

Internet shutdowns strangle democratic accountability

A government should not order a blanket shutdown of the internet unless a state of emergency has been declared. A state of emergency is declared in specific circumstances that are prescribed by the Constitution. These circumstances include the risks to a country's existence or territorial integrity.

If a state of emergency has not been declared and then the government orders an internet shutdown, it exposes the government and internet intermediaries to possible claims for business losses, among other legal claims. Moreover, national security cannot be used as pretext to sanction state criminality.

In accordance with Article 1 of the 1995 Constitution, those individuals who govern Uganda must do so with the voluntary consent of the citizens. This voluntary consent to govern, must be renewed every five years through transparent, free and fair elections. To avoid a situation where the voluntary consent of citizens is "manufactured" by the electoral management body, there must be a free flow of information before, during and after elections.

Consequently, democratic accountability is enabled through these periodic elections. Therefore, once elected, leaders are answerable to the citizens at all times during the exercise of their leadership mandate on behalf of the citizens. This accountability relationship requires the free flow of information that enables the citizens to know how leaders are exercising their mandate. When the government orders an internet shutdown, this act violates these expressive freedoms and the concept of democratic accountability.

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Daniel M. Walyemera
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On 13 January 2026, the Uganda Communications Commission (UCC) ordered a blanket internet shutdown in Uganda. This was on the pretext that the Inter-Agency Security Committee had made a "strong recommendation" to prevent electoral fraud, misinformation and disinformation. Other reasons included prevention of public violence and national security. None of the aforementioned reasons meet the legal threshold for a blanket internet shutdown.

The Inter-Agency Security Committee did not seek judicial scrutiny of their "strong recommendation" to UCC. Consequently, the said recommendation was not grounded in law and there was no judicial oversight, prior to its execution.

In a free and democratic society, the rule of law reigns supreme in every action of the government.

International human rights standards frown upon blanket internet shutdowns. There are, however, specific circumstances that may require internet shutdowns. These specific circumstances do not permit to-

tal internet shutdowns. The internet shutdowns have to be specific to the potential threats identified by intelligence services. This is to avoid total shutdowns that immobilise everyone.

Before the isolated shutdowns are carried out, there must be judicial oversight. Judicial oversight enables the courts to assess, on a case-by-case basis, whether the intended reasons for an internet shutdown meet the Oakes test. The Oakes test is a three part-test that an intended government restriction must pass before it is deemed legally justifiable.

The intended government restrictions must first be "provided for by the law". Secondly, they must be "necessary" and thirdly, they must be "proportionate to the legitimate aim pursued" by a government.

Apart from United Nations and African Union instruments that restrict internet shutdowns, a specific soft law instrument was in October 1995, adopted by experts in Johannesburg, South Africa, to precisely set the parameters of the legitimate use of national security for government restrictions. This was in view of the abuse of "national security" as an obscure reason to cover-up state criminality.

This soft law instrument known as "The Johannesburg Principles on National Security, Freedom of Expression and Access to Information" lay down the exact limits under which national security can be used for legitimate government restrictions.

In addition to the United Nations and African Union instruments, the Inter-Agency Security Committee is encouraged to read the Johannesburg Principles in order to make more informed and citizen-centred recommendations, to avoid rule by disinformation.

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