Legal Standards and Litigation

Sometimes the most effective way to challenge or prevent a shutdown is to do so through the courts. With enough evidence, the right strategy, and a good understanding of the legal environment (laws or policies that challenge or limit the use of Internet shutdowns), activists can prove the illegality of such actions and ensure that existing laws are used in defense of human rights online. This section includes resources, strategies, and legal landscape reviews to help you build and argue strong litigation and learn about successful legal challenges from around the world to inform those initiatives.

Strategies for engaging in strategic litigation

Knowing where to start the legal process can be daunting. The guides included in this section are designed to familiarize advocates and lawyers alike with strategies and best practices in building a legal case through various judicial bodies.

- **Strategic Litigation & Advocacy in Defense of Internet Freedom**: This curriculum developed by the American Bar Association introduces lawyers to the purposes and methods of conducting strategic litigation and advocacy in defense of Internet freedom, primarily freedom of expression and privacy rights. While it focuses specifically on Southeast Asia, it provides useful guidance for how to achieve an understanding of the legal and methodological frameworks employed by lawyers the world over to promote and defend basic human rights.
- This resource guide (coming soon!) is designed for lawyers, organizations, or individuals who wish to approach the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (ACtHR) to discuss internet shutdowns. This resource will assist in complementing advocacy methods on fighting shutdowns in the region. It will also identify the processes involved in approaching larger international bodies and provide sample communication and filings in both institutions with focus on internet shutdowns.
- This resource offers insight and recommendations for **navigating litigation during internet shutdowns in Southern Africa**. It includes a number of infographics and other guides aimed at introducing best practices and strategies for beginning litigation.
- **Suing governments when online freedoms are violated:** APC's guide to Digital Rights Strategic Litigation is a very quick and simple starting point for understanding where to begin when conceptualizing a strategic litigation campaign in Africa.

Understanding the relevant issues

The topic areas that are important to bringing an informed perspective to law. Relevant to lawyers who are interested in learning more about issues, or for experienced activists hoping to more clearly articulate key concepts

- **Digital Rights and Freedom of Expression Online**: These two trainings developed by Media Defense include a total of 16 modules that aim to upskill lawyers litigating digital rights issues across sub-Saharan Africa by introducing and diving deeper into concepts of freedom of expression and digital rights on the continent.
- The **Internet rights are Human Rights** is a series of training modules concerned with the relationship between human rights, ICTs and the internet. These modules are intended to help those who work on human rights and/or ICTs to understand ways in which the internet is affecting the enjoyment and protection of rights, and may provide useful legal background to inform both advocacy and litigation.

The UN has released a number of reports that outline how the international standard-setting body talks about the key issues. Knowing international legal precedent and benchmarks can help guide even local level legal initiatives

- **This joint declaration** establishes the importance of freedom of expression and access to information as pillars to a free and open internet, and as key rights that must be protected.
- **This statement by the Office of the United Nations High Commissioner for Human Rights** provides an overview of trends in Internet shutdowns. It contains an analysis of their causes and the legal implications and the impact on human rights thereof, the roles of companies, the existing efforts to promote Internet connectivity and provide development aid, and the relevance of such efforts to address their impact.
- **This report from the Special Rapporteur for Assembly** is a follow-up to a report on the rights to freedom of peaceful assembly and of association in the digital era and presents a study of recent trends and the impact of Internet shutdowns in relation to peaceful protests.
- **In this report from the Special Rapporteur for Freedom of Expression,** he addresses the roles played by private actors engaged in the provision of Internet and telecommunications access in FoE. He begins by examining State obligations to protect and promote freedom of expression online, then evaluates the digital access industry's roles, to conclude with a set of principles that could guide the private sector's steps to respect human rights

Understanding the laws, legal standards, and jurisprudence

Key to any successful case is a strong knowledge of relevant jurisprudence. This, of course, includes the applicable local, sub-national, and national laws and systems, but also includes international legal standards that can be used to make a case. Those international laws can play a particularly important role when engaging directly with extraterritorial court systems, some of which are explicitly referenced in the resources below.

- The Global Network Initiatives **Country Legal Framework Resource (CLFR)** is a detailed set of resources examining governments' legal authorities to intercept communications, obtain access to communications data, or restrict the content of communications in more than 50 countries. Through this resource you can review a country's laws pertaining to 1) provision of real-time lawful interception assistance; 2) disclosure of communications data; 3) national security and emergency powers; 4) censorship-related powers; 5) oversight of access-related powers, and 6) oversight of censorship-related powers.

- While not specifically about Internet shutdowns, this **primer on researching international law** has three goals. First, to introduce advocates from the Americas, Africa and Asia to the international law frameworks applicable to promoting and protecting digital rights, particularly freedom of expression and privacy rights. Second, it serves as a guide to conducting legal research in support of digital rights locally, with an emphasis on the United Nations system and two regional human rights systems, namely, those operating under the auspices of the Organization of American States (OAS) and the African Union. Finally, it has a compilation of technical and strategic online resources for activists who seek additional support and/or guidance.

- **The Laws That Let Internet Shutdowns Happen:** Access Now's Primer on Internet Shutdowns and the Law provides a comprehensive look at questions such as the legality of Internet shutdowns, existing legislation, impacts, and community members.

- **Dialling in the Law: A comparative assessment of jurisprudence on internet shutdowns:** This APC report "Dialling in the Law" outlines jurisprudence across the Global South on the legality of internet shutdowns. It tackles the growing challenge of government-mandated disruptions of internet access around the world, often under the guise of safeguarding public order and upholding national security interests.

- This report offers a comprehensive analysis of the **legal landscape in Ethiopia** around Internet shutdowns, and the legal justifications that have been used by the government in implementing them.

Examples of litigation

- **Restricting Access and Content**: This module, developed by Media Defense, gives a high level overview and review of regional and international level legal responses to internet shutdowns.