

INTERNET SHUTDOWN: GOVERNMENTAL ACTION, COMMUNICATION BREACH AND INTERNATIONAL HUMAN RIGHTS

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Abstract

This article deconstructs why governments shut down the internet in some parts and communities within their states for stated, and sometimes, no stated reasons. Using a doctrinal methodology the research question raised for the study is whether internet shutdown by any government, for whatsoever reasons, is not a governmental breach of internationally recognised human rights? One of the major findings of this work is that it is generally accepted that the right of access to the internet is an emerging right recognised by the international human right (soft law). It is as well recognised that the right is a special right, a standalone right without class, not because it is digital (soft) in outlook, intangible in effects and borderless in nature, but because it is accessory in nature. It is also established that digital right is an accessory right that makes the enjoyment of human rights possible. The study concludes that shutdown access to the internet shutdown may be legal provided the shutdown is moral and reasonable. It recommends that the dynamics of lawmaking should be geared towards enacting enabling laws and regulations that protect access to

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internet. The provision for derogation to these laws should be clear without ambiguity or obfuscation.

Keywords: human rights, internet shutdown, information, order, security

1.0 Introduction

Human right is a universally understood concept as there is a general understanding, for instance, of the concept of dignity of all human beings which is inherent in all human beings and inextinguishable or given. In other words, human rights are rights by virtue of being human.¹ The concept of human rights can be traceable to the philosopher Thoreau in his treatise, 'Civil Disobedience'.² The influence of this work in the discourse on human rights and the subsequent concept of international fundamental human rights is invaluable. The Universal Declaration on Human Rights (UDHR), 1948, is founded on the centrality of human dignity and worth which inheres in the human and any discussion on human rights and fundamental freedom remains empty if it is not about the human being.³ Despite it being a declaration, many states have adopted its content into their national constitutions such that by copious usage, the UNHR has acquired the force of law as part of the customary law of nations.⁴ As the internet has now

¹ Ravindran Daniel, *Human Rights in Theory and Practice: An Overview of Concepts and Treaties* (SAGE Publications India Pvt Ltd, 2022) 38.

² Henry David Thoreau, 'Civil Disobedience' (1849)
<<https://blogs.law.columbia.edu/uprising1313/files/2017/10/Civil-Disobedience-by-Henry-David-Thoreau.pdf>> accessed 22 April 2024; University of Connecticut, 'Human Rights Film+ Series' (2021-22) <<https://humanrights.uconn.edu/areas-of-focus/film-digital-media/human-rights-film-series/#:~:text=The%20Human%20Rights%20Film%2B%20Series,human%20rights%20issues%20and%20themes.>>> accessed 30 June, 2024.

³ Bhausaheb Ubale, 'Human Rights Poverty Eradication and Participatory Growth Program Rationale' (2008)
<<http://www.yorku.ca/povproj/publications/ProjectRationale.pdf>> accessed 30 June, 2024.

⁴ Ravindran, *Human Rights in Theory* (n 1) 45.

taken a center stage in our day-to-day activities, its intersection with the concept of human rights needs to be examined critically.

The internet is the pathway to information that can be accessed and retrieved anywhere without limitation to space and time. Through the internet, everyone could interact freely, via digital devices. As at 2022 statistics, there were 8.5 billion mobile subscriptions worldwide⁵ of which 4.5 billion people own smart phones.⁶ The advent of the Internet and associated digital facilities have enhanced the enjoyment of internationally recognised human rights since the internet provides cheap, affordable, and wide range of channels for expression of opinion and speech. In fact, the horizon created by the internet for the expression of opinion and speech is limitless and the possibilities being provided within cyberspaces are almost endless. Simply put, the internet has become the fastest means of communicating opinions, the cheapest way of spreading speeches and the widest way of broadcasting expressions.⁷ Notwithstanding all these positive uses of the internet, its malfeasance uses can be as monumental as the positive potentialities derivable from the internet uses. It is therefore necessary that information access needs to be regulated by the appropriate government body in line with the law. In order to regulate activities online, a government may be forced to, or find excuses, to order shutdowns for several reasons which may include the protection of national security and restoration of public order, to curtail the spread of hate speeches disinformation or misinformation.⁸

⁵ World Economic Forum, 'Charted: There are more mobile phones than people in the world' (2023) <https://www.weforum.org/agenda/2023/04/charted-there-are-more-phones-than-people-in-the-world/> accessed 28 March 2024.

⁶ GSM Association, 'Smartphone owners are now the global majority, New GSMA report reveals' (2023) <https://www.gsma.com/newsroom/press-release/smartphone-owners-are-now-the-global-majority-new-gsma-report-reveals/> accessed 28 March 2024.

⁷ Kathleen Stansberry, Janna Anderson and Lee Rainie, 'Expert Optimistic about the next 50 Years of Digital Life' (2019) Pew Research Center 1.

⁸ Afef Abrougui, 'Internet Shutdowns and Elections Handbook: A Guide for Election Observers, Embassies, Activists, and Journalist' (2021)

Government is a social control system that allocates law making right to some group within a society while also conferring enforcement rights to another group.. The government law is such that it is enacted to guide the lives and activities of its citizenry. The international Bill of Human Rights provides to everyone the right to equal access to public services in their country of which internet access is not excluded.⁹ There is no gainsaying that the government (law) extends to the use of the internet to ensure that such use does not contravene another person's right in the cycle known as the rule of law. The body of laws through which the society is regulated and governed could be unwritten as seen in the United Kingdom,¹⁰ or written as is the case of Nigeria which operates a documented constitution where the fundamental rights of individuals are entrenched in the 1999 Constitution of the Federal Republic of Nigeria.¹¹ In almost all the sovereignties of the world, freedom of opinion, speech and expression are designated as fundamental human rights.¹² This class of rights is the most inherent internet enhanced right.

Internet shutdown is any measure, factor, control or event that prevents, interferes, disrupts, disturbs, reduces, slows or hinders access to the internet. The manifestation of shutdowns may occur in various forms such as blockage of specific apps from functioning on social media, bandwidth throttling in order to slow internet access, total or partial shutdown of of

<<https://www.accessnow.org/guide/internet-shutdowns-and-elections-handbook/>>
accessed 22 April,2024.

⁹ See Article 21 (2) of the Universal Declaration of Human Rights. See also United Nations, 'International Bill of Human Rights'(2024)< <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>>Accessed> accessed 6 May 2024.

¹⁰ B. A. Haruna and Amana Mohammed, 'A Conceptual Analysis of the Rule of Law in Nigeria ' (2017) *Yusuf Bayero Journal of International Law & Jurisprudence* (BJILJ) 101-127.

¹¹ Ibid

¹² Article 19, The Universal Declaration of Human Rights (UDHR), 1948.

internet access.¹³ The uses of the internet either for negative purposes or for beneficial objectives are borderless. Hence, sometimes, governments of states have recourse to internet shutdown for the singular purpose of maintaining orders, security and peace within a political enclave or the whole geographical scope of the state. Desperate situation, it has often been argued, deserves desperate measures. Now the question begging for an answer is: what happens in a desperate situation where the best, perhaps, the only way out, is an internet shutdown?

The methodology for this work is doctrinal. It is an effort aiming at settling the conflict between access to the internet as an internationally recognised human right and internet shutdown as an antidote to ‘security threats’ to be considered by governments in a given appropriate situation. The primary objective of the work is to demarcate a boundary between when a government shutdown of the internet will amount to a proactive legal necessity and when it will amount to an instrument of suppression, oppression, and breach of human rights. This work is mainly centered on the main questions of ‘whether internet shutdown for whatever reason, without exception, is a breach of human right’. This question has always been a recurrent question in international jurisdiction. The need for the study is to locate the elements of law that confer legality and justification for governmental invoked internet shutdown, i.e., what are the ingredients of legal internet shutdown within the international human rights?

The work is divided into two parts. Part A deals with general introduction, Rights and Access to Internet, whether Internet Access is an Interest Recognised and Protected by Law? Part B engages the Complex Nature of the Right to Access Internet, Internet Shutdown, Excuses for Internet

¹³ Civic Space & Tech Brief, ‘Internet Shutdowns’ (2023) <<https://www.ohchr.org/sites/default/files/2022-03/Internet-shutdowns-and-human-rights.pdf>> accessed 10 October, 2023.

Shutdown, Internet Shutdown and Human Rights Violation, Legality of Internet Shutdown and Conclusion.

2.0 Rights and Access to Internet

The definition of ‘right’ has always being a debatable legal concept complicated by the lack of consistency in the way in which most people used the word ‘right’.¹⁴ However, for the purpose of this study, the definition of Salmond of ‘right’ as an ‘interest or benefit recognised by law’ is adopted while admitting the fact that such interests and benefits are protected choices.¹⁵ When a right is traceable to a particular law or by operation of a known law, such a right is qualified and usually described as a legal right. Again, for the purposes of this discussion, a legal right is an interest which is protected through the imposition of duties on other persons in respect of same: the immunity from the legal power of another.¹⁶ The hallmark of civilisation and humanity citizens’ duty to respect and recognize other citizens’ rights within the legal system. Premised on these basic attributes of legal right crammed into the adopted definition of legal right above, one may be tempted to ask whether internet access is a legal right?

The first question to be resolved here is to investigate whether the right of access to the internet is an interest or benefit recognised by law. Socio-linguistically speaking, ‘interest’ in the context of this discourse, simply means the ‘state of wanting to know or learn about something or someone’.¹⁷ For the purposes of determining the nature of access to interest, this definition of the concept ‘interest’ is apposite. However, the Black Law’s conceptual analytical definition of interest provides a better scope of

¹⁴ JM. Elegido: *Jurisprudence: A Textbook for Nigerian Students* (Spectrum, 1994) 155.

¹⁵ *Ibid.*

¹⁶ See the definition of ‘legal right’ in the Indian Supreme Court in the case of the *State of Rajasthan v. Union of India*, 1978 SCR (1) 1.

¹⁷ Oxford Languages Dictionary (2023) <<https://www.bing.com/search?>> accessed 10 October 2023.

‘interest’.¹⁸ Interest is described as the object of any human desire, a legal share in a thing; an equitable or legal claim in part or whole. For universal superstructure like the internet, an interest may be defined as, collectively, any agglomeration of rights, immunities, powers and privileges.¹⁹ A benefit is gain derivable from an object. It is evident that online activity engagement in specific domains relate to outcomes in that same domain offline.²⁰ Implicitly, it is assumed that internet usage does a targeted activity automatically subscribes that potential benefits linked to the activity are achieved.²¹ According to Black Law Dictionary, a beneficial interest is a right or expectancy in something.²² In other words, an interest is lawful share in something. Thus, access to internet is, first of all, a legal interest generally shared by *netizens*.²³

The Internet is a technology that is not ascribable to one inventor but is more a process which evolved over time by the combined effort of many.²⁴ This means that internet is not just an interest but it is an international amalgamation of interests to which citizens of the world mostly designated

¹⁸ Bryan A. Garner, *Black's Law Dictionary* (8th Ed. 2004), 2374

¹⁹ *Ibid.*

²⁰ Alexander van Deursen, Ellen Helsper, Rebecca Eynon, Jan van Dijk, 'The Compoundness and Sequentiality of Digital Inequality' (2017) 11 *International Journal of Communication* 452–473.

²¹ Alexander Jam Van Deursen and Ellen J Helsper, 'Collateral benefits of Internet use: Explaining the diverse outcomes of engaging with the Internet' (2018) 20(7) *New Media & Society* 2333–2351.

²² Bryan A. Garner, *Black's Law Dictionary* (8th Ed. 2004) 2374.

²³ Users of the internet, particularly, those that use internet as a medium of meeting, assembly, congregation etc. See Bhumika Sharma, 'netizens – Concept and Rights' (2016) 3(12) *Law Mantra* 1 <<https://journal.lawmantra.co.in/wp-content/uploads/2016/06/6.pdf>> accessed 29 May, 2024.

²⁴ Jaya Sharma, 'The Advantages and Disadvantages of Internet' (2024) <<https://www.shiksha.com/online-courses/articles/advantages-and-disadvantages-of-internet/>> accessed 23 June 2024.

as ‘digital citizens’ (or netizens) share.²⁵ Internet is the window through which persons in the physical world gain access to the cyber world where different human activities (such as studying, researching, teaching and learning, trading, interpersonal relationship, etc.) take place at all time.²⁶ Akeredolu,²⁷ premised on a United Nations special declaration,²⁸ argues that the internet provides enabling space for the realisation of all human rights. Rights such as freedom of expression, freedom from discrimination, social and cultural rights etc., are realisable on the internet.²⁹ Considering, from the premises of students and working-class engagement in the internet on their day-to-do activities, one can come to terms that the internet is not just an interest but also an international interest as it cuts across various activities within and outside a given country. Thus, the fact that access to the internet is not only an interest but an internationally affirmed interest is established and has become an internationally accepted trite law.

3.0 Is Internet Access an Interest Recognised and Protected by Law?

The General Assembly of the United Nations in 1946, among others, anticipating future possibilities like the internet, proclaimed that it is a right for every human being to hold opinion without interference or give and receive information through any medium regardless of frontiers for information dissemination.³⁰

²⁵ O.F. Akeredolu, ‘Digital Right Advocacy: Advocacy for Life in the Digital World’ (2021) 4(12) *International Journal of Social Science and Human Research* 3471-3481.

²⁶ Mesagan F. O, Eseadi C. & Omekwu, C. O. ‘Influence of Gender and Expected Competencies on Access to and Utilization of Cyberspace Resources and Services for Research by Postgraduate Students’, (2022) 27 *Education and Information Technologies* 6157–6171.

²⁷ O. F. Akeredolu, ‘Digital Right Advocacy: Advocacy for Life in the Digital World’ (2021) 4(12) *International Journal of Social Science and Human Research* 3471,3479.

²⁸ Preamble to African Declaration on Internet Rights and Freedoms, 2014.

²⁹ O. F. Akeredolu, ‘Digital Right Advocacy: Advocacy for Life in the Digital World’ (2021) 4(12) *International Journal of Social Science and Human Research* 3471,3479.

³⁰ Article 19 of the Universal Declaration of Human Rights.

The internet qualifies as a media through which information and ideas is usually sought, received and imparted, anticipated by Article 19 of the United Nations Universal Declaration of Human Rights (UDHR), is incontestable. Hence, it is arguable that the usage of the internet as a medium to express opinion freely and a forum to look for and receive information, is a right built into Article 19 of UDHR. The implication of this is that freedom to adopt the internet as a medium of expression of opinion, among others, is (an imperfect)³¹ right secured by international human rights law.

On June 30, 2016, the United Nations General Assembly on Human Rights Council internationally recognised and affirmed that:

The same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Right.³²

Sequel to this international (re)affirmation, the UN General Assembly declared internet access an international human rights in a non-binding Resolution.³³ Although the Resolution, a shade short of the expectations of the international stakeholders in digital advocacy, did not address governmental responsibility to provide access to internet to all citizens of the world, it created inspirational headlines around the world.³⁴ However,

³¹ Imperfect rights are non-justifiable rights though recognized. See David Frydrych, *The Architecture of Rights: Models and Theories* (Palgrave Macmillan, 2021) 231.

³² Article 1, the United Nations General Assembly, ORAL REVISIONS of 30 June (General Assembly resolution 70/1.)

³³ A resolution that derives its validity from the highest standard of international mores.

³⁴ Jack J. Barry, 'COVID 19 Exposes Why Access to the Internet is a Human Right' (2020) OpenGlobalRights< <https://www.openglobalrights.org/covid-19-exposes-why-access-to-internet-is-human-right/>>accessed> accessed 29 May 2024

the fact that the 2016 United Nations General Assembly on Human Rights Council declared internet access as a human right is not only a recognition of digital rights under international (soft) law on human rights and civilisation, but decreed access to the internet as an internationally recognised right. By the token of this international affirmation, access to the internet was transmuted from an inbuilt law to a right recognised by international law.

The decision in the Indian case law in *Faheema Shirin v. State of Kerala*,³⁵ is promoted as the judicial authority that proclaim internet access as a fundamental right vis-à-vis the country's Constitution. In the case, the applicant was vexed by her expulsion from her school hostel on the proved allegation that she violated the school's regulation that prohibited using mobile phone within a specific period of the day. It was held that accessing internet is a right free to all as it provides a medium to access right to education. Therefore, any instruction or rule that is set to impair the students' right will be against the law. Any restraints on the fundamental freedom of the student will adversely affect the student who seeks for knowledge to enable have competitive edge among her peers; such instruction cannot be permitted by law.³⁶

The other important feature of a legal right established by the application of the United Nations' declaration that internet access is a human right by the Indian Court is the element of a legal right. This is to the effect that an interest is a right only if such interest is protected by the law. Therefore, the Indian Court specifically held that any instruction that violates the protected interest of a citizen cannot be permitted. It is, therefore, safe to conclude that since the right of access to the internet is a right that enhances the enjoyment of other fundamental human rights, then the right to the internet is an inchoate right expressly recognised by international law and can be

³⁵ WP(C). NO. 19716 OF 2019 (L) ; [2019] SCC Online Ker 2976.

³⁶ Jack J. Barry, 'COVID 19 Access to Internet' (n 34).

protected by national court (like Indian Supreme Court) and regional judicial bodies like the ECOWAS Court and EU Courts.

4.0 The Complex Nature of the Right to Access Internet

The internet, just like the physical world, is infused with creativity and innovation. It has redesigned the world by making reconstruction which has made the citizens both in the physical world and the profusion of information have helped integrate cultures and almost reduced to oblivion the territorial boundaries of state.³⁷ The internet has become a forum where the people of the two worlds meet, where all individuals are considered equal and they equally take advantage of all required rights in order to be respected for natural purposes to have access to information, express opinion, and acquire knowledge.

Within the enclave of the scope represented by the internet are deep-seated rights termed as citizen rights, some of which are right to life, freedoms of thought, religion and expression, freedom of movement etc.³⁸ In most of the advanced democracies of the world, these set of rights are constitutionally protected and thus often referred to as the fundamental rights.

Also locatable at the core of the internet is the manifestation and expressive exercise of the right and freedoms of association and assembly. These rights are guaranteed and protected by both international legal instruments and domestic law mechanisms. Also embedded within the internet are economic rights, otherwise known as workers' right, social and cultural rights. In short, it is tempting to argue that having internet access promotes the convergence of all basic human rights within a device whether the device is handheld (cell/mobile phone), laptop, desktop, wall-hanged, or on

³⁷ Sanket Santosh Kate, 'Right to Internet: Why it matters', 2020, The Daily Guardian<
<https://theguardian.com/right-to-internet-why-it-matters/>> accessed 31 May, 2024.

³⁸ Paul Hunt, *Social Rights Are Human Rights* (Centre for Welfare Reform, 2017), 11.

surface displayed. This is a way of saying that provides an outlet to the enjoyment of human rights online.

The fact that the internet serves as a complementary right explains the complex nature of the right of access to the internet through the prism of operational approach. Access to the internet discussion and advocacy is shaping international and domestic legislations and regulations. The existence of the internet has made human rights "real" in places such as homes, neighbourhoods, schools, hospitals and workplace.³⁹ Internet has become the driving force behind universal human rights. Its presence seemingly invisible in the world, yet, it is everywhere all over the world.⁴⁰ Viewing internet access from this perspective, the Community Court of Justice of the Economic Community of West African States (ECOWAS) explains that:

The right to freedom of expression is necessarily complemented by access to the internet. Invariably, freedom of expression and access to internet becomes integral part of human rights, a violation of which is actionable. Both become elements of human rights for which states are under obligation to protect. In line with the above, access to internet should be deemed a right requiring state protection and any interference with the enjoyment of these rights has to be by specific statutory provisions.⁴¹

Given the numerous uses of the internet and its importance to life on the physical world today, access to the internet is not only an interest, but a right that supports the most important of all human rights: right to life. This is because, internet provides jobs and employment, supplies medicine and medical treatment, education, trade, financing, religion worshipping centres

³⁹ *Ibid*, 13.

⁴⁰ *Ibid*.

⁴¹ Amnesty International Togo & 7 Others v. The Togolese Republic (2020) SUIT No: ECW/CCJ/APP/61/18, 11

and information that makes life beautiful. Today, the internet has become the largest and cheapest avenue for expression of opinion, assembly of persons, escalation of information, promotion of relationship etc. The internet of things (IoT)⁴², the most revolutionised usage of internet, and advance stage of automation, is the connection nerve centre of the world where many objects interconnect in the digital world in order to communicate and share information with non-human things in the physical world, through Internet Protocol (IP) networks. The technology behind IoT is the interaction not of all forms of devices and appliances connected in a manner as to achieve smart re-organisation, online process control and administration.⁴³ The Internet of Things is now the epicentre of governmental activities and actions, business administration, international connection and interaction, home management and security, medical treatment and complex diagnosis, education, and almost all human activities on earth.⁴⁴ Its significance lies in its capacity to optimize productivity, reduce environmental hazard, improve product quality and “take the edge off resources to make life more innovative, accessible and dynamic.”⁴⁵

It has been recognised that the internet is an indispensable enabler a varied range of human rights.⁴⁶ As digitalisation advances, the internet upscales the realisation of freedom of expression, freedom of association and assembly, engagement in socio-cultural life and improvement in the standard of living. Access to internet is a right in *re-aliena* as well as a right

⁴²Niranjan Lal et al, *Internet of Things: Applications for Sustainable Development* (CRC Press Taylor and Francis Group, 2023)1.

⁴³ O. F. Akeredolu, ‘Digital Right Advocacy: Advocacy for Life in the Digital World’ (2021) 4(12) *International Journal of Social Science and Human Research* 3476.

⁴⁴ Niranjan Lal et al, *Internet of Things: Applications for Sustainable Development* (CRC Press Taylor and Francis Group, 2023)1,3.

⁴⁵ *Ibid.*

⁴⁶ Human Rights Council resolution 47/16; and A/66/290, para. 12.

in *re-propria*.⁴⁷ It is safe to conclude that access to internet is not only a complementary right; it is a human right that provides an international forum for the exercise of all other classes of internationally recognised human rights. Therefore, premised on the grounds stated above, it is arguable that the right to the internet is an embodiment of internationally recognised human rights.

5.0 Internet Shutdown

Internet shutdowns or blackouts are measures taken by persons in powers and or authorities, either governmental or non-governmental, to intentionally disrupt access to, and imposes limitations to the use of information and communications facilities online.⁴⁸ From all indexes and available evidence, internet shutdown exists on a spectrum of measures usually taken to disrupt access to the internet intentionally.⁴⁹ The shutdown consists and lies in any order, instruction, directives or activity designed to limit the ability of an identifiable group or class of people to use online communications tools, either by absolute restriction of internet connectivity, obstruction of accessibility and usability of services that are necessary for interactive communications online, such as social media and messaging services.⁵⁰ In fact, sometimes, communication channels and

⁴⁷ A re-aliena right is available against the property of another person i.e., a right of easement and the right to freely use the right of others. Right in re-propria is the right available in respect of one's own property. It results in absolute ownership. See Oxford Reference, 'Jus in re aliena'(2024)<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100027503>> accessed 23 June,2024.

⁴⁸ United Nations (Human Right Council) General Assembly, Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 2022, A/HRC/50/55, 2.

⁴⁹Businessday, 'How internet Shutdowns Impact People', (August 19) 2022, Sponsored.<https://businessday.ng/sponsored/article/how-internet-shutdowns-impact-people/>

⁵⁰ United Nations (Human Right Council) General Assembly, 'Internet shutdowns ' (n 48).

networks are slowed down or completely blocked during the internet shutdown.⁵¹ When such internet disruption is facilitated by a government, it is known as governmental internet shutdown. Therefore, internet shutdown may be a complete blackout, accessibility to limited services, bandwidth throttling or blacklisting of network providers.⁵² Internet shutdown may be limited to a given channel, i.e., intervention is to limit the availability of some websites and services, restricting access to certain communications channels alone.⁵³ Also, internet shutdown may be targeted at a defined location for various socio-political reasons.⁵⁴ Governmental internet shutdown is the pivotal, one of the focal points, of this study. Hence, reference to internet shut down here is a reference to shutdown inspired, directed or factored by the government directly or indirectly.

A report had it that 931 shutdowns were recorded between 2016 and 2021 in 74 countries,⁵⁵ with some countries blocking communications repeatedly and over long periods of time for stated reasons.⁵⁶ As much as the constituted authority in some nation/state of the world may want to argue that internet shut-down may be inevitable, and perhaps the only alternative

⁵¹ Businessday, 'How internet Shutdowns Impact People', (n 49).

⁵² United Nations (Human Right Council) General Assembly, 'Internet shutdowns' (n 48).

⁵³ On Friday, June 4, 2021, the Nigerian Federal Government announced that it will be indefinitely blocking access to microblogging and social media platform, Twitter, in Nigeria, a few days after Twitter deleted a controversial tweet made by Nigeria's President Muhammadu Buhari. See Nimi Princewill and Stephanie Busari, 'Nigeria bans Twitter after company deletes President Buhari's tweet' CNN World (June 5, 2021) <<https://edition.cnn.com/2021/06/04/africa/nigeria-suspends-twitter-operations-intl/index.html>> accessed 23 June, 2024.

⁵⁴ For instance, mobile network providers in Nigeria were directed by Nigeria's telecom regulatory body to shut down network communications in Zamfara State of the Nation for two weeks. See Temitayo Jaiyeola et al, 'Banditry: GSM operators obey FG's order, shut over 240 Zamfara base stations' Punch Newspapers (5 September, 2021) <https://punchng.com/banditry-gsm-operators-obey-fgs-order-shut-over-240-zamfara-base-stations/#google_vignette> accessed 23 June 2024.

⁵⁵ Including Brazil, India, and Turkey, Algeria, Ethiopia, Nigeria and Pakistan

⁵⁶ United Nations Human Rights Office of the High Commissioner for Human Rights

in some situations for the general good of a given people, mostly, internet shut-down are informed by selfish socio-political gains.⁵⁷ It has been argued that two of the most significant reasons for internet shutdown are to stop the spread of information in cyberspace and to hamper the communication system.⁵⁸ Thus, the Economic Community of West African States (ECOWAS) Community Court of Justice, in a landmark case of internet restriction confirmed that internet shutdowns constitute a form of prior restraint.⁵⁹ The Court ruled that the internet shutdowns implemented by the Togolese government in 2017 were illegal and unlawful.⁶⁰

For Wagner, internet shutdowns are not merely a suppression of digital communication but intended as a mechanism to achieve ‘communicative rupture.’⁶¹ Communicative rupture is carried out intentionally towards a specific context such as during election, mass demonstration or counter-terrorism operations. There is an authoritarian intent around shutdowns as it has repressive effect on the population. Therefore, the theory of communicative rupture is not just about “preventing information getting out” but more of “preventing information existing at all.”⁶² Furthermore, it goes beyond “disabling access to information or voice “but a sustained attack on the “existence of voice”.⁶³

⁵⁷ Deji Bryce Olukotun, ‘Internet Shutdowns – an Explainer’, (2016), available at <https://akademie.dw.com/en/internet-shutdowns-an-explainer/a-36731481>. Accessed September 23rd, 2023.

⁵⁸ Businessday, ‘How internet Shutdowns Impact People’, (n 49).

⁵⁹ *Amnesty International Togo & Others v. The Togolese Republic*, Suit No. ECW/CCJ/APP/61/18 (2020) (accessible at: http://www.courtecawas.org/wp-content/uploads/2022/02/JUD_ECW_CCJ_JUD_09_20.pdf)

⁶⁰ *Amnesty International Togo & Others v. The Togolese Republic*, Suit No. ECW/CCJ/APP/61/18 (2020) (Supra)

⁶¹ Benjamin Wagner, 'Understanding Internet Shutdowns: A Case Study from Pakistan' (2018) 12(1) International Journal of Communication 3917–3938

⁶² *Ibid*, 3921.

⁶³ *Ibid*

6.0 Excuses for Internet Shutdown

It is recognized by the international human rights law that restrictions may be placed on public freedoms (by extension freedom of access to the internet), subject to certain stated and specific criteria such as:

- 1) There must be a reasonable need for restrictions to be necessary;
- 2) The restriction place on internet access is proportional to reason necessitating the restriction; and
- 3) The restriction must be non-discriminatory.⁶⁴

The International Commission of Jurists, given the repeated government's inspired internet shutdown in Africa, in April, 2020, released the 'Legal guidance on internet restrictions and shutdowns in Africa'.⁶⁵ The basic requirements of the legal guidance are:

- a) States have an obligation to ensure that human rights are realised both online and offline.
- b) Restrictions must be provided for by law (Principle of Legality).
- c) Restrictions may be imposed only in pursuit of legitimate purposes.
- d) Limitations on human rights must not discriminate on grounds of race, colour, sexual orientation or gender identity, age, gender, religion, language, political or other opinion, citizenship, nationality or migration status, national, social or ethnic origin, descent, health status, disability, property, socio-economic status, birth or any other status.

⁶⁴ International Covenant on Civil and Political Rights (ICCPR), Art. 3

⁶⁵ International Commission of Jurists, 'Legal Guidance on Internet Restrictions and Shutdowns In Africa', (ICJ, Geneva, 2022), 1. The International Commission of Jurists was established in 1952 to develop and strengthen national and international justice systems. The Commission is made up of 60 eminent judges and lawyers from all regions of the world, with the mandate to promote and protect human rights through the Rule of Law, by using its unique legal expertise. The Commission is and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

- e) Limitations may be imposed only if they are necessary.
- f) Proportionality:
 - i. Restrictions must be the least restrictive means;
 - ii. Restrictions must not be overbroad;
 - iii. Discretion to impose restrictions must be constrained.
- g) Limitations must be subjected to judicial oversight.
- h) Access to effective remedies and reparation must be provided to address threats and redress unlawful violations.
- i) administrative oversight mechanisms.
- j) All business enterprises, including private telecommunications companies, must respect human rights online and offline.⁶⁶

It therefore follows that for a given excuse for internet shutdown to be ‘reasonable’, it must be in line with the international human rights law. Restrictions must also meet the test of ‘legality’ that has emerged overtime.⁶⁷ Even when shutdowns are ordered based on enabling laws and existing regulatory regime, they may not satisfy the legality requirement if the criteria used to justify them are overbroad or vague or if they are adopted through opaque procedures. Any intentional internet shutdown protocol that fails to meet these requirements is a violation of the rights to freedom of expression, peaceful assembly and freedom of association under Articles 19, 21 and 22, of the International Covenant on Civil and Political Rights (ICCPR).⁶⁸ It therefore follows that blunt measures and discriminatory restriction such as blanket Internet shutdowns, sometimes for prolonged periods, is a violation of international law, affecting States’ obligations to respect, a wide range of rights, including freedom of

⁶⁶ *Ibid*, 6-18.

⁶⁷ Giovanni De Gregorio and Nicole Stremlau, ‘Internet Shutdowns and the Limits of Law’, (2020)14 *International Journal of Communication*, 4224–4243, 4226.

⁶⁸ United Nation Human Rights Office of the High Commissioner, ‘Internet Shutdowns and Human Rights’, 2021, Civil Space Unit.

association and of movement and the rights to health and education.⁶⁹ This is in addition to freedom of expression and the right to peaceful assembly, However, it can be argued that internet shutdowns may be invoked for the protection of human rights when such rights are being violated by internet fraudsters. State actors can also justify internet shutdown by relying on legitimate reasons such as national security deriving from the principle of sovereignty or the responsibility to protect, in the context of mass violence or genocide.⁷⁰ Governments worldwide normally give all encompasses excuse, ‘national interest’ as the reason to deploy internet shutdowns and network disruptions to forestall election manipulation, as military strategy, quell mass protests or cut off conflict areas from the outside world in order to prevent disinformation and to control negative image from getting into international community.⁷¹ Other reasons for internet shutdown are to prevent spread ‘of communal violence, religious holidays, and school exams.’⁷²

6.1 Response to Mass Demonstrations

The internet has become the world's biggest meeting place and an assemblage point for the digital citizens, mass demonstrations. It is clear that protests against governments are enhanced or aggravated by the online activities across the world. In order to quell such trending protest, demonstration and anti-government movements, some governments do have recourse to internet shutdown. The Egyptian government is reported to be the first government to enforce government-imposed internet shutdown during the 2011 Arab Spring, as a means to thwart protestors and

⁶⁹ *Ibid.*

⁷⁰ Gregorio and Stremlau, ‘Internet Shutdowns’ (n 67).

⁷¹ Steven Feldstein, ‘Government Internet Shutdowns Are Changing. How Should Citizens and Democracies Respond?’ (Carnegie Endowment for International Peace, Washington, 2022) 1.

⁷² *Ibid.*

silence political participation.⁷³ In July 2021, the Cuban government shut down internet access on the island for 176 hours in response to mass demonstrations protesting the government's handling of the coronavirus pandemic and a lack of food and medical supplies.⁷⁴ Iran is also often reported as one of the nations that employs internet shutdown as counter-protest measure. Iran is reported to have shut down the internet, lasting several days, in a southeastern region during a rare upsurge of unrest in 2021 and the government is said to be using the tactic repeatedly whenever protests erupt in the country.⁷⁵ It is also on record that the Ethiopian government shut down its internet for two year in Northern Tigray region of the country in 2020.⁷⁶

6.2 Internet shutdown as Military Strategy

In some instances, the arm-conflicts in some nations, and reasonably so, have called for internet shutdown in deserving situations. In 2019, Myanmar's new military regime announced a nationwide shutdown of Facebook and other messaging services that were popular communications tools for opposition forces, as a military strategy in order to curtail the arm-struggle by the opposition fringes. For nearly a month before slowly allowing communications to come back online (and then periodically shutting off access again), the Myanmar's government partially shut down the internet and the reasons for the partial internet shutdown were stated by the government in a national announcement thus:

⁷³ Rachel Chiu, 'Why Internet Shutdowns Are Dangerous, Even for Liberal Democracies', 2021, National Interest, <https://nationalinterest.org/blog/buzz/why-internet-shutdowns-are-dangerous-even-liberal-democracies-182505>

⁷⁴ Feldstein, 'Government Internet Shutdowns' (n71).

⁷⁵ Guardian Nigeria News, 'With Internet shutdown, Iran Seeks to Limit Protest Outcry' The Guardian Newspapers (March 9,2021)<<https://guardian.ng/news/with-internet-shutdown-iran-seeks-to-limit-protest-outcry/>> Accessed 3 September,2022.

⁷⁶ Zacharias Zelalem, 'Six Million Silenced: A Two-Year Internet Outage in Ethiopia' Thomson Reuters Foundation (September 29,2022)
<<https://www.reuters.com/articles/ethiopia-internet-shutdown-idAFL8N2ZM09X>>
accessed 4 October, 2023.

Currently the people who are troubling the country's stability... are spreading fake news and misinformation and causing misunderstanding among people by using Facebook." As a result of the communications suspension, coup opponents were forced to resort to the old-fashioned technique of banging on pots and pans as a way to express their anger with the military takeover.⁷⁷

Based on this excuse, the regime by a proclamation announced the suspension of telecommunications services under the 'emergency orders' and the resultant internet shutdown lasted 19 months.⁷⁸

6.3 Disruption of Internet Access to Forestall Election Manipulation

National elections are one of the most monitored national events all over the world. Some African nations such as Niger, Republic of the Congo, Uganda, Zambia have given the need to curtail disinformation and to maintain the sanctity of the elections as an excuse for internet shutdown in the countries listed above. For instance, in Uganda, on Election Day, January 14, 2021, the internet was shut down by the government during the election (period) to forestall election manipulation.⁷⁹

6.4 Internet Blockage to Control Religious Holidays Associated with Violence

Some nations of the world have assumed the blockage of internet access in some parts of the nation to control 'Religious Holidays' historically

⁷⁷ Al Jazeera News, 'Myanmar Military Blocks Facebook, Social Media as Pressure Grows', (4 February, 2021)< <https://www.aljazeera.com/news/2021/2/4/myanmar-military-blocks-facebook-social-media-as-pressure-grows>>accessed 23 September, 2023.

⁷⁸ *Ibid.*

⁷⁹ News Story, 'Uganda shuts down internet ahead of general election', Business and Human Rights Resource Centre (11 January 2021)<<https://www.business-humanrights.org/en/latest-news/uganda-national-elections-accompanied-by-threats-access-information/>>accessed 10 October 2023.

associated with communal riotous activities and violence. On the 15th day of October, 2021, the Bangladesh ordered internet shutdown as ‘an attempt to quell violence stemming from attacks on Hindu temples over the alleged dishonouring of the Quran amid religious celebrations.’⁸⁰ Limited Shutting down of internet could also serve as a shield to the religiously naïve youth who are beginning to engage in online religious activities that may be inimical to their development and social stability of a country as whole.⁸¹

6.5 Internet Blockage to Prevent National Examination Malpractices

National examinations for pupils and students in secondary and high school are a big deal in some nations, particularly in the Arab world. Yearly, national examinations are conducted to determine suitability of students for future academic endeavours and professional careers: their university admission, and the subjects they are eligible to study and pursue.⁸² These examinations are deemed so important that some have designated the integrity of such examination as a ‘matter of national security.’⁸³ Thus, in order to avoid national embarrassment, the tendency to cheating or sharing exam questions by desperate students, a number of governments in the Middle East and North Africa (MENA) regularly implement nation-wide internet shutdowns during examinations to prevent examination malpractices in national examinations. Sudan, Algeria, Jordan, Iraq, and Syria are some of the nations of the world that have employed this extreme

⁸⁰ Doug Madory, ‘Mobile internet shutdown in Bangladesh’, Kentik Network Analysis Center (October 15, 2021) <<https://www.kentik.com/analysis/mobile-internet-shutdown-in-bangladesh/>> accessed 3 September, 2022.

⁸¹ Berger, Helen A. and Douglas Ezzy, ‘The Internet as Virtual Spiritual Community: Teen Witches in the United States and Australia,’ in Lorne L.Dawson and Douglas E. Cowan (eds.), *Religion Online: Finding Faith on the Internet*, (Routledge, New York, 2004), 175-188, 186.

⁸² Marwa Fatafta, Kassem Mnejja and Felicia Anthonio, ‘Internet Shutdowns During Exams: When MENA Governments Fail the Test’, Access Now (13 January 2023)<<https://www.accessnow.org/mena-internet-shutdowns-during-exams/>> accessed 24 June 2024.

⁸³ *Ibid.*

measure to prevent examination malpractices in national examinations.⁸⁴ In most MENA nations, cheating of any form, especially cheating in during examinations is not only frowned upon but severely punished, i.e., by caning and corporal punishments, imprisonment and fines. Governments take all sorts of measures to prevent cheating and question leaks before an exam and often resort to internet shutdown while the examinations are in progress.⁸⁵

7.0 Internet Shutdown and Human Rights Violation

Internet shutdown is not limited to illiberal regimes and developing democracies alone as the possibilities in the most advanced democracies are palpably potent. Internet shutdowns have been recorded in culturally strengthened democracies as well. In 2019, it is on record that the British police caused internet shutdown by blockage of the public's access to the Internet on the London underground to tackle planned protests by climate protesters.⁸⁶ Earlier in time, in San Francisco, in 2011, mobile-internet and phone services were shut down to control a protest in the subway.⁸⁷

There are records that over the past four years, India has recorded about 400 internet shutdowns. In some cases, the blockages were justified by leaders so as to maintain law and order, while in other cases, it is considered to be a tactic to stifle dissent. Historically, communication shutdown has been a well-known military strategy to win a war. For instance, during World War

⁸⁴ *Ibid.*

⁸⁵ Sebastian Schonfeld, 'Offline: When Exams Disrupt Everyone's Internet', (May 31 2022) < <https://pulse.internetsociety.org/blog/offline-when-exams-disrupt-everyones-internet> > accessed September 4, 2022.

⁸⁶ Tom Embury-Dennis, 'Extinction Rebellion: London Tube WiFi shut down by police in attempt to disrupt climate change protesters' *Independent* (April 17, 2019) < <https://www.independent.co.uk/news/uk/home-news/london-tube-wifi-down-internet-not-working-underground-protest-extinction-rebellion-a8873681.html> > accessed 24 June, 2024.

⁸⁷ Giovanni De Gregorio and Nicole Stremlau, 'Internet Shutdowns and the Limits of Law', (2020): 14, *International Journal of Communication*, 4224–4243, 4225.

I, British forces were reported to have manually cut German telegraph cables to hinder their adversaries' ability to communicate.⁸⁸ This historical reality is one of the factors that underlies the possibility of internet shutdown in any of the nations in the world. The potentiality of internet shutdown is self-evidenced in the United States of America's law. The President of the USA is empowered by law to cut off communication infrastructure by invoking the internet kill switch protocol during an emergency.⁸⁹ The Communications Act of 1934, was passed under President Franklin D. Roosevelt, before the internet existed, yet was engineered to contemplate the phenomenal communication channel represented by the internet.⁹⁰

Since the internet is the world in its digital manifestation, a web perfectly shaped by science and technology indicates that once any part of the world is cut-off or disconnected from the internet, then in its truest form, there is a disconnection of the world in the digital space. This theory is aptly amplified by Racheal Chiu's digital philosophy that there cannot be a world wide web, properly so called, if whole communities, regions and countries are forcefully excluded by governments and authorities.⁹¹ Hence, it is safe to suggest that rather than being a cheap way out of any alleged social malady, internet shutdown must be the last resort due to its effects on the immediate community where internet disconnection is effected and the aftermath on the international community online. It has been suggested that internet shutdown is not only a disruption of inter-social relationship, it also amounts to deprivation of 'thousands or even millions of people of their only means of reaching loved ones, continuing their work or participating

⁸⁸ Chiu, 'Why Internet Shutdowns Are Dangerous' (n 73).

⁸⁹ Section 706 of the Communications Act of 1934. The Telecommunications Act 1996 has amended or repealed sections of the Communications Act, 1934.

⁹⁰ *Ibid*

⁹¹ Chiu, 'Why Internet Shutdowns Are Dangerous' (n 73).

in political debates or decisions.’⁹² Therefore ‘shutdowns are powerful markers of sharply deteriorating human rights situations.’⁹³

Every interruption of the internet causes incalculable collateral damage and in terms of human rights deprivation because whenever the internet is shut down either deliberately by the government or due to technical or mechanical failure, both people and economies suffer. The cost of internet disruption often comes in the form of job loss, health loss and inability to participate in political discussion virtually and the cost always exceed any hoped-for national benefit.⁹⁴ Whenever the Internet is shut down by the government, the biggest communication network across the world is interfered with no matter what justifications and excuses are in place.⁹⁵ From all cardinal principles and experiences across the world, restriction of internet access is always a denial of citizens in the affected area of their fundamental human rights of freedom of speech, freedom of expression, freedom of association, freedom of assembly, etc.

The fact that internet shutdown is a clog in the wheel of enjoyment of human rights is beyond debate. The question that automatically follows internet shutdown is whether such shutdown is lawfully justifiable: whether such shutdown is legal or otherwise. A lawful internet shutdown will not amount to a governmental breach of fundamental human right recognised internationally notwithstanding the hardship such shutdown may occasioned. There is no doubt that governments, pursuant to their duty to protect lives and property, may do everything possible to avert massive security threats, protect citizens and maintain law and order by control access to internet through regulations, impose limitations to internet usage

⁹² Office of the High Commissioner for Human Rights, (n 56).

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Gregorio and Stremlau, ‘Internet shutdown’ 4226, (n 67).

and monitor activities online through various mechanisms, including law, social rules, and economic and network architecture.⁹⁶

Section 45 of the Nigerian Constitution provides for derogation of some fundamental human rights.⁹⁷ Internet shutdown is one of the constraints that brings to fore that no human right, especially freedom of speech, is absolute and that derogation may be permitted by the law in the appropriate situations.⁹⁸ To remove any benefit of that, this work is not giving credence to internet shutdown in anyway by any mean or in any way. However, it is submitted that provided there is transparency of purpose and for the benefit of humanity, where internet shutdown is the only way out, a government may legally and lawfully restrict access to the internet in order to prevent breakdown of law and order, for the common good of the people and well-being of the society. There is a need to re-emphasis that for internet shutdown to be lawful, legal and reasonable, it must be necessary, proportional to reason necessitating the restriction and the shutdown must be non-discriminatory, for selfish political gain or as a vendetta.

8.0 Legality of Internet Shutdown

There is no doubt that whenever governments impede and restrict access to the internet, they are interfering with, perhaps, the most important communications networks, notwithstanding the justifications for such interference. In deciding when an internet shutdown is illegal and unlawful because it violates human rights without justification, courts across the world have made some guiding pronouncements. For instance, the Turkish Court has pronounced that a restriction on access to a source of information is legal only when there is a defined and specific legal framework that regulates the scope of a ban and affording the guarantee of judicial review

⁹⁶ *Ibid.*

⁹⁷ Sylvanus Abila and Abiodun Amuda-Kannike, 'Insecurity and Conflicts: The Place of Human Rights under the Nigerian Law' (2019)10(2) NAUJILJ 96,99.

⁹⁸ International Covenant on Civil and Political Rights (ICCPR; United Nations, 1966), Art. 19.

to prevent possible abuses.⁹⁹ Therefore, blocking access to news articles on account of a violation of reputation and personal rights infringed on the constitutionally-protected right to freedom of expression.¹⁰⁰ The Supreme Court of India has established that an indefinite suspension of internet services is not permissible under the Indian's Constitution and is an abuse of power by the Government and for any government to legally order internet shutdown, such order must satisfy the tests of necessity and proportionality.¹⁰¹

In Africa, it has been held that though for the purpose of public interest, national security, public health, public order etc., it is internationally recognized that the government may derogate and suspend certain (fundamental) human rights, the fundamental basis of the exercise of this power of derogation is that such derogation must be done in accordance with the law.¹⁰² 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.¹⁰³ The Court held further that it is incumbent on the government not only to show up either by reference or otherwise the evidence of any such law, the government is under obligation to produce the said law before the Court. In the final analysis, it was found that in the circumstances of the facts put before the Court:

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.

9.0 Conclusion and Recommendation

⁹⁹ *Keskin Kalem Yayincilik v. Ticaret A.S.* (2021) App. No: 2018/14884.

¹⁰⁰ *Ibid.*

¹⁰¹ *Bhasin v. Union of India* (2020) SCC Online SC 25

¹⁰² *Amnesty International Togo & 7 Others v. The Togolese Republic* (supra)

¹⁰³ *Amnesty International Togo & 7 Others v. The Togolese Republic* (supra)

One recurrent decimal in discussions on internet shutdown and human rights is that access to the internet is an accessory right that enhances the enjoyment of almost all other known or ascertained human rights. Hence, States must respect, protect and promote the right of access to information and the right to privacy both online and offline. In any event where internet restriction is inevitable, limitations on freedom of access to internet must be provided for by law which is consistent with international human rights standards. Such a law must comply with the principle of legality, they are set in clear, non-ambiguous, and non-overbroad terms, such that the scope and terms of their application and consequences are foreseeable.¹⁰⁴ Again, such limitations can only be imposed in pursuit of purposes identified as legitimate under international law: for the protection of national security, public order, public health or morals or protection of the rights or reputations of others. Any form of internet shutdown that is in anyway short of these minimum requirements by the government will amount to a governmental breach of internationally recognised human right of her citizens. Internet shutdown will not amount to digital bullying if the shutdown is for the singular purpose of maintaining order, security and peace within a political enclave or the whole geographical scope of the State and it is proved that there is no other way out. It is recommended that the dynamics of lawmaking should be geared towards enacting enabling laws and regulations that protect access to internet. The provision for derogation to these laws should be clear without ambiguity or obfuscation. Government, and its officials, should engage in capacity building which leverage on knowledge based on the view that internet usage, its access by citizenry is not a threat to effective governance nor does it limits governmental powers. In fact, a balanced appreciation of the access to internet and internet use promotes accountability and good image of government.

¹⁰⁴ International Commission of Jurists, 'Legal Guidance on Internet Restrictions', (n 65), 6.