endorsed another instrument on the role of freedom of opinion and expression in women's empowerment](#), which sets out that the rights can be exercised on the internet.

Network Disruptions Undermining Access to Information



Among the various forms of online censorship, [internet shutdowns are some of the most invasive and blunt](#). Unlike traditional forms of censorship like blocking internet pages or certain content, [these disruptions to digital communications are architectural and affect a preliminary condition in the information society: access to the internet](#).

While many conversations on the impact of network disruptions on human rights tend to [centre around civil and political rights](#), the disruptions also have a profound impact on socio-economic rights, such as [the right to education, housing, health, and even social security](#). According to a 2019 CIPESA report, [Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa](#), at least 22 countries had interrupted digital communications since 2016, with most of them taking place around elections, protests, or national exams. These countries included [Algeria, Burundi, the Central African Republic \(CAR\), Cameroon, Chad, DR Congo, Congo \(Brazzaville\), Egypt, Equatorial Guinea, Gabon, Ethiopia, Libya, Mauritania, Niger, Togo, Sudan, Zimbabwe, Gambia, Mali, Morocco, Sierra Leone, and Uganda](#).

In 2015 the issue of internet shutdowns was given due attention through a [joint declaration on freedom of expression and conflict situations](#) by the UN and regional monitors of freedom of expression, which, among others, underscored that [blanket shutdowns of the internet](#) should not be justified under human rights law. In 2016, the Human Rights Council [“unequivocally” condemned](#) “measures to intentionally prevent or disrupt access to or dissemination of information online.”

Furthermore, the necessity for states to abstain from deliberate internet interference was reinforced by the [UN General Assembly in late 2018](#), in its Resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association.” The resolution requires states to [guarantee the same rights individuals have offline online](#) mostly by abstaining from shutdowns and content limitations on the internet that violate international human rights law.

The UN Human Rights Council has similarly, [in two resolutions approved by consensus in 2018](#), expressed concern about “the emerging trend of ... undue restrictions preventing internet users from having access to or disseminating information at key political moments” and deep concern at [“measures in violation of international human rights law that aim to or that intentionally prevent or disrupt access to or dissemination of information online.”](#) It [“condemn\[ed\] explicitly measures in violation of international human rights law that preclude or limit an individual’s right to seek, receive or impart information online,”](#) and called upon states to [“refrain from and cease measures, when in violation of international human rights law, seeking to block internet users from gaining access to or disseminating information online.”](#)

According to [reports of the former UN Special Rapporteur on freedom of expression David Kaye](#), an intentional internet shutdown measure enforced by states or Internet Service Providers limits access to or dissemination of information online and also violates [freedom of expression and human rights](#). Given the universal access to the internet as one of the [UN Sustainable Development Goals](#), internet shutdowns also violate a number of human rights provided under the sustainable development goals.

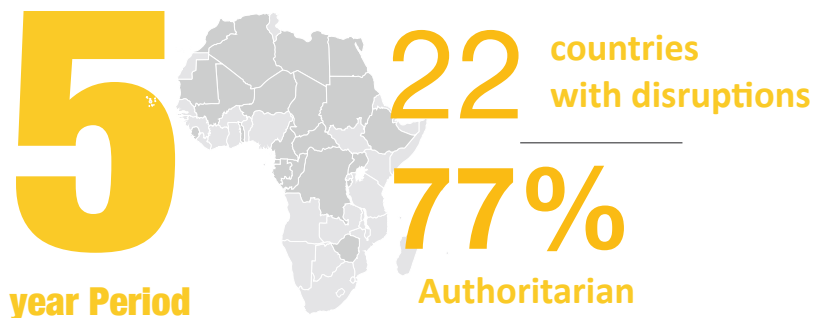
At the regional level, the [African Declaration of Principles on Freedom of Expression and Access to Information](#) adopted by the African Commission on Human and Peoples' Rights in 2019 clearly prohibits any disruption or distortion of access to the internet, making the African human rights system very progressive in terms of having a broader legal protection from internet shutdowns. [The Revised Declaration of Principles of Freedom of Expression and Access to Information](#) has a transformative impact on the internet, in terms of giving voice to [billions of Africans and meaningfully enhancing their ability to access information](#), while improving diversity and reporting. Particularly [principles 37 and 38 provide protection for access to the internet](#).

The importance of internet access for disseminating information that is politically balanced and adequate, particularly during election times, is underscored [under principle 13 of the declaration](#). The declaration emphasises that any [preparatory work for elections should take into account the need for access to information](#) and adhere to the [African Union Commission's Guidelines on access to information and elections](#).

Information is important for individual citizens, communities, and citizens' organisations if they are to effectively participate in the democratic process. As the African Declaration observes, [no democratic government can survive without accountability](#). [The basic reflection of accountability is that people have information about the operation of government](#). It is the responsibility of State Parties to produce an environment that fosters access to information and to guarantee "acceptable disclosure and spreading of information" in a manner that offers "the necessary facilities and eradicates remaining difficulties to its realisation. Free and fair periodic elections uncover candidates" records and recommended policies to a level of public examination that is capable of positively influencing the receptiveness of elected representatives.

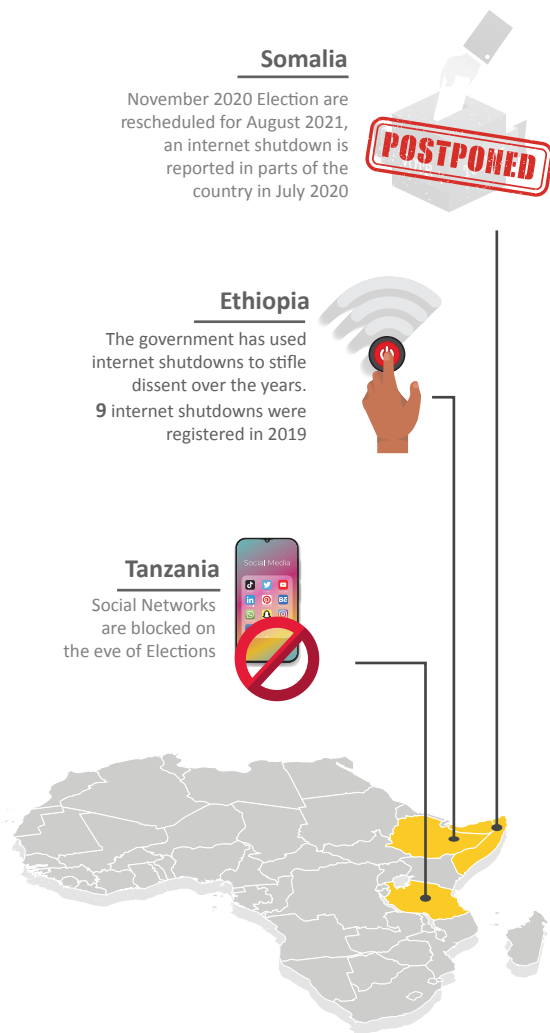
It is important to note that not all African countries have adopted the AU Convention on Democracy, Elections and Governance, which was signed into law by member states in 2007 and came into force in 2012. Only 39 African countries have ratified this convention, which establishes democracy and people's participation [as individual fundamental rights](#).

Despite such guarantees, state and non-state actors have violated these rights. They have limited access to information during election periods. This in turn undermines the reliability of electoral processes. Trends indicate that [most of the countries conducting elections in 2020 and beyond have experienced internet shutdowns](#), often affecting fairness and credibility of elections. [The African countries that have disrupted internet access in 2019 are categorised as authoritarian by the Democracy Index published by the Economist Intelligence Unit \(EIU\)](#). In fact, of the 22 African countries where internet disruptions were recorded over the five years, [77% are authoritarian](#). In most cases, there is a [lack of transparency and accountability of states when shutting down the Internet](#), including justification of the reasons or the procedures on which these restrictive measures are implemented.



Given that COVID-19 hampered crucial offline electioneering, the online space became crucial, meaning that internet shutdowns had a significant impact on the election process.

For Example;



According to reports on the ground, assisted by data collected by the NetBlocks Internet Observatory, major social networks **were blocked across Tanzania on the eve of the election**, with users depending on virtual private networks (VPNs) to send messages and access information. Instagram and Facebook were among the inaccessible platforms in all parts of the country. WhatsApp was affected too. Three months before the elections, Tanzania adopted the **Electronic and Postal Communications (Online Content) Regulations, 2020** that describe strict conditions for using digital communications platforms, and have been **identified** as a threat to the exercise of digital rights in the country.

In Somalia, where the planned election for November 2020 was **rescheduled for August 2021**, **residents in Mogadishu** and other towns across the country reported **an internet shutdown in July 2020**, impacting the pre-election environment in the country. This, nevertheless, was not the only time Somalia has faced the problem. Back in 2017, **the country also went completely offline**. Somalia has faced civil strife for more than two decades and elections - though held in a formal process - have not adhered to standards enshrined in the African Convention on Democracy, Election and Governance or other relevant international legal instruments. For example, in the 2016–2017 election period, live television coverage of the **candidates' debate was prevented because of internet disconnection**. Somali people were not able to use other alternatives such as radios, **as only a small portion of the Somali population had access to other media such as radios**.

In Ethiopia the government has used internet shutdowns from **2016 to 2018 to stifle dissent**. In 2019, **about nine blanket internet shutdowns** were registered in the country. For example, in June 2019, high-profile assassinations, including of the chief of staff of the defense forces and the Amhara regional president, resulted in lockdowns of Bahir Dar and Addis Ababa, as well as several **nationwide internet blackouts**. Likewise, on June 3, 2020, the government ordered a blanket shut down of the internet including

mobile phone networks, landlines and internet services **in western Oromia's Kellem Wollega, West Wollega, and Horo Guduru Wollega zones** where military operations were taking place. This restriction impacted **services, reporting on decisive events, and human rights investigations**.

Similarly, on June 30, 2020, the government ordered a blanket shut down of the internet following the death of prominent Oromo musician and activist, Haacaaluu Hundeessaa. The shutdown was purportedly intended to control the unrest that **resulted in destructions of property and deaths in Addis Ababa and Oromia region**. The internet shutdown was criticised by **international human rights groups** for creating challenges in verifying facts on the ground.

More recently **on November 4, 2020, data from NetBlocks indicated that the internet had been shut off regionally in Tigray**. Minutes after NetBlocks detected the network disruption, Prime Minister Abiy Ahmed announced via his Twitter and Facebook accounts that a "red line" had been crossed and that military action was being taken to "save the country." Tigray has been under a state of emergency since November 6.

What alternative options can be sought?

Democratic rulers have refrained from interrupting the flow of digital information during election times. For instance, **none of the African countries that are categorised as ‘flawed democracies’ (Botswana, Cape Verde, Ghana, Lesotho, Namibia, and Senegal) or as a ‘full democracy’ (Mauritius), have ever ordered a network disruption.** Researches indicate that interruption of the **flow of digital-based information and communication** is not the best recourse as internet shutdowns only offer short term solutions. Besides violating international human rights law, blanket internet disruptions do not offer sustainable solutions to local challenges governments normally raise as a justification for internet shutdown. Experiences in the area show how other options can be utilised to attain what would otherwise be achieved by blanket internet distortion and disruption strategies.

Opting for Progressive Legislation and Judicial Review

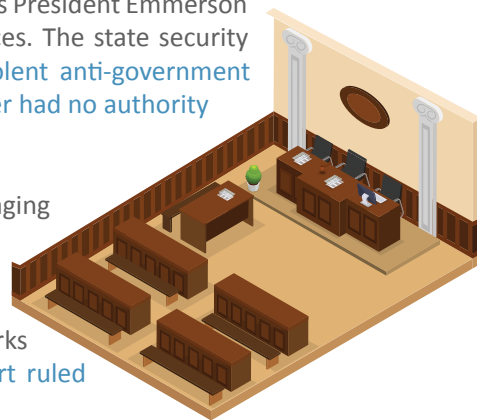


When internet shutdowns are found absolutely necessary enacting proper legislation that provides the scope and grounds of internet shutdowns is of paramount significance. Governments should ensure the credibility and independence of the judiciary and establish a mandate for judicial review of internet access limitations by government or third parties. This measure is significant to verify if the **necessity and proportionality requirements widely discussed under international human rights law** are met under such actions. Progressive legislation combined with judicial review can strike the balance between government’s arbitrary shutdown of the internet and the public’s right to access information particularly during election periods. It will also prevent any retroactive application of laws to support internet shutdowns.

Legal Actions Before Domestic and Regional Courts

The best experience that can be replicated elsewhere is the **legal action** that was backed by civil society organisations and lawyers against mobile operators and governments over internet shut down in **January 2019** in Zimbabwe. **The shutdown caused loss of business and income and threats to life,** according to the suit filed by the Zimbabwe Lawyers for Human Rights and the Zimbabwe unit of the Media Institute of Southern Africa. The legal action was directed at the **three mobile networks operating in the country,** including Econet Wireless Zimbabwe Ltd, as well as President Emmerson Mnangagwa, the national security minister and the head of the intelligence services. The state security minister ordered service providers to switch off the internet after a wave of **violent anti-government demonstrations in the country.** **In this case the high court decided that “the minister had no authority to make that order.”**

Redress at a regional level is another avenue that should be explored as encouraging moves are seen at least from courts that are under the regional economic communities (RECs). In 2019, Access Now together with other eight organisations, **submitted a brief to Economic Community for West African States(ECOWAS),** arguing that the shutdown in Togo was inconsistent with regional and international frameworks and violated the fundamental human rights of the Togolese people. **The ECOWAS court ruled that the blackouts in Togo were illegal.**



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