

RIGHTS DEPLUMED

Mapping the Human Rights Impact of Internet Shutdowns in Ethiopia

Research Report

Consultant

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May 2021



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Center for Advancement of
Rights and Democracy

EXECUTIVE SUMMARY

Internet shutdown is a growing challenge in Ethiopia. Since 2016, internet shutdown has been imposed more than ten times in major events happening in Ethiopia, in the wake of high-profile assassination in Bahir Dar and Addis Ababa, and during armed conflict in Tigray. Despite a repeated pushback from civil society, and digital rights activists, the issue of internet shutdown did not get the attention it deserve, as well as the level of reprehension towards shutdowns remain a tangential agenda in socio-political discussions in Ethiopia.

The research report found that the Ethiopian government has been using different narratives which now includes a proposed law to justify internet disruptions. To effectively tackle the problem, this report emphasised that the human rights-based approach to be an appropriate normative frame to grill the actions of the government because it situates the issue of internet shutdowns in the broader debates of international human rights law. The report notes that the government must align its actions with the three pillars of human rights-based approach: substantive, process and procedural dimensions. Specifically, the Ethiopian government must align its shutdown measures with substantive standards of international human rights law, i.e., legality, legitimacy, necessity and proportionality. While the process dimension entails transparency and oversight requirements, the procedural dimension involves the government to follow due processes before imposing shutdowns, and remedial measures after shutdowns.

The report highlights the human rights impact of internet shutdowns in Ethiopia. It pinpoints various approaches human rights defenders and policy makers can use to frame and respond to the impacts of internet shutdowns in Ethiopia. Internet shutdown impacts a number of human rights, which are grouped into three generation of rights: first generation rights (civil and political rights), second generation rights (socio-economic rights) and third generation rights (solidarity rights). The report found that internet shutdown is an affront to democracy, and digitalisation, as well as it deplumes the normative values of constitutionally protected human rights and freedoms. The report also found that internet shutdown tarnishes the integrity of elections, and debilitates human rights in the digital age. The report concludes by offering some recommendations for human rights defenders, civil societies and policy makers to keep the internet on in Ethiopia.

1. INTRODUCTION

Internet shutdown is the hallmark of authoritarian governments around the world.

Evgeny Morozov in his book, *The Net Delusion*, famously argued that ‘few authoritarian regimes are interested in completely shutting down all communications, if only because they want to stay abreast of emerging threats, censorship of at least some content is inevitable.’¹ This claim is true in 22 African countries where internet disruptions were imposed from 2014-2019, 77% of them are authoritarian and the rest are hybrid or semi-authoritarian governments.²

In Ethiopia too, internet shutdown has become the new normal that is leaving millions in dark which may rise to trammelling the right to freedom of expression and other human rights. Successive prime ministers have been using internet shutdowns as a tool to muzzle freedom of expression in Ethiopia.³ However, shackling the rights to freedom of expression, offline and online through the means of internet shutdown is illegal. It is worth mentioning an affirmative

precedent in *Amnesty International Togo and et al v. Republic of Togo*⁴ where the Economic Community of West African States (ECOWAS) Community Court of Justice in 2020 held that the government of Togo violated individuals’ rights to freedom of expression when it shut down the internet in 2017. In particular, their rights to seek and receive information and to express and disseminate opinions online.

Internet shutdowns are known by other names such as internet blackouts’, ‘network disruptions’ ‘internet disruptions’, ‘internet outages’, or ‘kill switches.’⁵ Internet shutdown is understood as an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific or entire population, often to exert control over the flow of information.

Various studies conducted on internet shutdown have shown the economic impacts of blackouts⁶, the social impact

1 Evgeny Morozov, *The Net Delusion: how not to liberate the world* (Public Affairs, 2011) 93.

2 See Collaboration on International ICT Policy in East and Southern Africa (CIPEA) report, ‘Despots and Disruptions: Five Dimensions of Internet shutdowns in Africa’ (February 2019) 4.

3 Yohannes Eneyew Ayalew ‘The Internet shutdown muzzle(s) freedom of expression in Ethiopia: competing narratives’ (2019) 28 *Information & Communications Technology Law* 208-224.

4 *Amnesty International Togo and et al v. Republic of Togo*, ECOWAS Community Court of Justice, JUD No. ECW/CCJ/JUD/09/20 (June 25, 2020) para 45

5 Ben Wagner, ‘Understanding Internet Shutdowns: A Case Study from Pakistan’ (2018) 12 *International Journal of Communication* 3918.

6 See Darrell M West, ‘Internet Shutdowns Cost Countries \$2.4 Billion Last Year’, *Center for Technology Innovation at Brookings* (2016) 8.

of internet shutdowns⁷, the spectrum of shutdowns,⁸ specific context of shutdowns⁹ or the role of non-state actors¹⁰ in shutting down the internet. None of them have discussed the impact of internet shutdowns on different classes of human rights (first, second and third generation of rights) nor have approached the issue through the lens of human rights-based approach. Thus, this report is, therefore, seeks to interrogate the impact of internet shutdowns on human rights using a human rights-based approach. The human rights-based approach frames internet shutdown as a phenomenon to be assessed using three inter-related pillars: substantive, process and procedural dimensions.

This report is organised into six parts, including the introduction and conclusion. Part two explores the development of the

internet in Ethiopia, as well as discusses various policies of the government. Part three examines the various approaches employed to conceptualise internet shutdowns. These are: spectrum and human rights-based approaches. While part four explains the impact of internet shutdowns on human rights. In searching an advocacy frame, the report offers a human rights-based approach—which dictate measuring an internet shutdown through a substantive, process and procedural dimensions. For example, any internet shutdown must fulfil the substantive dimension which requires shutdowns must be legal, legitimate, proportional and necessary in a democratic society. So, part five sheds light on how the three pillars of human rights-based approach offers some solutions to confronting internet shutdowns in Ethiopia.



7 See Tomiwa Ilori, 'Life Interrupted: Centering the Social Impact of Network Shutdowns in Advocacy in Africa', Global Network Initiative (GNI) report (2021) 12.

8 Eleanor Marchant and Nicole Stremlau, 'A Spectrum of Shutdowns: Reframing Internet Shutdowns from Africa,' (2020) 14 International Journal of Communications, 4327–4342.

9 Wagner (n5).

10 Admire Mare, 'State-Ordered Internet Shutdowns and Digital Authoritarianism in Zimbabwe,' (2020) 14 International Journal of Communication 4244–4263.

2. THE PROVENANCE OF INTERNET IN ETHIOPIA

The advent of the internet in Ethiopia seems a very nascent phenomenon that was introduced two decades ago. Although Ethiopia had telephone services since 1894 – not long after its invention, the history of the Internet in Ethiopia with limited accessibility was introduced only in 1997, and broadband Internet was not widely deployed until recently.¹¹ According to the Ethiopian Ministry of Communication and Information Technology data, the first four thousand kilometres of fibre optic backbone were laid in Addis Ababa in 2005.¹²

It shall be recalled that Ethiopia is currently amongst countries with the lowest level of Internet penetration and use. Statistical figures have shown that the number of Internet users in Ethiopia is still low compared to the total number of population.¹³ There is disagreement about the exact number of Ethiopians with access to the Internet, but estimates typically range between 18 and 23 million. For example: the International Telecommunication Union (ITU), in the year 2018 provides that, out of 110,135,635 people living in Ethiopia; 18.62 million people are Internet users which constituted 17.1 % of the total population.¹⁴

Recently, the Ethio-Telecom released new figures on its bi-annual report. According to this report, as of 21 January 2021, there are 23.5 million internet subscribers in Ethiopia in the year 2020¹⁵ which constitute 20% of the total population (Per Worldometer, the Ethiopian population is estimated to be 117.5 million). In the past few years, Ethiopia has experienced a steady growth in internet penetration from 0.02% in 2000¹⁶ to 23.5% in 2020 which is estimated 23.5 million people are using the internet. Although Ethiopia still lags behind the rest of the world in internet penetration, it is bridging the gap very quickly.

11 Kinfe M Yilma and Halefom H Abraha 'The Internet and Regulatory Responses in Ethiopia:Telecoms, Cybercrimes, Privacy, E-commerce, and the New Media',(2015) 9 Mizan Law Review 109.

12 Ethiopian Ministry of Communication and Information Technology (2014) 1 Communication and Information Technology Statistical Bulletin 6.

13 See Halefom H Abraha 'Examining approaches to internet regulation in Ethiopia' (2017) 26 Information & Communications Technology Law 293-311.

14 see International Telecommunications Union (ITU) Internet users by country, <<https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>> accessed 7 May 2021.

15 Ethio Telecom 2013 EFY (2020/21) First Half Business Performance Summary Report <<https://www.ethiotelecom.et/ethio-telecom-2013-efy-2020-21-first-half-business-performance-summary-report/>> accessed 9 May 2021.

16 The International Telecommunications Union (ITU), Percentage of Individuals Using the Internet, Ethiopia <<https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>>accessed 7 May 2021.

Number of internet users in selected countries in Africa as of December 2020, by country (in millions)

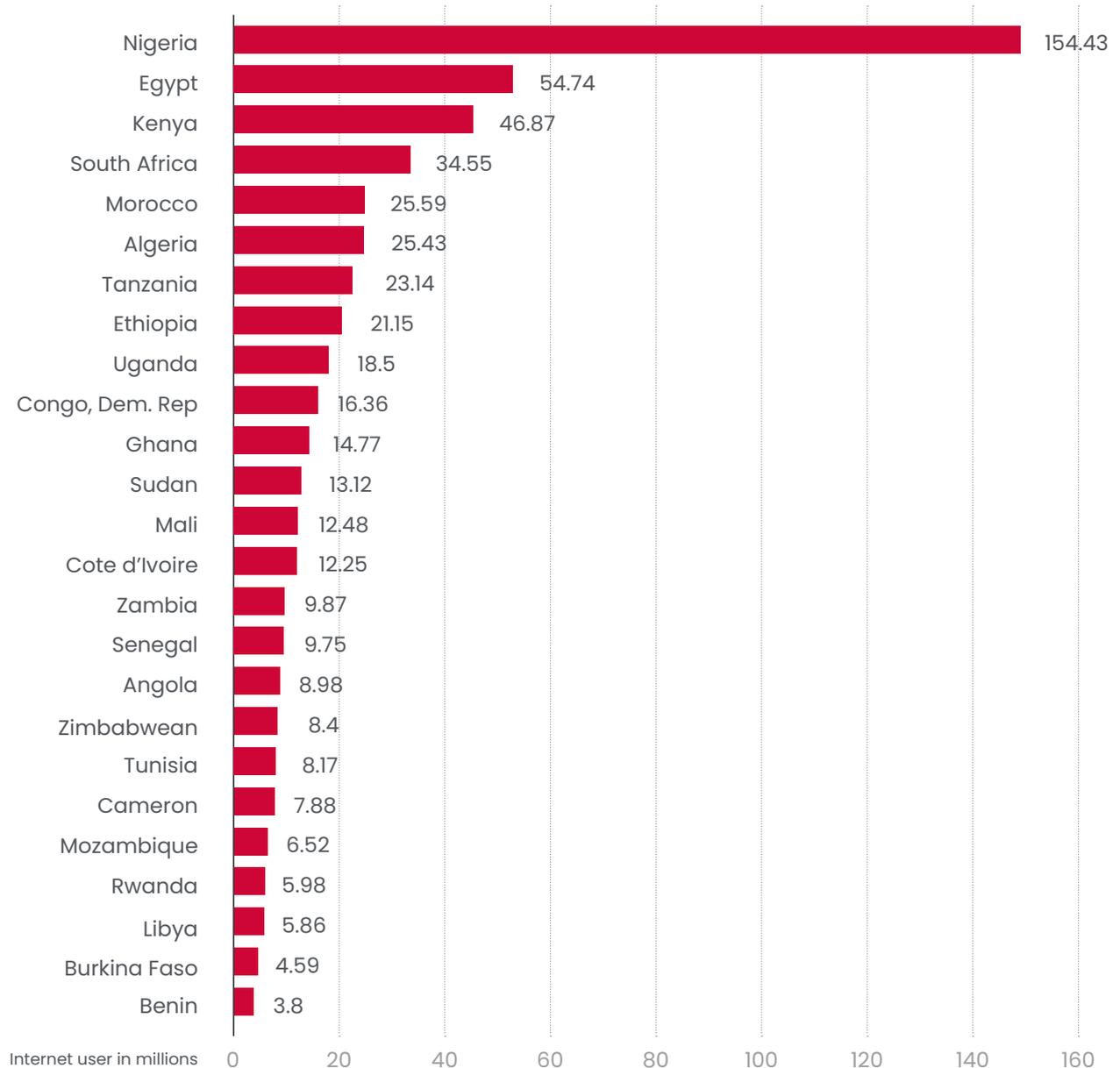


Figure1: Statista, the number of internet users in selected African countries as of December 2020¹⁷

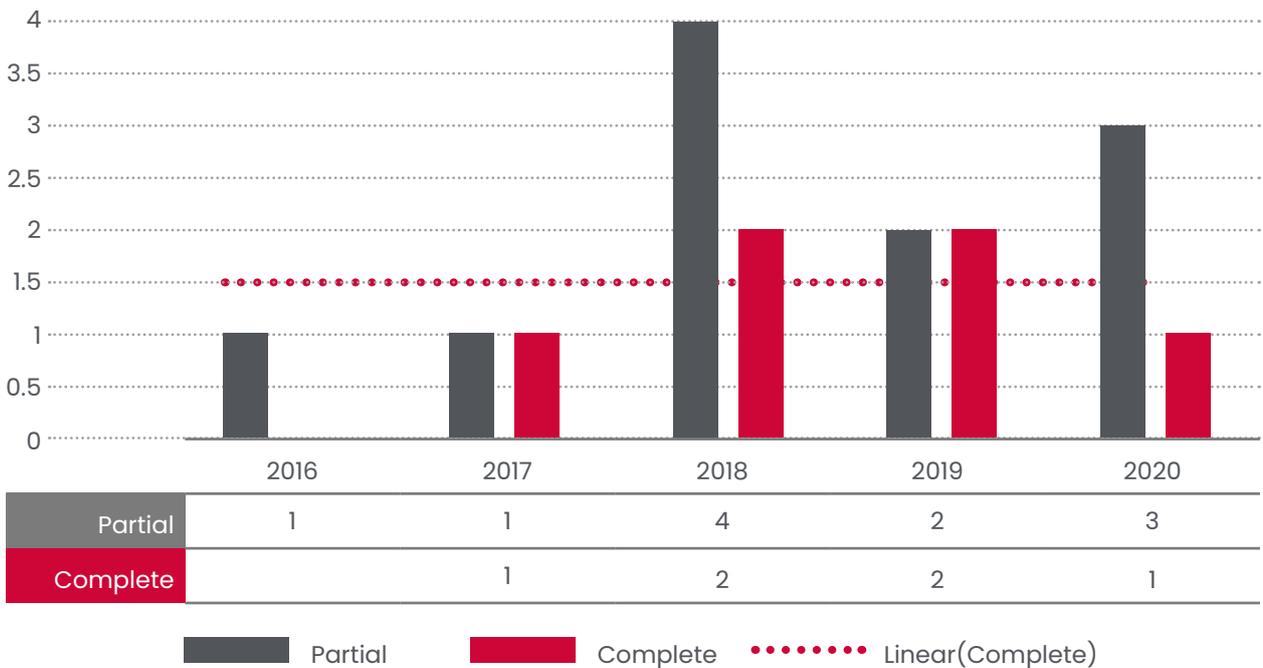
¹⁷ Statista, 'Africa: number of internet users in selected countries 2020' <<https://www.statista.com/statistics/505883/number-of-internet-users-in-african-countries/>> accessed 7 May 2021.

The Ethiopian ICT policy made in 2009 underlined the need for enhanced innovation including internet access. Meanwhile the country’s Second Growth and Transformation Plan/GTP II (2016-2020) aims to serve as a springboard for ‘realising the national vision of becoming a low middle-income country by 2025, through sustaining the rapid, broad based and inclusive economic growth, which accelerates economic transformation and the journey towards the country’s renaissance.’¹⁸ In GTP II, the strategic directions for digital infrastructure are: ‘accelerate information and communication technology, human development, ensure

the legal framework and security, use ICT for government administration, upgrade government electronics services, internalize ICT knowledge among the general public, use ICT for industrial and private sector development and ICT research and development.’¹⁹

From 2016 onwards, various justifications were given for shutting down the internet in Ethiopia. For example, the government invoked national security concerns, keeping the integrity of school exams, public order, armed conflicts and insecurity and deflecting cyber-attacks as official justifications to shut the internet off.

Trends of Internet shutdown in Ethiopia since 2016



18 Ethiopia: Second Growth and Transformation Plan (GTP II: 2016-2020).

19 ibid

Recently, the government of Ethiopia has launched a national ‘Digital Strategy’ (2020-2025), which aspires Ethiopia’s digital transformation by the year 2025. Prior to the announcement of the

national ‘Digital Strategy’, the Ethiopian Prime Minister Abiy Ahmed has made a controversial maladroit statement in a press conference addressing the issue of recurrent internet shutdowns in Ethiopia.²⁰



“As long as it is deemed necessary to save lives and prevent property damages, the internet would be closed permanently, let alone for a week. Ethiopia will cut the internet as it’s neither water nor air.”

Prime Minister Abiy Ahmed

Practically, the internet and mobile technology have played a decisive role in transforming the lives of millions in Ethiopia through innovation, tech start-ups and creativity since private companies have been introduced alternative digital services in banking and other sectors.²¹ For instance, using mobile phones, the M-birr service offers financial transactions. Using M-birr customers can deposit, withdraw and transfer cash, as well as pay for bills, goods and services.

Similarly, the Hello Cash service enables existing and potential customers of financial institutions to carry out transactions. One of the

unique features of the HelloCash mobile money service is the shared infrastructure feature, allowing multiple banks and Micro Finance Institutions to serve each other’s customers. In the agricultural sector, the Ethiopian Commodity Exchange (ECX) launched a gateway for direct online trading of agricultural products among farmers. In the transport sector, the ‘Ride’ also known as the ‘Ethiopian version of Uber’ simplified the lives of many Ethiopians to using private Taxi transportation.²²

In light of these policies, Ethiopia had launched ambitious projects in the history of e-government in Africa through

20 Africanews, Ethiopia will cut internet as and when, ‘it’s neither water nor air’ - PM Abiy (2 August 2019) <<https://www.africanews.com/2019/08/02/ethiopia-will-cut-internet-as-and-when-it-s-neither-water-nor-air-pm-abiy/>> accessed 7 May 2021.

21 Collaboration on International ICT Policy for East and Southern Africa (CIPESA) and Small Media, ETHIOPIA: Universal Periodic Review (UPR) Session 33 Digital Rights Advocacy Briefing Document, (2019) 8-9.

22 RIDE to Re-launch Internet Based Taxi Hailing Service in Addis Ababa, 2Merkato.Com <<https://www.2merkato.com/news/alerts/4783-ride-to-re-launch-internet-based-taxi-hailing-service-in-addis-ababa>> accessed 7 May 2021.

Woredanet and Schoolnet systems.²³ However, the Ethiopian government has been using Woredanet and Schoolnet projects to advance political ends and narrative control.²⁴ Put simply, the Woredanet stands for ‘network of district (woreda) administrations’ and employs the same protocol that the Internet is based upon, but rather than allowing individuals to independently seek information and express their opinion, it enables ministers and cadres in Addis Ababa to videoconference with the regional and district offices and instruct them on what they should be doing and how.”²⁵

Iginio Gagliardone argues that “the ‘Schoolnet’ uses a similar architecture to broadcast pre-recorded classes on a variety of subjects, from mathematics to civics, to all secondary schools in the country while also offering political education to school teachers and other government officials.”²⁶

The Digital Strategy also seeks to modernise and overhaul the WoredaNet system via creating a fibre network

backbone able to provide high-speed connectivity to public offices and institutions.²⁷ This shall be conducted under the supervision of the Ministry of Innovation and Technology (MINT).

While it is imperative to reintroduce the WoredaNet and SchoolNet programmes, maximum caution has to be placed in order not to abuse them for narrative control and governmental information flow channels.

In sum, few points may be made as to the development of the internet in Ethiopia. One, the internet penetration rate is increasing in the past few years in Ethiopia despite recurrent shutdowns in the country. Also, various policies have been put in place to expand internet connectivity throughout the country.

23 See Iginio Gagliardone “A Country in Order”: Technopolitics, Nation Building, and the Development of ICT in Ethiopia (2014) 10 Information Technologies & International Development 3-19.

24 *ibid*

25 Iginio Gagliardone and F Golooba-Mutebi, The Evolution of the Internet in Ethiopia and Rwanda: Towards a “Developmental” Model? (2016) 5 Stability: International Journal of Security & Development 1-24, 6.

26 *ibid*

27 Digital Strategy in Ethiopia 2025, 51.

3. FRAMING THE CONCEPT OF INTERNET SHUTDOWNS

There is no universal definition given to the concept of internet shutdowns. Various sources define and describe it differently depending on the context of discussion. However, the most persuasive technical definition of internet shutdown was developed at the conference in Brussels in 2016. As per this definition:

[a] deliberate disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.²⁸

In this definition, the first element of a shutdown is the **intentionality** behind it. This means that governments or Internet Service Providers (ISPs) restrict access to the internet deliberately. However, looking more closely we can see that the intentionality of an internet shutdown is not always clear-cut. For instance, if a natural disaster pummelled the central internet grid, then the internet or electric services could be disrupted for a period of time. In such a case, the action may not necessarily have been intentional. Nevertheless, in such circumstances states have positive obligations to protect and fulfil access to the internet by fixing dysfunctional facilities and restore internet connection.

The second element in the definition is the **disruption** of the internet services. This implies that the ISPs make an interruption to the free flow of their

services. These disruptions can be total or partial shutdowns. In the former, all services on the internet are blocked off, targeting mobile internet access and/or fixed lines, such that users in a country or region are not able to access the internet. By contrast, the latter includes content blocking techniques applied to restrict access to certain websites or applications, involves the throttling of the internet, very often to block people from communicating or sharing information inter se. The third element in the definition is the **target location or population** of the disruption. Sometimes this is a specific geographic region, at other times it is the entire State.

From a human rights point of view, internet shutdowns can be understood as an intentional measure to prevent or disrupt access to or dissemination of information online in violation of human rights law.²⁹

²⁸ This definition was developed at RightsCon Brussels in 2016 in collaboration with a diverse set of stakeholders including technologists, policy makers, activists, and others. see Deji Olukotun and Peter Micek, No more internet shutdowns! Let's #KeepItOn. (30 March 2016) <<https://www.accessnow.org/no-internet-shutdowns-lets-keepiton/>> accessed 7 May 2021.

²⁹ The promotion, protection and enjoyment of human rights on the Internet: resolution / adopted by the Human Rights Council, 18 July 2016, A/HRC/RES/32/13, para 10.

Similarly, the 2019 African Declaration on Freedom of Expression and Access to Information prohibits any disruption of access to the internet.³⁰ It provides: ‘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.’ Accordingly, the Declaration prohibits shutdown of the internet, of the kind described above in strongest and absolute terms. This makes the African human

rights system very progressive in terms of having a norm prohibiting internet shutdown, and would be a bulwark for the protection of human rights on the continent where internet shutdowns are common.

In Ethiopia, the Draft Computer Crimes Proclamation has a provision that defines internet shutdown similar to the above technical definition.³¹ The Draft Proclamation defines:

Internet shutdown means an intentional disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.

While replicating a definition from a digital rights’ civil society, AccessNow, might be proper in some context but the drafters have missed the opportunity to offer an alternative nuanced definition for the concept drawing from the unique context in Ethiopia, as well as the 2019 African Commission Declaration on Freedom of Expression and Access to Information in Africa.

a substantial increase in the number of African countries that shut off the internet.³³ There were ten such countries in 2018, and at least fourteen in 2019.³⁴ Out of the fourteen countries that shut down the internet in 2019, at least seven have either never shut down the internet or did not do so in 2018 and 2017. These include, Benin, Gabon, Eritrea, Liberia, Malawi, Mauritania, and Zimbabwe.³⁵

Per the AccessNow data in 2019 alone, the internet was intentionally disrupted at least 25 times in Africa, including Ethiopia.³² In addition to the steady increase in shutdowns, there was also

In a recent report titled ‘Shattered Dreams and Lost Opportunities’, AccessNow has documented that the internet was intentionally switched off in twelve African countries in 2020, including Ethiopia.³⁶

30 Declaration of Principles on Freedom of Expression and Access to Information in Africa, adopted by the African Commission on Human and Peoples’ Rights at its 65th Ordinary Session held from 21 October to 10 November 2019 in Banjul, The Gambia, principle 38(2).

31 The Ethiopian Computer Crimes Proclamation (Draft) (on author’s file)

32 AccessNow, Targeted, Cut off, and Left in the Dark, The #KeepItOn report on internet shutdowns in 2019.

33 AccessNow (n30)

34 AccessNow (n30)

35 AccessNow (n30)

36 AccessNow, ‘Shattered Dreams and Lost Opportunities, A year in the fight to #KeepItOn’ (3 March 2021) 2.

States provide a number of reasons to justify internet shutdowns. The most common official justification for ordering shutdowns in 2019 was fighting fake news, or hate speech.³⁷ In other words, States claim that a shutdown is necessary to fight viral mis-information and dis-information. However, references to hate or dangerous speech could be an attempt to hide their efforts to control the flow of information during periods of political instability.³⁸ Other justifications include national security measures in the form of military actions : for example in Ethiopia;³⁹ public order measures in relation to quelling protests, for instance in Sudan;⁴⁰ stopping students from cheating on school exams in countries like Algeria⁴¹ and Ethiopia;⁴² and during elections in countries including— Benin,⁴³ Cameroon,⁴⁴ The Gambia,⁴⁵

Malawi,⁴⁶ Senegal⁴⁷ and Uganda.⁴⁸ In 2020, however, many states failed to confirm their internet shutdown orders, leaving the affected populations to guess why they imposed this form of arbitrary measure.⁴⁹

There are some approaches to conceptualise internet shutdowns. For instance, the spectrum approach is an emerging frame to understand shutdowns which allows for more nuanced conceptualisation rather than thinking of shutdowns as a homogeneous technique. Thus, the spectrum approach recognises the variations of internet shutdowns, by considering their frequency and duration, depth, breadth, and speed.⁵⁰ Accordingly, frequency and duration interrogates how often and for how long the internet is shut off in a particular place. Depth questions

37 AccessNow (n30)

38 See Jaysree Bajoria, India Internet Clampdown Will not stop Misinformation, April 24, 2019<<https://www.hrw.org/news/2019/04/24/india-internet-clampdown-will-not-stop-misinformation>> accessed 7 May 2021.

39 International Crisis Group, Restoring Calm in Ethiopia after High-profile Assassinations, (Statement 25 June 2019) <<https://www.crisisgroup.org/africa/horn-africa/ethiopia/restoring-calm-ethiopia-after-high-profile-assassinations>> accessed 7 May 2021.

40 Heidi J. S. Tworek, Government-imposed internet blackouts are a power move to suppress dissent, (June 25, 2019, The Conversation) < <https://theconversation.com/government-imposed-internet-blackouts-are-a-power-move-to-suppress-dissent-119153>> accessed 7 May 4, 2021.

41 Jon Henley, Algeria blocks internet to prevent students cheating during exams, (The Guardian June 22, 2018) <<https://www.theguardian.com/world/2018/jun/21/algeria-shuts-internet-prevent-cheating-school-exams>> accessed 7 May 2021.

42 Yohannes Eneyew Ayalew, 'A Tale of Two Prime Ministers? Internet Shutdowns Gagging Free speech in Ethiopia' (OxHRH Blog, July 2019), <http://ohrh.law.ox.ac.uk/a-tale-of-two-prime-ministers-internet-shutdowns-gagging-free-speech-in-ethiopia/> (accessed on 4 May 2021).

43 Internet Sans Frontières, Internet Shutdown and Democratic Backsliding in Benin, (Paris, April 28, 2019) < <https://internetwithoutborders.org/internet-shutdown-and-democratic-backsliding-in-benin/>> accessed 7 May 2021.

44 UN Office of the High Commissioner for Human Rights (OHCHR), "UN expert urges Cameroon to restore Internet services cut off in rights violation", press release (10 February 2017). at<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21165&LangID=E>>accessed 7 May 2021.

45 Deji Olukotun, "Gambia shuts down Internet on eve of elections", Access Now (30 November 2016) at<<https://www.accessnow.org/gambia-shuts-internet-eve-elections/>>accessed 7 May 2021.

46 Civicus, Internet shutdown, disputed results and protests surrounded general elections (August 28, 2019) < <https://monitor.civicus.org/updates/2019/08/28/internet-shutdown-disputed-results-and-protests-surround-general-elections/>> accessed 7 May 2021.

47 AccessNow (n31) 14

48 Article 19, "Uganda: Blanket ban on social media on election day is disproportionate" press release (18 February 2016) at<<https://www.article19.org/resources/uganda-blanket-ban-on-social-media-on-election-day-is-disproportionate/>>accessed 7 May 2021.

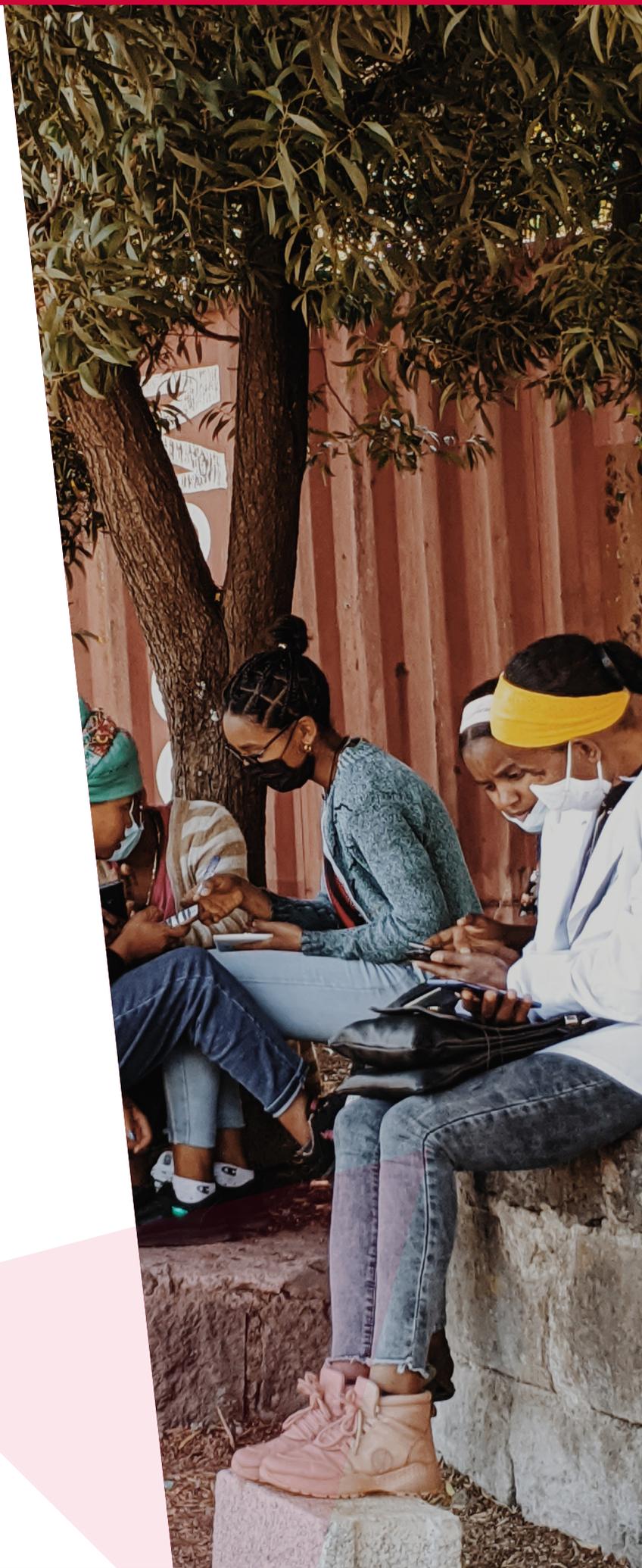
49 AccessNow (n36) 10.

50 Marchant (n8) 4327.

what type of content that is targeted, ranging from a full internet blackout, to a particular platform, or even the targeting of an individual blogger or another kind of user. While breadth explores how many people are affected or how geographically dispersed a shutdown is. Whereas speed measures the type of techniques available to implement shutdowns—from a complete shutdown to partial throttling.⁵¹

The other approach to understand internet shutdowns is a human rights-based approach. This report uses this frame to situate the concept of internet shutdowns in the broader debates of international human rights law. The human rights-based approach offers three pillars (substantive, process and procedural dimensions) to assess whether various types of internet shutdowns were lawful under international human rights law—which is further taken up under part five.

In concluding, internet shutdown may be understood as deliberate disruption of internet or electronic communications. There are various approaches employed to conceptualise internet shutdowns. These are: spectrum and human rights-based approaches.



⁵¹ Marchant (n8) 4336.

4. MAPPING THE IMPACT OF INTERNET SHUTDOWN ON HUMAN RIGHTS IN ETHIOPIA

4.1 The status of international human rights treaties in Ethiopia

Ethiopia has adopted cornucopia legal and policy frameworks protecting civil and political rights, as well as economic, social and cultural rights. Traditionally, and most importantly, the concept of internet shutdown is closely linked with the right to freedom of expression since shutdowns muzzle freedom of speech online.⁵²

Article 9(4) of the Ethiopian Constitution reads ‘All international agreements ratified by Ethiopia are an integral part of the law of the land.’ This means the Ethiopian legal system is seemingly considered as monist in giving effect to international treaties. In this respect, Getachew Assefa argues that international treaties ratified by Ethiopian parliament shall have a direct effect even without publication and the Ethiopian constitutional dispensation also shows that ratified treaties are in principle self-executing capable of direct application in Ethiopia.⁵³

In particular, Ethiopia ratified major international human right treaties that protects the freedom of expression, such

as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (freedom of expression in article 13), and Convention on the Rights of Disabilities (freedom of expression in article 21). At regional level, Ethiopia is party to the 1886 African Charter on Human and Peoples’ Rights (ACHPR)—which has a provision that guarantee the right to freedom of expression and access to information in article 9 as well as 1990 African Charter on the Rights and Welfare of the Child (ACRWC) and is fully bound by article 7 on the right to freedom of expression. Ethiopia is party to seven out of nine core international human rights treaties. The following table set forth the details of treaties ratified by Ethiopia.

⁵² Yohannes (n8) 208.

⁵³ See Getachew A. Woldemariam, ‘The Place of International Law in the Ethiopian Legal System,’ in Z. Yihdego et al. (eds.), *Ethiopian Yearbook of International Law 2016*, (Springer International Publishing AG, 2017) 75. However, in practice most of the time Ethiopian courts are oblivious to international human rights treaties.

SN	Name of Treaty	Date of Adoption at International Level	Date of Ratification by Ethiopia
1	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1965	23 June 1976
2	International Covenant on Civil and Political Rights (ICCPR)	1966	11 June 1993
	Optional Protocol to the International Covenant on Civil and Political Rights which allows complaint procedure	1966	Not ratified
	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	1989	Not ratified
3	International Covenant on Economic, Social and Cultural Rights (ICESCR)	1966	11 June 1993
	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	2008	Not ratified
4	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1979	10 September 1981
	Optional Protocol to the Convention on the Elimination of Discrimination against Women	1999	Not ratified
5	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) (CAT)	1984	14 March 1984
	Optional Protocol of the Convention against Torture	2002	Not ratified

SN	Name of Treaty	Date of Adoption at International Level	Date of Ratification by Ethiopia
6	Convention on the Rights of the Child (CRC)	1989	14 May 1991
	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2000	14 May 2014
	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2000	25 March 2014
	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	2011	Not ratified
7	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)	1990	Not ratified
8	International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)	2006	Not ratified
9	Convention on the Rights of Persons with Disabilities (CRPD)	2006	7 July 2010
	Optional Protocol to the Convention on the Rights of Persons with Disabilities	2006	Not ratified

Table 1: The status of ratification of international human rights treaties by Ethiopia

Under international human rights law, the Ethiopian government has at least three types of duties, namely the duty to respect, protect, and fulfil rights.⁵⁴ These obligations universally apply to all rights and entail a combination of negative and positive duties. Ethiopia is party to seven core international treaties as stated in the above table, which implies the government is under obligation to respect, protect and fulfil human rights.

The obligation to respect generally implies a negative duty by which all branches of government (executive, legislative and judicial) must refrain from violating the right. The African Commission in the Ogoni case affirmed that ‘the obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action.’⁵⁵

For example, the Ethiopian government is duty bound to refrain from shutting down the internet aimed at stifling freedom of

expression, unless permitted under a relevant exclusion to that expectation.

The obligation to protect obliges the Ethiopian government to guard right holders from interference with their rights through the behaviours of non-state actors. In this respect, the African Commission has clarified the essence of the obligation to protect as obliging states to protect right-holders against other subjects by legislation and the provision of effective remedies.⁵⁶

The third duty of states is the obligation to fulfil human rights, which is a positive expectation on the part of Ethiopian government to deploy its machinery towards the realisation of rights. This is intertwined with the duty to promote rights.⁵⁷ In relation to the right to freedom of expression, for example, it imposes an obligation on the Ethiopian government to take positive measures to promote that right through arranging mechanisms to open access to the internet and by installing telecommunication facilities.⁵⁸

54 See Asbjørn Eide, ‘Economic, Social and Cultural Rights as Human Rights’ in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social, and Cultural Rights: A Textbook*, (Kluwer Law International, 2001) 23-28.

55 *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, ACHPR Communication 155/96 (Ogoni case) para 45.

56 See *Haregewoin Gebre-Sellaise & IHRDA (on behalf of former Dergue officials) v. Ethiopia*, ACHPR Communication 301/05, 7 November 2011, para 130, and *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola*, ACHPR Communication 292/04, 22 May 2008, para 83.

57 *Ibid* para 47.

58 African Declaration (n30) Principle 37(3) (b).

4.2 The impact on first generation rights

For the sake of giving a clear picture different types of human rights, this report follows Karel Vasak's typology of human rights into three classes of generations.⁵⁹ These are: first, second and third generation rights⁶⁰. The first-generation concerns "negative" rights, in the sense that their respect requires that the state do nothing to interfere with individual liberties, and correspond roughly to the civil and political rights. For example, the right to freedom of expression, privacy, assembly or association. The second generation, on the other hand, requires positive action by the state to be implemented, as is

the case with most social, economic and cultural rights. For instance, the right to education, the right to health or work. The third generation of human rights which may be called "rights of solidarity", includes the right to development, self-determination, peace and healthy environment.

However, it shall be recalled that the 1993 Vienna Declaration and Programme of Action (1993) cast-off the traditional classification of right into three generations by adopting the principle of 'indivisibility' of human rights. The Vienna Declaration stipulates:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.⁶¹

When internet shutdown is imposed by states, it definitely affects a number of first-generation rights, specifically, the right to freedom of expression and access to information, freedom of assembly, freedom of association and the right to elect and participate in a democratic process.

The human rights law regime is one of the most significant normative frameworks

under international law to regulate internet shutdowns. This is because internet shutdowns impede human rights in the digital age, and the internet provides a mechanism for amplifying the exercise of rights online. Following its landmark Resolution in 2012, the UN Human Rights Council has acknowledged that human rights can be exercised on the internet.⁶²

⁵⁹ Karel Vašák, Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights (1977) UNESCO Courier, 29–32.

⁶⁰ See Spasimir Domaradzki, et al, 'Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse' (2019) 20 Human Rights Review 423.

⁶¹ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, Art 5.

⁶² The promotion, protection and enjoyment of human rights on the Internet: resolution adopted by the Human Rights Council A/

“The same rights that people have offline must also be protected online.”

In general, internet shutdowns deprive the normative values of human rights. During the times of internet shutdown, a plethora of human rights, both online and offline, will be debilitated, thereby deplume(ing) their intrinsic values and normative strengths.

The next part explores the link between internet shutdowns and how it affects various first-generation rights (civil and political rights) in Ethiopia.

4.2.1 Freedom of expression

The right to freedom of expression is protected under article 29 of the Ethiopian Constitution, as well as regional and international human rights instruments.

Article 29. Right of Thought, Opinion and Expression

1. Everyone has the right to hold opinions without interference.
2. Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.

The Constitution clearly endorses freedom of expression in similar terms as under the Universal Declaration of Human Rights (UDHR)⁶³ and the International Covenant on Civil and Political Rights (ICCPR).⁶⁴ It recognises freedom to seek, receive and impart information.⁶⁵ This further resonates

with the so-called ‘two dimensions’ of freedom of expression – individual and collective freedoms – through enabling the right holders to exercise their rights either individually or collectively.⁶⁶ It also embraces a plethora of modes and means of expression, be it orally, in

HRC/RES/20/8, (16 July 2012) para 1.

63 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Art 19

64 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series (UNTS), vol. 999, p. 171, Art 19

65 *ibid*

66 See “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Merits, Reparations and Costs. IACtHR Judgment of February 5, 2001. Series C No. 73. para. 64; and Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). IACtHR Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 30.

writing, in print or by any medium of one's choice.⁶⁷ Thus, freedom of expression on the internet is equally protected in Ethiopia under the Constitution through the phrase 'any media of his choice.'

Freedom of expression is also described as a meta or multiplier right since it enables individuals to enjoy many other rights.⁶⁸ For instance, political participation rights would be worthless without the conversation of ideas.⁶⁹ The rights to assembly, peaceful demonstration, and association would also be superficial if they did not include an entitlement to engage with, and express, ideas with others.⁷⁰ Having said that, freedom of expression is the frontline right to be thwarted by internet shutdown. Internet shutdown has a direct and limiting effect on freedom of expression online.⁷¹ The right to freedom of expression is the sine qua non of a democratic society.⁷² This is because freedom of speech enables citizens to participate in a democracy.⁷³ As a result, freedom of expression exercised through the new media, such as the internet in

new democracies, has been called the "oxygen of democracy."⁷⁴ In this regard, Benedek postulates that '[i]f freedom of expression is the oxygen of democracy, then the internet is the atmosphere, where people are living, breathing and exercising their freedom of expression.'⁷⁵

This claim is compelling in the sense that there is a growing reliance on the internet in the digital age. For this reason, shutting down the internet would shackle individuals' rights from expressing their views, venting their discontents towards government, as well as participating in a democracy.

In *Amnesty International Togo and et al v. Republic of Togo*, the ECOWAS Community Court of Justice found a violation of the right to freedom of expression by the Republic of Togo when the Togolese government had ordered shutdown measures in connection with widespread protests following demands for presidential term-limit.⁷⁶

67 *ibid*

68 Michael O'Flaherty, 'Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34,' (2012) 12 *Human Rights Law Review* 631.

69 UN Human Rights Committee (HRC), CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para 12.

70 Kevin Boyle, 'Thought, Expression, Association, and Assembly', in Moeckli, Shah and Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 2010) 266.

71 Yohannes (n3) 208.

72 See Cooray L.J.M., *The Australian Achievement: From Bondage to Freedom* (ACFR Community Education Project, 1988).

73 UN Human Rights Committee (HRC), General comment no. 34, Article 19, *Freedom of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para 2: 'freedom of expression constitutes the foundation stone for every free and democratic society.'

74 Freedom of expression and information is the oxygen of democracy – say Council of Europe leaders at meeting of Council of Europe, European Union and OSCE leaders on promoting and reinforcing freedom of expression and information at the pan-European level in Luxembourg (1 October 2002) see Wolfgang Benedek, *Freedom of Expression and the Internet* (Council of Europe, 2013) 24.

75 Benedek (n74) 24.

76 *Amnesty International Togo and et al v. Republic of Togo* (n4) para 4.



In Ethiopia, between 2016 and 2018, following the nation-wide civic disobedience movements and protests, the government has quelled these protests though shutting down the internet.⁷⁷ The mass protests have been led by the youths in different parts of the country. For instance, the Qeerroo, Fano, and Zerima youths have operated in Oromia, Amhara, and Gurage-Southern Nation, Nationalities and Peoples' (SNNP) regions, respectively. Most of youths were mobilised their protests through the internet. Consequently, individual's freedom of expression was severely restricted.

Recently, after a civil war broke out between the Federal government and

Tigrayan Liberation Front (TPLF) on 4 November 2020, the internet was closed in Tigray. Despite the claims and counterclaims of belligerents and blame one another for the disruptions in Tigray, the right to freedom of expression and communication of millions of residents in Tigray were affected, as well as hindered journalists from covering the situation on ground.⁷⁸

The internet shutdown in connection with ongoing armed conflict in Tigray implicates the collective aspect of freedom of expression as famously espoused by the Inter-American Court of Human Rights (IACtHR).⁷⁹

4.2.2 Freedom of Assembly

The right to assembly is recognised under the Ethiopian Constitution. The Constitution provides:

⁷⁷ Yohannes (n3) 214.

⁷⁸ Human Rights Watch, Q&A: Conflict in Ethiopia and International Law (25 November 2020) < <https://www.hrw.org/news/2020/11/25/qa-conflict-ethiopia-and-international-law> > accessed 7 May 2021.

⁷⁹ The Last Temptation of Christ case (n66)

Article 30 The Right of Assembly, Demonstration and Petition

1. Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.

The right to assembly is a discrete entitlement that allows individuals to express their views in assemblies or meeting halls. The right of peaceful assembly empowers individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others.⁸⁰ Together with other related rights such as the right to freedom of expression, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.⁸¹

Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for or opposition to those ideas and goals.

Article 21 of the ICCPR expressly mentions the right to peaceful assembly. The UN Human Rights Committee (HRC) in its General Comment No.37(2020) expanded the forms of assembly by clearly indicating that assemblies may be made through the internet.⁸² The HRC underscores the importance of internet for the right assembly, and discourages blocking or hindering of internet connectivity as:

Many associated activities happen online or otherwise rely upon digital services. Such activities are also protected under article 21. States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies. The same applies to geo-targeted or technology-specific interference with connectivity or access to content. States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression.⁸³

⁸⁰ See UN Human Rights Committee, General Comment No.37 Article 21: right of peaceful assembly, CCPR/C/GC/37 (27 July 2020) para 1

⁸¹ Ibid

⁸² See UN Human Rights Committee, General Comment No.37 Article 21: right of peaceful assembly, CCPR/C/GC/37 (27 July 2020) para 34.

⁸³ General comment No. 37 (n82), para. 34.

It follows that internet shutdown is a menace that impedes the enjoyment of the right to assembly. Undeniably, internet shutdowns (be it throttling or complete blackouts) seriously affect participants of meetings to hold a peaceful assembly.

In pandemics like Covid-19, almost all meetings are being held on the internet, thus, imposing internet shutdown literally means denying assemblies of any sort, in turn, will affect individuals' rights.

4.2.3 Freedom of Association

The Ethiopian Constitution guarantees the right to freedom of association. It provides as follows:

Article 31 Freedom of Association

Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.

This means individuals are entitled to form an association and associate with others for any cause. Individuals may form associations in offline or digital environments. The internet provides a mechanism to amplify the exercise of the right to association in many African countries since it has in some cases enabled Africans to replace despotic and dictatorial rulers. For example, association formed online in the social

media played a role in popular revolutions in Egypt, Sudan and Tunisia.⁸⁴

When internet shutdown measures are imposed, it will restrict individuals to run their association either in cyberspace or offline. Thus, internet shutdown is an antithetical to the right to association in the digital age.

⁸⁴ Dunia Mekonnen Tegegn, Why Access to Information is Essential for Democratic Elections in Africa, the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) report (January 2021) <<https://cipesa.org/2021/02/why-access-to-information-is-essential-for-democratic-elections-in-africa/>> 7 May 2021.

4.2.4 The right to elect and to participate in election

The right to elect in a democratic election is a fundamental right bestowed by the Constitution. Article 38 (1) enshrines the right to take part in the conduct of public affairs, the right to vote upon attainment of majority age, and participate in universal and equal suffrage.

Internet shutdown may affect individuals from making informed choice before or during election days, as well as restricts access to information for voters.⁸⁵

The African Commission on Human and Peoples' Rights has adopted a Guideline in 2017 on Access to Information and Election in Africa which unequivocally prohibits internet shutdowns during elections.⁸⁶

Principle 26 African Guideline on Access to Information and Election >
 ...public or private body involved in the provision of telecommunication services shall refrain from shutting down the internet, or any other form of media, during the electoral process.

Therefore, the Ethiopian government must refrain from shutting down the internet during elections. In the forthcoming general election or perhaps any local

elections and referendum, the government must keep the internet on since shutdowns during election would tarnish the legitimacy and legality of the election.

4.3 Impacts on second generation rights

Although many conversations on the impact of internet shutdowns on human rights tend to centre around first generation rights, it also has a profound impact on second generation rights (socio-economic rights), such as the right to education,

health, and even the right to work. In the next part, I will take you through into discussing the impact of internet shutdown on the right to education, the right to health and the right to work.

4.3.1 The right to education

The right to education is both a human right in itself and an indispensable means of realising other human rights.⁸⁷ This is

why the UN Committee on Economic, Social and Cultural Rights (CESCR) once aptly remarked that 'a well-educated,

⁸⁵ Dunia Mekonnen Tegegn, Why Access to Information is Essential for Democratic Elections in Africa, the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) report (January 2021) <<https://cipesa.org/2021/02/why-access-to-information-is-essential-for-democratic-elections-in-africa/>> 7 May 2021.

⁸⁶ The African Guidelines on Access to Information and Elections in Africa (the Guidelines) adopted by the African Commission on Human and Peoples' Rights on 10 November 2017, during its 61st Ordinary Session in Banjul, The Gambia, principle 26.

⁸⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 (Twenty-first session, 1999), The right to

enlightened and active mind person, can able to walk freely and widely, is one of the joys and rewards of human existence.⁸⁸ The right to education is widely regarded right under article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition to being a party of the ICESCR, the Ethiopian government has pledged under the Constitution to allocate enough resources for realising the right to education.⁸⁹

The CESCR has championed in its General Comment No.13, the realisation of right to education can be measured against quadruple 'A' standards.⁹⁰ These are: accessibility, availability, acceptability and adaptability. This report will not delve into the various nuances of quadruple 'A' standards, rather it focuses on the first two principles of availability and accessibility. The principle of availability prescribes that educational institutions and programmes should be available in sufficient quantity by states. For example, states are required to make available buildings, sanitation facilities, teaching materials, computer facilities and information technology.⁹¹

Given the ever-increasing pace of internet connectivity in academia, access to the

internet may be demanded as part of the right to education. On the other hand, the accessibility standard entails that educational institutions and programmes have to be accessible to individuals. The accessibility standard rests on three inter-related dimensions: physical accessibility, economic accessibility and non-discrimination. In terms of physical accessibility, it means education has to be within safe physical reach or via modern technology such as online instruction.⁹²

Recently, in the matter of *Shirin R.K. v. State of Kerala*, the Indian High Court at Kerala, set a progressive precedent that 'a restriction imposed on the use of mobile phones in a women's hostel was an unreasonable infringement upon the right to access the internet, and the right to education.'⁹³

In sum, it shall be said that internet shutdown would deprive the right to education (and truncates availability and accessibility dimensions of the right).

education (article 13 of the Covenant), Para 1.

88 CESCR (n86) para 1.

89 Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995, Art 41(4).

90 CESCR (n87) para 6

91 CESCR (n87) para 6(a)

92 Sital Kalantry et al, Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR, (2010) 32 Human Rights Quarterly 277.

93 *Shirin R.K. v. State of Kerala*, the Indian High Court, Kerala, (2019) paras 19-25.

4.3.2 The right to health

Internet shutdown thwarts the right to health. In the digital environment, people are becoming highly dependent on the internet for social services, including accessing health services. Thus, when State or non-State actors (Internet Service Providers) block or otherwise disrupt the internet, it would unequivocally affect the right to health as any form of internet shutdown results in failure to access health related information.⁹⁴

In interpreting the normative contents of the right to health, the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 14 highlighted that the right to health is not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to health-related information.⁹⁵ The Committee noted that information accessibility (and internet access) would fall under the ambit of accessibility in the famous ‘AAAQ’ test. In particular, information accessibility may well refer to the right to seek, receive and impart information and ideas

concerning health issues.⁹⁶ This further confirms that individuals can exercise these rights, both online and offline.

The report finds that the internet shutdown measure exceedingly affected the right to health in Ethiopia. First, during the internet blackouts, individuals were deprived of access to health-related information including sexual and reproductive health rights online. Second, patients’ have been forced to reschedule their medical appointments both in the domestic and overseas health institutions as a result of online communications blockage. Third, health sector technology companies were affected by the disruption of the internet; this is partly because they lost their income and created a huge inconvenience on their clients. Fourth and most importantly, due to an armed conflict and counter-insurgency, provision of health services and humanitarian aids have been obstructed. The Tigray and Wollega internet blackouts are the case in points.⁹⁷

94 See Yohannes Eneyew Ayalew, Questioning Ethiopia’s Internet shutdown measures through the lens of the Right to Health, Global Health Law Groningen Blog (28 June 2019) <<https://www.rug.nl/rechten/onderzoek/expertisecentra/ghlg/blog/questioning-ethiopias-internet-shutdown-measures-through-the-lens-of-the-right-to-health-28-06-2019?lang=en>> accessed 7 May 2021.

95 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, para 11.

96 CESCR (n95) para 12.

97 Alex De Waal, Switch Tigray’s Internet Back On, World Peace Foundation Blog (21 April 2021) <https://sites.tufts.edu/reinventingpeace/2021/04/21/switch-tigrays-internet-back-on/?fbclid=IwAR10ou7eSPEfq_afAvRNE1qNLNA_DWsrJkv1vkvTIWLCgyGSCU3c-W8Bo> 7 May 2021. See also Human Rights Watch Statement, Ethiopia: Communications Shutdown Takes Heavy Toll, Restore Internet, Phone Services in Oromia (9 March 2020) <<https://www.hrw.org/news/2020/03/09/ethiopia-communications-shutdown-takes-heavy-toll>> accessed 7 May 2021.

4.3.3 The right to work

The right to work is another fundamental right that could be affected by internet shutdown. In the views of the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to work has two dimensions.⁹⁸ The first dimension is individual which is laid down under article 6 and 7 of the ICESCR embrace the opportunity to gain living by work that one freely chooses or accepts — and thereby includes the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions.⁹⁹ While the collective dimension is addressed in article 8 of the ICESCR, which enunciates the right of everyone to form trade unions and join the trade union of one's choice, as well as the right of trade unions to function freely.¹⁰⁰

When shutdown is put in place, it trammels individuals to engage in income generating activities thereby effectively upsetting the right to work. In particular, internet shutdown impacts the individual dimension of the right to work in two ways. First, individuals engaged in internet related start-ups or local internet café businesses, their right to gain living will be significantly plummeted otherwise stopped altogether. Second, access to the internet will ease work and enhance work productivity,

further implicating enjoying just and favourable conditions of work. At this juncture, it is worth to mention a survey run by the Network of Digital Rights in Ethiopia (NDRE) in 2019. Although it was not a comprehensive in terms of methodology, the finding shows that internet shutdown had considerably affected the work productivity or work rate of 65% of Ethiopians during the blackout in 2019.¹⁰¹

As mentioned in passing under part 2, the internet has played a decisive role in transforming the lives of millions in Ethiopia.¹⁰² Private companies and mobile telecommunication rely on it to support technology-driven services.¹⁰³ This includes, for example, essential banking services start-ups (example, Ride service for transportation), etc. All these services rely on internet connectivity, which is why shutdowns have immense impact on the right to work.

98 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, para 2.

99 Ibid

100 Ibid

101 A survey on the impact of internet shutdowns in Ethiopia (September 2019) (On author's file)

102 Yohannes Eneyew Ayalew, How internet shutdowns have affected the lives of millions of Ethiopians, The Conversation (2 April 2020) <<https://theconversation.com/how-internet-shutdowns-have-affected-the-lives-of-millions-of-ethiopians-134054>> accessed 7 May 2021.

103 Abdi Latif Dahir, Ethiopia's tech startups are ready to run the world, but the internet keeps getting blocked, The Quartz Africa (18 June 2019) <<https://qz.com/africa/1646789/ethiopia-tech-startups-hurt-by-social-media-block-internet-shutdown/>> accessed 7 May 2021.

4.4 The impact on third generation rights

Like first generation rights, as well as second generation rights, internet shutdown may affect third generation rights. This report focuses

on the right to development as an example. The Ethiopian Constitution recognises the right to development as a fundamental human right.

Article 43 The Right to Development

1. The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.
2. Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.
3. All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.

In addition to this Constitutional provision, Ethiopia has adopted a Digital Strategy to foster development. One of the aspirations of Ethiopia's Digital strategy is to build robust connectivity to catalyse a digital economy.¹⁰⁴

Ethiopian Digital Strategy for 2025 section 5.1. >

Connectivity is a foundational element of digital transformation and can drive socio-economic development. Robust connectivity enables citizens and businesses to participate in the digital economy by having access to affordable and high-quality internet, through which they can engage in information sharing and online transactions. Improved connectivity also brings socio-economic development in multiple ways. A 10% increase in internet penetration for example, can improve a country's GDP by 0.9%-1.5%.

Given the universal access to internet as one of the UN Sustainable Development Goals (SDGs),¹⁰⁵ the shutdown of the internet will retard development and considerably affect the right to development. In other words, internet shutdown impedes the right to development.¹⁰⁶

Therefore, it follows that the Ethiopian government is under obligation to fulfil the right to development through keeping the internet on, and foster infrastructures that expand internet access.



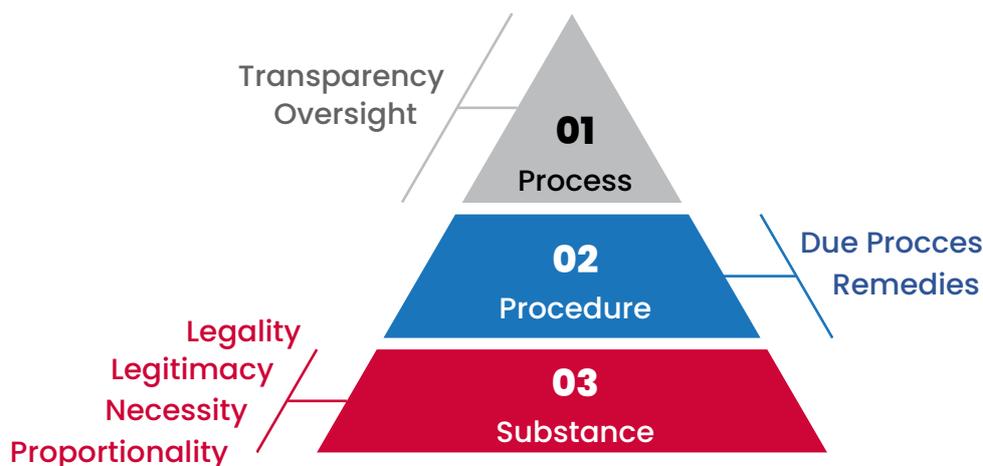
105 UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, Target 9.c.

106 Deborah M Nyokabi et al, 'The right to development and internet shutdowns: Assessing the role of information and communications technology in democratic development in Africa' (2019) 3 Global Campus Human Rights Journal 147-172.

5. TOWARDS A HUMAN RIGHTS-BASED APPROACH

Human rights-based approach is an important tool-box used to understand, frame and conceptualise the lawfulness of internet shutdowns under international human rights law. The human rights-based approach is an oldest approach to assess the lawfulness of any restrictions on human rights. When it comes to internet shutdown, this approach serves as a frame to grill the actions of state and non-State actors.

Pyramid Of Human Rights Based Approach



Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the vocabulary of human rights-based approach has begun to attract various stakeholders in academia and civil society. Conspicuously, the ICCPR has widened the gamut of human rights-based approach that applies to a number of rights under the Covenant. For instance, in relation to freedom of expression, the ICCPR outlines various ways to restrict the right under article 19(3). In 1984, the then UN Commission of Human Rights (now UN

Human Rights Council) has adopted the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, among other things, specify the modus operandi of human rights-based approach.¹⁰⁷

Later, the UN Human Rights Committee (HRC) further elaborated in length concerning the substance, procedure and process of human rights-based approach in various General Comments, including on the right to freedom of expression. This report draws the various nuances

¹⁰⁷ UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4.

of human rights-based approach from UN HRC reports, as well as the reports of the UN Special Rapporteur on the right to freedom of expression and opinion.

Now, it is important to unpack the notion of human rights-based approach. Human rights-based approach hinges on three inter-related dimensions.¹⁰⁸ These are: substantive, process and procedural dimensions. Digging into the details, the substantive dimension has four sub-components, such as, legality, legitimacy, necessity and proportionality, which dictates states to align their shutdown measures with international human rights law. The process dimension encompasses transparency and oversight mechanisms that states should follow before implementing internet shutdown measures. The procedural dimension embraces due process and remedial measures that guide states before imposing shutdowns.

The application of human rights-based approach to the issue of internet shutdowns was widely discussed in the reports of the former UN Special Rapporteur on freedom of expression — addressing contemporary challenges to freedom of expression in 2016¹⁰⁹ and the roles played by private actors engaged in the provision of Internet and telecommunications access in 2017.¹¹⁰

At the regional level, the African Commission on Human and Peoples' Rights has adopted specific Guidelines addressing internet shutdowns in Africa. The African Commission recommends human rights-based approach as a way to address shutdowns. Principle 27 of the 2017 African Guideline on Access to Information and Elections in Africa expressly forbids internet shutdowns but when they are imposed exceptionally, shutdowns must follow the various standards of human rights-based approach.

Principle 27 >

In exceptional cases in which a shutdown may be permissible under international law, the reasons for any shutdown shall be proactively disclosed. Such limitation shall:

- (a) Be authorised by law;**
- (b) Serve a legitimate aim; and**

(c) Be necessary and proportional in a democratic society.

¹⁰⁸ On the applicability of human rights-based to platforms moderation, see generally Barrie Sander, 'Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation,' (2020) 43 Fordham International Law Journal 939.

¹⁰⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, Contemporary challenges to freedom of expression, A/71/373 (2016) para 12-25.

¹¹⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, The roles played by private actors engaged in the provision of Internet and telecommunications access, A/HRC/35/22 (2017) paras 8-16.

It shall be noted that the proposed Computer Crimes Proclamation has a clause resembling the African Guideline. Particularly, article 24 (1) of the Computer Proclamation(draft) provides ‘Measures aimed at internet shutdown should only be made when they are necessary in order to protect national security, public order, public health and public safety.’

Accordingly, the African Guideline set forth the substantive (legality, legitimacy, necessity and proportionality) and process (proactive disclosure or transparency) aspects of human rights-based approach. The next part briefly summarise the three dimensions of human rights-based approach in relation to internet shutdowns.

5.1 Substantive dimension

5.1.1 Legality

The principle of legality refers to the requirement that Internet shutdowns imposed upon human rights by states should be provided by the law. The Ethiopian Constitution underscored the legality requirement under article 29 (6) using the phrase ‘these rights can be limited only through laws.’

Pursuant to paragraph 24 of the Human Rights Committee’s General Comment No.34, the underlying tenet of legality requires that any state restriction on human rights has to be clearly provided by law, and be specific. This means any measures should be ordered without

ambiguity. So, laws should not be vague in their formulation. As stated in *The Sunday Times v. the United Kingdom*, the European Court of Human Rights emphasised that the law has to be adequately accessible to the citizens.¹¹¹

In *Amnesty International Togo and et al v. Republic of Togo*, the ECOWAS Community Court of Justice expounded on the legality requirement by ruling that an internet shutdown made without clear legal procedure was illegal.

¹¹¹ *The Sunday Times v. the United Kingdom*, ECtHR 26 April 1979, para 49.

Amnesty International Togo and et al v. Republic of Togo, ECOWAS Court Judgement paragraph 45.

The Court notes that the Respondent's attempt to justify the action of the state of Togo in shutting down the internet access based on the protest that took place there. According to the Respondent, the said protests had the potential to degenerate into a civil war and therefore it was imperative for the State to protect the national security of the country. While this argument has merit and has been internationally recognized as a valid defence to derogate from certain rights, the fundamental basis of the exercise of this power of derogation is that it must be done in accordance with the law. In other words, there must exist a national legislation guaranteeing the exercise of this right whilst providing the conditions under which it can be derogated from. Such conditions may include but are not limited to public interest, national security, public health, public order etc. The Court therefore opined that the Respondent has not shown up either by reference or otherwise the evidence of any such law. On this note, the Court concludes that failure of the Respondent to provide the said law is evidence that their action was not done in accordance with the law and therefore, supports the Latin maxim "Exturpi causa non oritur actio." in the circumstances as analysed it is clear that in the absence of any law the Respondent is in violation of Article 9 of the African Charter on Human and People's Rights. The Court therefore holds that the act of the Respondent in shutting down internet access is a violation of the Applicants right to freedom of expression.

In Ethiopia, successive governments shut the internet off without any legal basis. Criticising this practice, the UN Special Rapporteur on Freedom of Opinion and Expression in his final visit report urged the government to end the practice of shutdowns.¹¹² But then again, the Ethiopian government responded to such claims by adducing a bizarre justification that the Information Network Security Agency (INSA) is 'vested with the power to keep the country safe from any threats against national security and it can take

¹¹² Report of the UN Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, David Kaye Visit to Ethiopia, A/HRC/44/49/Add.1 (29 April 2020) Paras 51-52.

¹¹³ Comments by the State on the Report of the UN Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression on His Visit to Ethiopia (15 April 2020) para 20.

measures when the necessity arises.¹¹³ In particular, the government cited article 6 of Proclamation No.808/2013 which re-establishes the INSA that mandates the Agency to upkeep national security. However, other than mentioning sweeping powers of the Agency, when one reads into the said provision, it does not grant the INSA's power to shut the internet off. Assuming article 6 mandates the Agency to shut down the internet owing to national security threats, then such national security argument should be

interpreted narrowly referring only to measures to protect a country's existence or its territorial integrity against the use or threat of force as per the Johannesburg Principles.¹¹⁴ Yet when we assess this law

as it stands, it is too general, nebulous and does not fulfil the legality requirement, both under Ethiopian Constitution and international human rights law.

5.1.2 Legitimacy

The legitimacy standard refers to the requirement that internet shutdown measures taken that restrict freedom of expression have to be in conformity with utilitarian grounds of communal interest such as national security, public health and morality or the right of others. For example, the Ethiopian Constitution under article 29(6) provides a few grounds by which freedom of expression can be legally limited. These include: limitations imposed to protect the well-being of the youth, the honour and reputation of individuals,

prohibition of the propaganda for war as well as the public expression of opinion intended to injure human dignity.¹¹⁵

In sum, before implementing shutdown measures, the Ethiopian government must align its actions with one or more communal interests or the right of others such as collective security, morality or public health or the right of others, including the right to privacy and the right to vote.

5.1.3 Necessity

Necessity is the third gauge by which to judge the compatibility of shutdown measures with human rights law. This means that the right to freedom of expression on the internet can be limited only if it is necessary in order to protect one of the legitimate objectives set out above. Although the Ethiopian Constitution is silent regarding the requirements of necessity, the African

Declaration provides useful guidance as to the necessity requirement by providing that a limitation has to originate from a pressing and substantial need.¹¹⁶

Whenever a limitation is deemed 'necessary', this requires that the limitation is based on one of the justifying grounds recognised by the relevant provisions of the treaty, and responds to a pressing

¹¹⁴ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, (ARTICLE 19, London, November 1996) Principle 2. Johannesburg Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. These Principles are authoritative source to understand the interface between national security and freedom of expression.

¹¹⁵ *ibid*

¹¹⁶ African Declaration (n30) Principle 9(4) (a-b).

public or social need.¹¹⁷ As such, any assessment as to the necessity of a limitation shall be made on objective considerations. This means that the courts decide the question by using certain objective conditions, though the matter is determined on a case-by-case basis. For example, in the *Konaté v. Burkina Faso*, the African Court held that ‘if a restriction is to be deemed acceptable, it is insufficient for it to be provided for by the law and to be written precisely; it must also be absolutely necessary for the

advantages which are to be obtained.’¹¹⁸ However, such limitation measures may not nullify the very purpose of the right.¹¹⁹ Even more importantly, shutdowns must not have as a consequence make human rights meaningless.

In toto, the necessity requirement obligates the Ethiopian government to align internet shutdown measures to be absolutely essential to the public interest sought, and necessary to meet some pressing social need.

5.1.4 Proportionality

States can restrict rights if the restriction is proportional to the objective such a restriction seeks to achieve. This means states have to demonstrate that the tools chosen to achieve legitimate objectives are proportionate so as to protect the rights or reputations of others, national security, public order, public health or morals. Applied to the right to freedom of expression online, while this test allows for some restrictions of internet access, it does not give states exorbitant leverage to muzzle the right holder.

The tenets of proportionality demand States restrictions are commensurate

with the objective sought to be achieved. *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v. Republic of Zimbabwe* dealt with state actions against the Associated Newspapers of Zimbabwe (ANZ) following its publication of *The Daily News* on 25th October 2003, which was critical of the government. State actions included police entering the ANZ offices in order to stop their work and prevent all further publication. The Complainants argued that the closure of the newspaper was causing irreparable harm to their freedom of expression.¹²⁰ The African Commission stated:

The principle of proportionality seeks to determine whether, by the action of the State, a fair balance has been struck between the protection of the rights and freedoms of the individual and the interests of the society as a whole. In

¹¹⁷ Siracusa Principles (n107) Principle 10.

¹¹⁸ *Lohé Issa Konaté v. Burkina Faso*, ACtHPR, Application 004/2013, Judgment, 5 December 2014, para para 132.

¹¹⁹ *ibid*

¹²⁰ *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Republic of Zimbabwe*, ACmHPR Communication 284/03, paras 1-12.

determining whether an action is proportionate, the Commission will have to answer the following questions: (1) Was there sufficient reasons supporting the action? (2) Was there a less restrictive alternative? (3) Was the decision-making process procedurally fair? (4) Were there any safeguards against abuse? and (5) Does the action destroy the very essence of the Charter rights in issue?¹²¹

Applying those principles, the Commission held that the closure of a newspaper amounted to a disproportionate measure and thus violated the right to freedom of expression because the extreme action of the State to stop the Complainants from publishing their newspapers, close their business premises and seize all their equipment could not be supported by any genuine reasons.¹²²

To illustrate this in context, internet shutdowns for example do not often satisfy the test of proportionality, even though their duration and geographical scope may vary. Affected users are denied access to emergency services and health information, mobile banking, e-commerce, transportation, school classes, voting and election monitoring, reporting on major crises and human rights investigations.¹²³ Most importantly, blanket shutdowns

measures are disproportionate to the legitimate aim to be sought as they are imposed on a blanket basis.¹²⁴ In Ethiopia the shutdown measure in connection with security forces strike in 2018 is said to be proportional as the closure concentrated in Addis Ababa only and did not extend to other parts of the country. Whereas the shutdown action in connection with the second state of emergency in 2018, as well as shutdowns ordered to keep the integrity of national exams did not fulfil the proportionality test since it is neither geographically limited nor platforms specific. Notably, the communication blackout in Tigray region may be justified as necessary to safeguard the country's existence, arguably it not proportional since banning all communication services (including internet) on blanket basis may result in unintended collateral damages on civilian population.

5.2 Process dimension

In addition to the above substantive concerns, the Ethiopian government should address concerns regarding transparency and oversight of internet shutdown measures.

Internet shutdown measures must be transparent and such actions must be

reviewed by an oversight body. Internet shutdowns ordered without transparency

¹²¹ *ibid* para 176.

¹²² Associated Newspapers of Zimbabwe case(n120) 178.

¹²³ The UN Special Rapporteur (n109), para 15.

¹²⁴ Article 19, Uganda: Blanket ban on social media on election day is disproportionate, press release 18 February 2016) at<<https://www.article19.org/resources/uganda-blanket-ban-on-social-media-on-election-day-is-disproportionate/>>accessed 8 May 2021.

will thus jeopardise the lawfulness of the process. For instance, in Chad, the failure of authorities to provide a meaningful public explanation for a series of internet and social media shutdowns between February and October 2016 created the presumption that they were unlawful.¹²⁵

To date, with the exception of the Tigray blackout, actions leading up to shutdowns

were not transparent nor communicated to the general public proactively. Even in the Tigray blackout, such clarification came out nearly a month after the conflict broke out on 4 November 2020. This makes the Ethiopian internet shutdown process a more complicated undertaking, and did not follow the prescribed process.

2 December 2020



Dear Our Esteemed Customers

Clarification on Tigray Region Telecom Services Current Situation

There has been telecom services interruption in Tigray Region for the last three weeks due to the crisis in the region. Currently, we are able to resume telecom service using alternative power solutions and after conducting necessary maintenance and rehabilitation works on damaged telecom infrastructures:

- ✓ In areas such as Dansha, Turkan, Humera, Shiraro, Maytsebri and Maykadra telecom service has been **partially** resumed
- ✓ In Alamata telecom service has been **fully** resumed

Dear our esteemed customers, we would like also to inform you that we are working to restore telecom services in all areas of the region within short period of time. To this end, we are working on maintenance & rehabilitation of damaged telecom infrastructures and also working with Ethiopian Electric Power to ensure commercial power availability in addition to considering alternative power solutions.

Ethio telecom

Also, who or which government department orders internet shutdown measures in Ethiopia remains clandestine. Apparently, there is a shaky public presumption that when the internet is shut off due to national exams, there is an assumption that the request for shutdown

might come from the Ministry of Higher Education. Equally, when a shutdown imposed due to national security, the order might come from the Office of Prime Minister or Information Network Security Agency (INSA). Ironically, these bodies were deferring the responsibility

¹²⁵ UN Special Rapporteur (n109) para 9.

of ordering shut down the internet to another undisclosed 'Higher Body'. This again casts a serious doubt and discontent that the process and means of shutdowns

are hidden to public scrutiny. As such, it can be argued that the whole process of shutdowns in Ethiopia seemingly devoid of oversight and accountability.

5.3 Procedural dimension

There should be some procedural guarantees for victims of internet shutdown. These include, the provision of due process of law and remedial measures. In terms of due process, the organ who orders the shutdown measures (be it the INSA, Prime Minister Office, Ministry of Education or Ministry of Peace) arguably did not involve affected customers (for example, Start-up owners) before they take actions.

customers to have a judicial recourse. Article 24 (3) of the draft Computer Crimes Proclamation sets forth the following provision 'any affected party has the right to judicial recourse to challenge the decision of the service providers, the Agency (Information Network Security Agency) or any other government body.'

Most importantly, with the exception of some recent public apology from Ethio-Telcom, the government has never given remedial or non-repetition guarantees to victims of internet shutdown and customers of telecommunication services. Poignantly, the government has been trying to normalise or justify internet shutdowns through a flawed narrative of 'internet is not water nor air'. Thus far, the steps taken by the Ethiopian government to shut down the internet were procedurally improper, and lacked effective remedies, including compensation. Although enacting a law discouraging internet shutdown along with cybercrimes may normalise the governments shutdown measures, the drafters of the Computer Crimes Proclamation have inserted a provision that could affirmatively enable affected

6. CONCLUSION AND RECOMMENDATIONS

This report considers the various human rights impacts of internet shutdowns in Ethiopia. In assessing the impacts shutdowns brought on human rights, the major finding of the report is that internet shutdowns affect every generation of rights in Ethiopia (civil and political rights, socio- rights and solidarity rights). The report highlighted that Ethiopia has ratified seven core international human rights treaties and is fully bounded by these treaties. Ethiopia has a Constitutional safeguard that promotes and protects human rights. However, contrary to human rights standards, successive Ethiopian governments were shutting down the internet on many occasions. Using doctrinal and comparative methods, which includes reviewing the relevant literature

on internet shutdowns and their impact on human rights, this report found that the human rights impact of internet shutdowns in Ethiopia is deplumating and sweeping. Regrettably, the Ethiopian government has been using different narratives which now includes a proposed law to justify internet disruptions. The report also found that the human rights-based approach should be an appropriate normative and practical tool to grill the actions of state and non-State actors (including the proposed private telecom service providers). Overall, the report concludes that the fight to keep the internet on in Ethiopia is far from over. In order to effectively fighting the practice of internet shutdown in Ethiopia, the report makes the following recommendations:

- ▶ As the lessons from Togo and India have enviously shown, strategic litigation is a powerful arsenal to fight internet shutdowns. Thus, civil societies working in Ethiopia should challenge the actions of the government before national and regional courts.
- ▶ Citizens and civil societies should start asking the actions of the government through a list of questions founded on a human rights-based approach. (These include: was the internet shutdown made by a clear law? was the shutdown legitimate? was the shutdown necessary in Ethiopian context? Whether the shutdown proportionate to the legitimate aim to be sought? Was the shutdown measure procedurally rigorous and fair? Whether the shutdown measure underwent a relevant process?)
- ▶ The Ethiopian government must end the practice of internet shutdown, as well as must stop normalising internet shutdowns and must be abide by international human rights standards such as legality, legitimacy, necessity and proportionality.

- ▶ Finally, in order to fully protect and enforce human rights, mainly the right to freedom of expression and other human rights affected by shutdowns, the government should take these rights seriously. This requires granting courts an active role of interpreting these rights. Also, the government must initiate a constitutional amendment process to expressly reclaim the court's inherent power of judicial review from a non-judicial body, i.e., the House of Federation.

