Litigating Internet shutdowns in Uganda: A sad tale

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The shutdown of public Internet access is now standard operating procedure for Uganda during a general election. It appears to be high up on the pre-election checklist, coming just after the distribution of voting materials. The government shut down the Internet in 2016, 2021 and now in 2026.

Each instance of shutdown has come with more sophistication. In 2016, the shutdown was abrupt, unannounced and was quickly bypassed using VPNs. The latest shutdown went public by a leaked letter to the telecommunications companies just a few hours before the shutdown. With a few exceptions, the shutdown was thorough, VPN proof, with many GenZ hacks being quickly discovered and shut down.

The latest shutdown took effect on January 13 at 6pm and by press time, remained in effect on social media, despite announcements to the contrary by the Uganda Communications Commission (UCC). The impact of the enforced digital detox slowly sank in. From being unplugged from professional, family or other social networks to failing to reach online reading, to ordering eats on Glovo or calling Uber to the rescue.

For lawyers, there was no access to the Electronic Court Case Management Information System to enable their work. The tax body seemed to have had some inside information and issued an early circular bringing forward the VAT payment date.

In human rights terms, Internet access impacts our fundamental rights to freedom of speech and expression, freedom of association, access to information and the right to a livelihood. Some may argue that Internet access is itself a human right. To compound this, the Internet shutdowns in Uganda also come with total or partial suspension of mobile money services.

In March 2024, the African Commission on Human and Peoples' Rights passed a resolution reaffirming the importance of access to the Internet in the digital age and its implications for the realisation of human rights in the African Charter. The resolution calls on state parties to refrain from ordering the interruption of telecommunication services during or after elections.

For such an impactful event, there is surprisingly little contest in Ugandan courts over it. Need we say that the litigation so far has been unsuccessful.

Internet access champion

Unwanted Witness Uganda, a civil society organisation, has been the outstanding champion litigating Internet shutdowns, with three actions to its name. First came a High Court action filed in 2016, challenging the unannounced shutdown on February 17, 2016, and then again on May 11 to 12, 2016, during the inauguration of the president-elect. In response, the Attorney General and the Commission pleaded that they acted within their respective constitutional/legal mandates and were justified in their actions and, therefore, did not violate any rights.

The case was dismissed in August 2019 by His Lordship Andrew Bashaija for failing to show evidence of any single person who was affected by the shutdown. The judge held that it cannot be concluded that all residents of Uganda or just a few persons accessing social media and mobile money were affected, and that, therefore, must be cogent evidence to buttress the allegations. One can only wonder if the judge did not experience the shutdown himself and if he was not then entitled to take notice of it as a notorious fact.

Before the High Court matter was dismissed, our champions filed another case in the Constitutional Court in 2017. This time there was a second petitioner, the indefatigable Norman Tumuhimbise of the Jobless Brotherhood fame, who told of how he had suffered economic loss by reason of the shutdown. There were also other witnesses with similar sad stories of their losses arising from the shutdown.

SERVICE SUSPENSION

A state of emergency...

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This valiant effort was again dismissed in April 2021, with the Constitutional Court finding that it did not have jurisdiction over the matter as there was no question requiring interpretation of the Constitution, but rather it was a matter of enforcing the Constitution, which was to be done in the High Court.

However, Justice Irene Mulyagonja, even while dismissing the case, helpfully guided on the seminal Indian decisions of Anuradha Bhassin Vs State of India and Modern Dental College & Research v State of Madhya Pradesh in which similar internet shutdowns had been challenged.

Bloodied but undeterred from a second loss in as many years, Unwanted Witness took their cue and filed again in the High Court in 2021. This time, they added three telecom companies to the suit and challenged the Internet shutdown of January 9 to 12, 2021.

This suit was also dismissed, this time by Justice Musa Ssekaana in a most perplexing manner. He relied on the Indian decisions cited by the Constitutional Court above to find that Internet shutdowns can be utilised as a temporary measure. However, he did not address the thorny issue that Uganda does not have the equivalent of the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules 2017, which the Indian authorities relied upon for their Internet shutdowns.

This is despite the Constitutional Court stating expressly that "Unlike Uganda, India already had detailed laws and regulations under which telecommunications services may be suspended. The shutting down of the Internet was, therefore, considered within the context of the statutes and regulations made under them."

Under Ugandan law, UCC can only direct service suspension during a state of emergency declared by the President. The Indian cases and telecom suspension rules do not cure the constitutional defect in Uganda. Under Article 43, as emphasised by the Supreme Court (in Onyango Obbo v Attorney General), restrictions of human rights must be strictly necessary and demonstrably justifiable in a free and democratic society.

Administrative blocking of the internet, especially in elections, remains disproportionate in its breadth and effects. The Supreme Court has also recognised (in Kabaziguruka v Attorney General) that Uganda's treaty obligations and the guidance of relevant international and African human rights bodies are important to assessing compliance with constitutional rights. On that footing, the African Commission's position against election-period internet disruptions reinforces that such blocks violate the right to freedom of expression and access to information as guaranteed under the African Commission on Human and Peoples' Rights.

Second, Justice Ssekaana found that the application was intended to "trick" the court into making a different decision from the Constitutional Court. This finding was again demonstrably wrong as the Constitutional Court only dismissed the petition and did not decide on the legality of the Internet shutdown.

As if to tie it up properly, Justice Ssekaana also found that under the Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules, the action should have been filed in the Constitutional Court, leaving our champions in a quandary.

First dismissed by the Constitutional Court and sent to the High Court, now the High Court was also dismissing them and sending them back to the Constitutional Court. The Ugandan colloquialism "kati ffe tugoinge wa" (so where should we go now) sums it up well.

The unresolved questions

Despite all this, Ugandan judicial ink spent on the legality of internet shutdowns, there remains the question under what law the Commission authorised to order a shutdown?

For various reasons, none of the cases above answered this question. The Attorney General and the Commission are not on record in any of the decisions as citing any legal basis for the shutdowns. In the letter of January 13, 2026, in which the Commission ordered its latest infamy, there is no legal provision cited at all.

This is in sharp contrast with another letter from the Commission dated January 7, 2026, warning about the declaration of election results, which was peppered with legal citations, albeit irrelevant. Like the creation of a criminal offence requires specific language, so too does the curtailing of fundamental rights and freedoms. Such power cannot be derived from general regulatory language of a statute. An X post challenging the Commission to cite the legal basis for their actions remains unanswered despite the constitutional obligation of holders of public office to be accountable to the citizens.

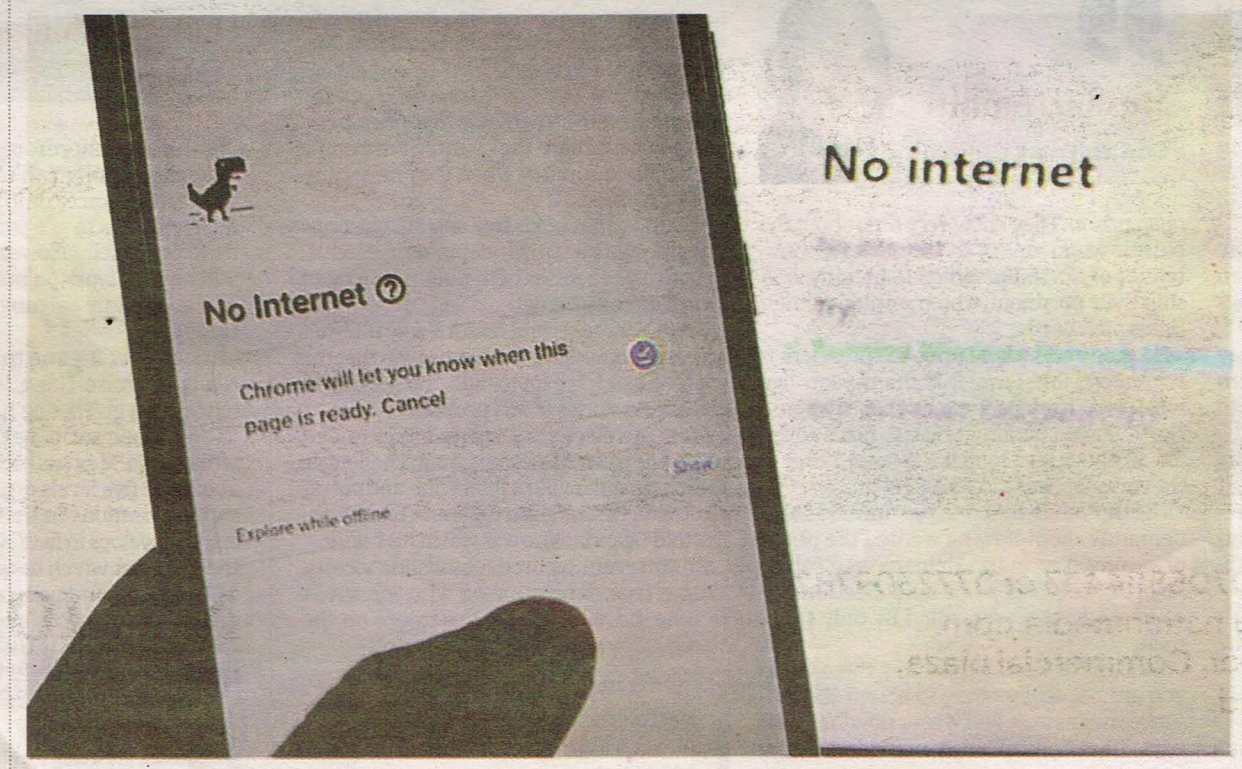
The shutdown directive and the public communication lifting the shutdown cite an Inter-Agency Security Committee. This committee, its membership and mandate are not prescribed by law, and it appears to be a loose administrative arrangement on national security. In the 2016 and 2021 shutdowns, the instructions were issued by the National Security Council, chaired by the President, Commander-In-Chief and the leading contender in those presidential elections. Under the Uganda Communications Act, it is only the minister responsible for communications who is expressly authorised to give policy directions to the Commission.

What about the conduct of the telecommunications companies, considering the United Nations Declaration on Business and Human Rights? Is it okay for businesses not to inquire about the legal basis of their regulator's directives and to simply implement actions that violate the human rights of their customers and the public?

The struggle continues

Two lawyers have filed suit to challenge the latest internet shutdown. Aboneka v Attorney General seeks declarations on the illegality of the shutdown and handsome damages for the applicants, but none for the Ugandan public. Another human rights champion, never too far from a good fight, Hassan Male Mabirizi, has applied for criminal summons against Mr Nyombi Thembo, the UCC executive director.

The Uganda Human Rights Commission, which rescued Eddie Mutwe from the infamous basement, remains loud in its silence. We cannot say more; suffice to say this is a developing area in Ugandan law.



The latest internet shutdown took effect on January 13 at 6pm and remains in effect on social media. PHOTO/ FILE

The writers are lawyers