The effects of internet shutdowns in Southern Africa

SOUTHERN AFRICA REGIONAL DIALOGUE ON INTERNET ACCESS
6 NOVEMBER 2019

SOUTHERN AFRICA LITIGATION CENTRE
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TYPES OF INTERNET SHUTDOWNS

• Instructions to regulatory authority
• Instructions to Internet Service Provider
• Executive directives
• Declaration of emergency

• Partial v Total
• Specific v Indiscriminate
• Full network v Only social media
• Short term v long-term
Appointment of regulatory authority board

- Parliamentary control over appointments
- Minister appoints but in consultation
- Minister appoints most or all members
- President appoints most or all of members
Independence of regulatory authorities

Requirements for transparency, parliamentary oversight

Legally Independent
Ministers can guide
Ministers can instruct
Powers of regulatory authorities

Act within parameters of the specific law
Any powers conferred by law

Anything incidental to functions
Any powers including assigned by Minister
Powers not limited by law
Administrative fines
Fine or imprisonment up to 2 years
Fine or imprisonment up to 5 years
Fine and imprisonment of 5 years

Failure to comply with orders of regulatory authorities
“Network shutdowns ... generate a wide variety of harms to human rights, economic activity, public safety and emergency services that outweigh the purported benefits.”

UN Special Rapporteur on Freedom of Assembly and Association, 2019
<table>
<thead>
<tr>
<th>Country</th>
<th>Estimated costs of 24-hour shutdown</th>
<th>Internet penetration (% population)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>$22.5 million</td>
<td>22.3%</td>
</tr>
<tr>
<td>Botswana</td>
<td>$9.5 million</td>
<td>47%</td>
</tr>
<tr>
<td>Comoros</td>
<td>$71.7 thousand</td>
<td>15.3%</td>
</tr>
<tr>
<td>Democratic Republic of the Congo</td>
<td>$3.2 million</td>
<td>8.6%</td>
</tr>
<tr>
<td>Eswatini</td>
<td>$1.8 million</td>
<td>47%</td>
</tr>
<tr>
<td>Lesotho</td>
<td>$1 million</td>
<td>29.8%</td>
</tr>
<tr>
<td>Madagascar</td>
<td>$1.6 million</td>
<td>9.8%</td>
</tr>
<tr>
<td>Malawi</td>
<td>$1.6 million</td>
<td>13.8%</td>
</tr>
<tr>
<td>Mauritius</td>
<td>$9.7 million</td>
<td>63.2%</td>
</tr>
<tr>
<td>Mozambique</td>
<td>$3 million</td>
<td>20.8%</td>
</tr>
<tr>
<td>Seychelles</td>
<td>$1.2 million</td>
<td>70.1%</td>
</tr>
<tr>
<td>South Africa</td>
<td>$60.8 million</td>
<td>56.2%</td>
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<tr>
<td>Tanzania</td>
<td>$9.4 million</td>
<td>38%</td>
</tr>
<tr>
<td>Zambia</td>
<td>$9.2 million</td>
<td>40%</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>$5.7 million</td>
<td>48.6%</td>
</tr>
</tbody>
</table>

Impact of shutdown on economy?

**SOURCE:** COST OF SHUTDOWN TOOL (COST), NETBLOCKS (2019) & INTERNET WORLD STATS USAGES AND POPULATION STATISTICS (2019)
Impact of Internet Shutdown on Economy

- Increased costs on business
- Mobile payment systems
- Remittances
- Personal income
- Transportation

Informal economy

- Women
- Reliant on low cost social media
- Self-employed

Personal

Formal economy

- Retrenchments
- Contribution of ICT sector to GDP
- Erodes business confidence
- Foreign Direct Investment
- Investor confidence
• 41% use internet in past 12 months to get information about health and medicine
• 32% use mobile phone for information about health and medicine
• Coordination of health services affected during shutdowns
• Access to emergency services
• Affects medicine supply chain
Chavunduka & Another v Minister of Home Affairs & Another, 2000 (1) ZLR 552 (SC)

DIMENSIONS TO FREEDOM OF EXPRESSION

**Creation**  
(internal dimension - the formation and holding of opinion, ideas and information)

**Communication**  
(communicative dimension - the expression of opinion, imparting of ideas and information)

**Effect**  
(external dimension - the effect of opinions, ideas and information on the audience)
IS THE LIMITATION OF FREEDOM OF EXPRESSION JUSTIFIED?

1) Is the restriction expressly written in law?

2) Is the primary purpose of the restriction public health, morality, security, order or the rights of others?

3) Is the connection between the restriction and the objective being pursued proportional?

Is there a “direct, obvious, serious and proximate harm to a public interest” that can justify the restriction?
TIMED BLOCKING OF INTERNET SERVICES AND BLOCKING OF SOCIAL MEDIA PLATFORMS IS FREQUENTLY A VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

Not provided for in law

Blocking not justified for legitimate purpose

Blocking unnecessary or disproportionate measure to achieve aim

Provided for in a law which is overly broad, vague, arbitrary

Blocking lists not available to determine purpose

Blocking renders legal content inaccessible

Limited oversight or review by judiciary or independent body

UN SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION, 2011
Decision

"Freedom of expression is a cornerstone upon which the very existence of a democratic society rests."

Expression and dissemination of ideas are indivisible.

Public Order as a Ground to Restrict Freedom of Expression?

Public order "requires the guarantee of the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard." [para 69]

Any restriction of the right to freedom of expression must:
- Be provided by law
- Be clear
- Be the least restrictive option
- Be necessary to achieve a legitimate purpose
- Be proportionate
- Be limited to the just demands of a democratic society
- Balance competing interests between the goal and the right
• Control of information to influence voters
• Filter websites critical of government
• Blocking of websites in local languages
• Access to information – impacts of fairness of elections
• Transparent election process & vote counting – reflect results in real time – confidence in outcomes
• Internet shutdown increases likelihood of disputed results, allegations of vote rigging
• Electoral laws prohibit interference with campaigning, or media distribution of information
<table>
<thead>
<tr>
<th>Country</th>
<th>Radio</th>
<th>Television</th>
<th>Newspaper</th>
<th>Internet</th>
<th>Social media</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana</td>
<td>41%</td>
<td>46%</td>
<td>19%</td>
<td>22%</td>
<td>30%</td>
</tr>
<tr>
<td>Eswatini</td>
<td>41%</td>
<td>37%</td>
<td>15%</td>
<td>16%</td>
<td>24%</td>
</tr>
<tr>
<td>Lesotho</td>
<td>46%</td>
<td>21%</td>
<td>3%</td>
<td>13%</td>
<td>16%</td>
</tr>
<tr>
<td>Madagascar</td>
<td>38%</td>
<td>16%</td>
<td>4%</td>
<td>3%</td>
<td>5%</td>
</tr>
<tr>
<td>Malawi</td>
<td>30%</td>
<td>7%</td>
<td>2%</td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td>Mauritius</td>
<td>89%</td>
<td>88%</td>
<td>35%</td>
<td>47%</td>
<td>42%</td>
</tr>
<tr>
<td>Mozambique</td>
<td>36%</td>
<td>28%</td>
<td>3%</td>
<td>11%</td>
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</tr>
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<td>Namibia</td>
<td>63%</td>
<td>41%</td>
<td>22%</td>
<td>25%</td>
<td>26%</td>
</tr>
<tr>
<td>South Africa</td>
<td>56%</td>
<td>69%</td>
<td>20%</td>
<td>32%</td>
<td>35%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>45%</td>
<td>23%</td>
<td>5%</td>
<td>8%</td>
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MEDIA

Shutdown = indiscriminate Disproportionate given population access to news
Radio remains major source of news

- Exchange of information
- Access to e-mail
- Access to information
- Ability to verify stories, fact-checking
- Shutdown affects access to safety alerts, weather warnings, government misconduct
- People easily jump between news platforms – radio, television, messaging, social media
- Misinformation increases during shutdown
PERSONAL SECURITY

- 85% of persons use internet in past 12 months to stay in touch with family and friends
- 53% use internet for information about news and politics
- Messaging services cheaper form of communication
- More flexibility, groups chats
- Increased arrests, police abuse during shutdown

Purpose and Effect of Internet Shutdowns?

When do States shut down internet and mobile services?

Pre-emptive: Official visits, Political events
Mass demonstrations
Counter-terrorism operations
Elections

Short-term shutdown

Long-term shutdown

Targeted at specific areas where there is political dissent

Laws utilised to effect internet shutdowns were not intended for that purpose:
• Communication laws intended to further universal access
• Interception laws aimed at specific types of communications and specific individuals
Stated rationale for shutdown?
- Public interest
- National security
- Public order
- Curtail spread of false information or incitement

Rights implications?
- Prevents access to information
- Impedes freedom of expression, assembly, association, opinion
- Impedes rights to livelihood and work, education, health

BUT!
- Wide in scope
- Move from censorship to complete disruption of communications
- Facilitates repression, marginalises, removes dissenting voices
- Limits transparency, accountability
- Creates rule of law crisis
Possible Arguments in Litigation on Internet Shutdown?

Main Statutory Arguments

- Was the State's communication law referenced?
- Does the Internet shutdown comply with the stated purpose of the Act?

- Does the law authorise communication blockage orders?
- Did the communication regulatory commission issue the order?
- Were the correct procedures followed? Did the correct government official issue the order?
- Was there undue pressure on an independent commission?
Methods used to block internet content
Source: Internet Society, Perspectives on Internet Content Blocking: An Overview

IP and Protocol-based Blocking

How?
A device is inserted in the network that blocks based on IP address and/or application (e.g., VPN)

What helps?
- Change IP address
- Migrate content
- Use content delivery networks (CDN)
- Hide IP address by using VPN

The connection has timed out
URL-based Blocking:
How?
A device is inserted in the network that intercepts web requests and looks up URLs against a block list.

What helps?
- Multiple layers of encryption
- Use non-standard application layer

Deep Packet Inspection-based Blocking:
How?
A device is inserted in the network that blocks based on key words or other content.

What helps?
- Multiple layers of encryption
- Small changes in text to bypass blocks

Platform-based Blocking:
ESPECIALLY SEARCH ENGINES
How?
Working with application providers (such as search engines), content is modified according to local requirements.

What helps?
- Use alternative platform, such as different search engine

DNS-based Blocking:
How?
Discourages access at network or ISP level. DNS traffic is funneled to a modified DNS server that can block lookups of certain domain names.

What helps?
- Send queries through unmodified public server (VPN)
Navigating Litigation During Internet Shutdowns in Southern Africa 2019