**Internet shutdowns by Governments in West and Central Africa, and non-compliance with international law require urgent action**

The rapid growth of Internet penetration rates in Africa has given to citizens of the continent a platform of free expression, which contrasts with the wall silence that long prevailed in many countries. In recent years, civil societies have used Internet to voice dissent, discontent with bad governance, and even to organize. In parallel, fearing the effects of such openness, some regimes in Africa resorted to online censorship.

Internet shutdowns, which are defined as [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](https://www.accessnow.org/keepiton/), are a type of online censorship.

While the practice of such censorship has occurred in [various locations of the continent between 2015 and 2016](http://afrique.lepoint.fr/economie/coupures-de-reseaux-sociaux-et-d-internet-l-afrique-explose-tous-les-records-21-10-2016-2077592_2258.php), many of them appeared to be located in West and Central Africa. From Mali to Gabon, trough Chad, the Republic of Congo, or the Democratic Republic of Congo, governments usually implement these shutdowns, through order requests sent to Internet Service Providers (ISP) or telecommunications operators.

In this case study, we shall focus on the implementation of Internet shutdowns by governments in West and Central Africa and their compliance with international law. To do so, we shall see that governments in West and Central Africa employ creative techniques to disrupt Internet access as well as diversified official justifications for internet shutdowns (I). We shall then see how by implementing these measures, West and Central African governments violate their international obligations. (II)

# West and Central African governments’ techniques to disrupt Internet access and their official justifications

1. Governments’ creativity in restricting citizens’ access to the internet

Instances of Internet shutdowns observed in 2016 by Internet Sans Frontières in West and Central Africa involve total Internet blackouts, restriction of access to certain websites, specifically social media, and throttling of bandwidth.

The pattern of implementation of these shutdowns that we observed is similar: Government officials, usually the Minister of Interior, order ISPs or operators to limit or cut Internet access, without a warrant.

[In March 2016](http://www.aljazeera.com/news/2016/03/congo-media-blackout-presidential-elections-160320044041238.html) the Minister of Internet of the Republic of Congo sent and official order to telecom operators to cut off text messages and disconnect fixed-line and mobile internet in the country for 48hours in the context of presidential elections. This widespread cut off of internet is the most extreme type of internet shutdown because it precludes Congolese citizens’ access to any internet services for example web research, online media, social media. The blockage of an entire nation’s Internet access is therefore the most restrictive to Internet users’ rights.

In other cases, Governments can choose to block access to only selected websites or social media. [In Chad, since February 2016](http://internetwithoutborders.org/fr/keepiton-open-letter-to-the-chadian-government-on-blocked-social-media/), there have been discontinuous interruptions in access to social media such as Facebook and Twitter, or VoIP applications such as Whatsapp or Viber.

Likewise in [Mali, in August 2016](http://internetwithoutborders.org/fr/keepiton-facebook-and-twitter-blocked-in-mali-amid-protests/) access to social media like Facebook, Twitter and Viber was suspended for a day, allegedly to prevent and avoid citizens’ coalition and planning of protests or events. In fact social media have proved to be very useful to unify people and to shape debates, like during the 2011 North Africa and Middle East uprisings.

Other African governments chose to use both throttling and total Internet cut, as Internet Sans Frontières reported following [Gabon’s presidential election and unrest](http://internetwithoutborders.org/fr/internet-bandwidth-limited-by-the-government-in-gabon/). In the aftermath of the election day, The Government of Gabon first resorted to restrictions to Internet Bandwidth by imposing Bandwidth caps. These bandwidth caps made applications and online services unusable, because they led to the saturation of the network. Although officially maintaining access to these websites, this type of interference with the speed of data transfer often makes Internet access difficult, and even impossible. In addition to bandwidth throttling, the Government decided to impose a total Internet blackout on the country. Under international pressure, notably from UN’s Secretary General Ban Ki Moon, and France’s Ministry of Foreign Affairs, a new form of Internet censorship appeared in Gabon: after four days of [general internet shutdown](http://allafrica.com/stories/201609051407.html), the government enforced what was called an [*internet curfew*](http://money.cnn.com/2016/09/16/technology/internet-censorship-blackouts-gabon/index.html), from 6 am to 6 pm as well as blocking access to Facebook, Twitter and WhatsApp. According to Human Rights Groups, including Internet Sans Frontières, « [the curfew was an attempt to convince the international community that things were returning to normalcy.](http://motherboard.vice.com/read/gabon-internet-censorship-election-outage)»

1. Poor official governments’ justifications for internet shutdowns in tensed contexts

While enacting these different techniques of Internet shutdowns, governments owe their citizens explanations. In fact, these measures are highly intrusive and harmful for their citizens.

However, in most cases, governments give none or poor official justifications to these measures, which often seem more like pretexts, than legal based reasons. While orders requesting ISPs and operators to limit or cut Internet access are not always publicly accessible, it is possible to draw a pattern.

For instance, the Chadian Government declared that its interruption of access to social media as a “technical problem”, but coincidentally, these Internet shutdowns happened in contexts of tension and outrage. More specifically, in February 2016, protests in support a young girl victim of gang rape, were violently repressed. In April 2016, the Internet shutdowns happened just after the controversial 5th re-election of the President of Chad Idriss Déby. Even reporters were prevented from covering the vote count of april presidential elections such as the TV5 monde reporters. ” [The authorities failed in their duty to ensure that the necessary conditions were in place for Chadian citizens to receive pluralistic media coverage of the first round of the election](https://rsf.org/fr/node/31262)*,” said Constance Desloire of Reporters Sans Frontières’s Africa desk.*

Some Governments may even deny publicly implementing Internet shutdowns, such as Gabon.

In Mali , in August 2016, the suspension of Facebook, Twitter and Viber took place just after the arrest of a journalist who had been an outspoken critic of the government and army.

It appears that those governments link their orders to the necessity to protect the public order. It was clearly disclosed In Congo-Brazzaville, in march 2016, when the Minister of Interior ordered telecom operators to shutdown internet access for 48 hours, by refering to national security reasons. This happened just as Congolese citizens were headed to the polls, a government source told AFP news agency the shutdown was intended to stop any "illegal" publication of the results of Sunday's elections.

In fact, these unwarranted actions are often taken in the name of protecting public order, or national security. Public order is indeed one of the possible reasons to exceptionally allow limitations to freedom of expression under international law. In fact, article 19 section 3 of the ICCPR states that rights of reputation of others, national security, public health, public order and moral are legal exceptions to the guarantee of freedom of expression. (<https://www.article19.org/pages/en/limitations.html)> Yet, can fear of losing power or fear of critics on re-elections be defined as disturbing the public order in these West and Central African countries?

# West and Central African Governments’ disregard for international law and its human rights impacts

1. A continuous violation of international obligations

While implementing Internet shutdowns, the previously mentioned West and Central African governments violate the rule of law. In fact, all of these countries are bound by sources of international law that protect the right to freedom of expression.

Article 19 of the Universal Declaration of Human Rights (1948) and article 19 of the International Covenant on Civil and Political Rights (1966) protect the right to freedom of expression. Article 15 of the International Covenant on Economic, Social and Cultural Rights (1966) protects the right of everyone to “enjoy the benefits of scientific progress and its applications” which includes the right to use internet. Moreover, the article 33 of the International Telecommunications Union’s Constitution, states the right of the public to use international telecommunication services and outlines the States’ duty to insure the exercise of this right. Internet is recognized as an international telecommunication service, therefore these governments should have protected these rights instead of diminishing them by restricting or blocking the access to this communication channel.

In addition, based on the UN Guiding principles on Business and Human Rights, governments should promote respect of human rights. With reference to the growing digital market in Africa, governments should urge companies operating in the digital sector, such as Internet Service Providers, to comply with international standards regarding the respect of freedom of expression. In fact, though the UN Guiding Principles are not binding, governments should be aware of their key role in the promotion of human rights. International treaties generally do not impose direct legal obligations on business enterprises. States have to translate their international human rights law obligations into domestic law and provide for their enforcement. Internet Service Providers are allowed to bring restrictions to their users’ rights because of government’s demands. While doing so they should however make sure that these restrictions respect three conditions summed up by the UN Special Rapporteur La Rue in his 2011 report. Restriction to users’ rights must be **rule-based, proportionate, necessary and follow a legitimate aim which can exclusively be one of the following : « respect for the rights and reputations of others, and protection of national security, public order public health or morals » (art.12 DUDH , art.17 PIDCP) .**

However, in the previously stated internet shutdowns in West and Central African countries, none of these Governments had respected these conditions and therefore Internet Service Providers should not have complied to these orders. On July 1, 2016, United Nations’ Human Rights Council adopted a Resolution, in which the Council states that human rights that apply in the non-virtual world must be applied with the same force in cyberspace. The Council condemns « *intentional measures to prevent or disrupt* *accessing or sharing information online.* » The position of the UN is since then very clear, blocking access to Internet or social media is illegal under international law. Governments such as the Chadian, Malian, Gabonese, and the Republic of Congo don’t comply with their international commitments.

At the moment, no jurisdiction exists to sanction the non-respect of these international commitments. As Emile Durieux wrote in his book Droit des medias (p. 848) only sanction gives rules their binding force, and in its absence commitments are weak and impunity prevails. However, the 26th article of the Vienna Convention of 1969 stipulates that « Every treaty in force is binding upon the parties to it and must be performed by them in good faith ». West and Central African governments should comply with this conventional rule.

1. A Non-Compliance with devastating consequences

“[It seems to me governments are using Internet outages as a license to commit human rights violations.](http://motherboard.vice.com/read/gabon-internet-censorship-election-outage)” Said Doug Madory, researcher at web analytics firm Dyn.

The fact that these West and Central African governments disregard international law and its sources by not complying with their obligations and commitments has a negative impact on their citizens. In fact, these Internet shutdowns constitute an infringement of their right to freedom of expression and communication. Freedom of expression and communication are two fundamental freedoms that allow citizens to have access to knowledge, information and communicate with others to express their own opinion. By cutting internet access, or access to social media, governments constrain internet users’ access to the information published on internet websites and social media, but not only, they also prevent people from communicating between them and express their own ideas.

Internet Shutdowns may also be used to avoid media coverage on human rights violation, as for example police repression of protests, like in Mali, in August 2016.

Furthermore, during Internet shutdowns, citizens’ economic and development rights are disrespected by these governments. Internet Shutdowns have damaging consequences for economic activities in the countries in which they are implemented. This includes socioeconomic impact and revenue loss in local businesses and digitalized economic areas. The last report of the [Organization](http://www.investorwords.com/3504/organization.html) for [Economic](http://www.investorwords.com/1639/economic.html) Cooperation and Development (OCDE) shows that by implementing Internet shutdowns these governments hope to paralyze political opinions in their country, but instead they only achieve to paralyze and freeze a part of their economy. A recent Brookings Institute report showed the world economy has lost [2,4 billion USD due to intentional disruptions to Internet connection.](https://www.brookings.edu/research/internet-shutdowns-cost-countries-2-4-billion-last-year/)

1. Conclusion and recommendations

Internet shutdowns have occurred in several countries in West and Central Africa: Republic of Congo, Chad, Mali and Gabon. The latter occurred in times of disputed elections, popular discontent, or unrest. They were usually ordered by Ministries of Interior officials without warrant, and in all cases observed, ISPs and operators agreed to implement the censorship request.

These shutdowns violate the International Law, and have undisputed Human Rights consequences. Recent reports show that they also dramatically affect local and world economies.

With other upcoming elections in Africa in 2017 and 2018, and with the growing citizens’ demands for better governance and accountability, it is likely that other countries than those cited in this case study will resort to Internet shutdowns. Therefore, it is urgent that actions are taken to prevent Governments in Africa to use this censorship:

* By pushing for the adoption of legal provisions protecting the right to access and use the Internet, in the aftermath of the July 1, Human Rights Council resolution;
* By reminding States their International obligation with regards to online freedom of expression, and freedom to assembly;
* By including mechanisms of international sanctions against States, which use Internet shutdowns to curb free expression and freedom to assembly;
* By internationally, strongly and publicly condemning States involved in such practices;
* By strongly inviting ISPs to have clear, transparent due diligence mechanisms to deal with Internet shutdown orders received from the Government.