



Sudan's Bad Laws, Internet Censorship and Repressed Civil Liberties

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Introduction

This brief explores the repressive elements of media and technology-related laws in Sudan and how they have been used to undermine freedom of expression and other civil liberties in the aftermath of president Omar al-Bashir's April 2019 overthrow. Further, the brief explores the phenomenon of network disruptions (commonly referred to as internet shutdowns), which has been prevalent in Sudan over the past three years.

These repressions continue to flourish despite guarantees in the country's constitution of 2019 of the right to privacy (article 55), freedom of expression (article 57), and freedom of assembly (article 58). Article 57(1) provides that every citizen has an unrestricted right to freedom of expression, receiving and publishing information and publications, and accessing the press without prejudice to order, safety and public morals as specified by law. Article 57(2) states that every citizen has "the right to access the internet without prejudice to order, safety and public morals as specified by law." Under article 57(3), the state guarantees freedom of the press and other media in accordance with what is regulated by law in a pluralistic democratic society.

Furthermore, Sudan has ratified key international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR), which guarantee the right to freedom of assembly, freedom of expression, and the right to receive, impart and disseminate information.

According to the industry regulator, the Telecommunication and Post Regulatory Authority (TPRA), as of December 2020, the country had 34.2 million mobile subscriptions, with the market leader being Zain (47%), followed by MTN (28%) and Sudani (25%). Internet subscriptions stood at 13.7 millions users in January 2021, representing a penetration of 31%. Sudan has the most affordable mobile internet in Africa and is ranked among the five least expensive countries for mobile internet globally.

Highlights

- Sudan's constitution grants citizens the right to free expression and "the right to access the internet".
- In the last three years, six internet disruptions have been recorded, mostly ordered to thwart public protests against bad governance.
- A 2015 law on access to information has a catalogue of information exempt from disclosure on the basis of "national security".
- Sudan's dismal press freedom record derives from the government's poor democratic practices and repressive provisions in the Press and Publications Law of 2009.
- In July 2021, Sudanese authorities invoked the 2020 regulations on websites content filtering and blocking to restrict access to more than 30 local news websites in the wake of anti-government protests.
- The national security law amendments of 2020 give wide powers to security officers, and the military has used the law to undermine civil liberties.
- The military has utilised the cybercrime law of 2020 to silence activists and critical state officials.

Law on Access to Information

In 2015, Sudan enacted a law on access information but it largely undermines government transparency by limiting citizens' access to information. Various categories of information are exempt from disclosure, including information on "national security and economic security", the state's foreign policy, investigations by judicial or security agencies, and trade secrets. These terms are not well-defined, giving the government latitude to deny citizens access to important information and thus undermining civic ability to demand for transparency and hold the government accountable. The language of these exceptions is intentionally vague to protect the interests of the government.

Article 10(g) further undermines citizens' ability to access information by empowering any public institution to enforce fees on citizens requesting information. Unfortunately, this is in a country that has experienced a doubling of poverty and dropped from lower middle income to poor country status in the past three years. The Act does not impose upon information holders any duty to proactively disclose information in their possession.

The Press and Publications Law of 2009

Sudan has a dismal press freedom record, being among the poorest performers on the World Press Freedom Index where it is ranked 159th out of 180 countries and on Freedom House's Freedom in the World, where it is categorised as "not free". This poor performance derives from the government's democratic failings and repressive provisions in the Press and Publications Law of 2009. The law establishes a National Council for Press and Journalistic Publications to regulate the media, mandates a licensing system for newspapers, with article 21(a) requiring all newspapers, bulletins, and press publications to obtain approval from the Press Council after paying fees determined by the Council; and requires, under article 23(1), the registration of all practicing journalists with the General Federation of Sudanese Journalists.

The National Council for Press and Journalistic Publications is not fully independent from the government (which funds it and appoints majority of its members), but is bestowed with overarching powers, including the authority to suspend the issuance of a newspaper for three days without any court judgment under article 33(1)(d). In August 2021, the Council suspended two newspapers, Alitibaha and Alsayha. Such high-handed actions against newspapers have been commonplace in Sudan, where authorities confiscated newspapers several times in 2009, and arrested at least 79 journalists especially during the uprising in 2019. The military in Sudan also temporarily closed the offices of Al Jazeera media network in 2019. The former regime in Sudan used the law to shut down five newspapers in 2011.

Article 20 of the 2009 law prohibits individuals from publishing newspapers and requires that publishers must be companies, political parties, social organisations, scientific institutions, government departments, or foreign communities. Article 4 defines a journalist as "every qualified person who works in journalism and is registered with the General Federation of Sudanese Journalists". Observers say this definition perpetuates the distinction between registered journalists and others, and thus deprives groups of the society of the ability to freely exercise their right to freedom of expression.

The National Security law **Amendment of 2020**

In 2020, Sudan issued the National Security Law Amendment of 2020. Article 25 of the law leaves latitude for staff of intelligence agencies to violate citizens' privacy. It states: "The security service has the right to request information, data, documents or things from anyone to check it or take it". The law gives the Sudanese General Intelligence Service full authority to do this without any court order, which exposes citizens to misapplication of the law under the pretext of security.

On October 27, 2021, military forces that staged a coup appeared to use article 25 to search individual's phones to delete documentation of human rights violations that were perpetuated by security forces. The national security law was amended after the overthrow of former president, al-Bashir. Before it was amended, the law gave the intelligence service authority to enforce censorship, investigation, inspection and seizure of funds. Whereas the amendment repealed these powers, the current article 25 hands intelligence agencies wide search, seizure, and monitoring powers.

The Cybercrimes **Law**

The Sudan cybercrime law of 2020, which amended a law that came into force in the final days of al-Bashir's reign in 2018, falls short of enabling the enjoyment of citizens' rights and freedoms. Article 24 relates to publishing false news online and punishes offenders with a heavy penalty of four years imprisonment, or flogging, or both.

Whoever prepares or uses the telecommunications network or any of the means of information, communications or applications to publish news, rumors, or reports - knowing that it is false - with the intent to cause fear or panic to the public, or to threaten public peace or tranquility, or to diminish the prestige of the state, shall be punished with imprisonment. For a period not exceeding four years, or by flogging, or both

This provision could be used by the government and other powerful actors to silence opponents and critics. In July 2020, the Sudanese military announced that it had appointed a cybercrimes commissioner to prosecute activists, journalists and others, both inside and outside the country, who defamed or insulted the army on the internet. The military has utilised the law to silence activists and even state officials critical of the military's human rights record. In February 2021, Lt. General Abdel Fattah al Burhan, chairman of the Sudanese Sovereign Council, issued a lawsuit under articles 24, 25, and 26 of the cybercrime law against Orwa Elsadig, a member of the committee working to rid Sudan of the vestiges of the al-Bashir regime, for allegedly saying he would work to oust Burhan.

The law has pushed journalists into self-censorship as military officials and their supporters frequently dismiss critical reporting as "fake news," and Sudanese journalists and activists fear the army is weaponising the charge to silence dissent, rather than fight disinformation.

Content Filtering and Website **Blockage Regulations 2020**

Website blockage has been a common occurrence in Sudan dating back to the days of the al-Bashir regime which used websites blocking, content filtering and inspection. For instance, in 2016, authorities conducted an inspection campaign targeting 103 internet cafes and seized large quantities of computer hardware including what they said contained sexually explicit materials. In July 2021, Sudanese authorities blocked more than 30 local news websites in the run up to protests demanding the resignation of the government. The blocking of websites is enabled by the 2020 regulations on content filtering and website blockage. These blockages have been widely condemned as an infringement on the right to expression, access to information and an independent press. The mandate to order website blocking rests with the TPRA and under article 8 of the regulations, ISPs are obliged to immediately effect the blockage once instructed by the regulator.

History of Internet Shutdowns

In the last three years, six internet disruptions have been recorded in Sudan. These have been mostly ordered to thwart public protests against bad governance. Former president al-Bashir's regime initiated internet disruptions in view of public protests calling for his overthrow, but the government that succeeded him has been more prolific in utilising shutdowns in response to criticism and protests.

Al-Bashir was overthrown by an uprising, which started in December 2018, and was spearheaded by the Sudanese Professionals' Association (SPA), a grouping of various professionals' unions. The association led the protests and extensively used social media to disseminate news about the uprising and to mobilise citizens. The military rulers that succeeded al-Bashir must have realised the mobilising power of the internet and have since variously disrupted the internet, in addition to instituting other measures to curtail organising, freedom of expression and the free flow of information online.

The longest internet disruption in Sudan history was recorded in 2019 and lasted 37 days, during which the country lost an estimated 1.9 billion US dollars. Over 100 protesters were killed during protests around the time the shutdown was initiated.

The latest shutdown started on October 25, 2021 and lasted 25 days. It was instituted after Lt. Gen. Burhan declared a state of emergency in the country, seized control of the government, and dissolved the country's transitional government. The shutdown was ended by a court order. Sudan also blocked access to the internet in 2020 to avoid cheating during the Sudanese Secondary School Certificate exams and in the same year instituted a shutdown geographically restricted to Kassala state in eastern Sudan, in a bid to stop tribal conflict. Much earlier, YouTube was blocked in Sudan in the wake of its 2010 elections when videos revealed fraud committed by electoral staff, and again in 2012 after the posting of the film *The Innocence of Muslims*. Both of these events were preceded by widespread protests.

The TPRA, the sector regulator, has been responsible for directing ISPs to disrupt internet access, often citing the emergency law, public safety law, and the law setting up the TPRA and stipulating its powers as the basis for its orders.

Rundown of Internet Shutdowns in the Last Three Years

- **December 19, 2018 to February 26, 2019:** Social media was blocked to impede coordination between protestors. The head of Sudan's National Intelligence and Security Service, Salah Abdallah, told a news conference: "There was a discussion in the government about blocking social media sites and in the end it was decided to block them."
- **June 3, 2019 to July 9, 2019:** Mobile data was blocked to curb protests and stop citizens from sharing evidence of human rights violations by the military. Government dubbed the internet "a threat to national security". The telecoms regulator confirmed that internet services were restricted throughout the country at the request of the Transitional Military Council (TMC). A court decision ordered all service providers to restore access.
- **May 14, 2020 to May 16, 2020:** Mobile data in Kassala state in eastern Sudan blocked purportedly to stop tribal conflict.
- **September 13, 2020 to September 24, 2020:** Mobile data blocked to avoid cheating during exams.
- **June 19, 2021 to June 30, 2021:** Mobile data blocked to avoid cheating during exams, per the telecoms regulatory authority. Telecom companies notified internet users ahead of the disruption via SMS.
- **October 25, 2021 to November 18, 2021:** Internet disrupted to thwart protests against a coup d'état.

Pushing Back Against **Shutdowns**

On November 11, 2021, the general court of Khartoum ordered ISPs to restore internet services to all subscribers in response to a lawsuit raised by the Sudanese Consumer Protection Organisation. On the same day, the TPRA insisted on maintaining the shutdown despite the court order, citing “national security” and a “State of Emergency” as justification. The authority argued that it was essential to implement the directives of the “higher leadership, given that the emergency order is a sovereign matter related to the protection of national security, which is above all decisions from any other party.” This necessitated a continuation of the shutdown provided the state of emergency and threats to national security persisted.

The TPRA decision declining to restore internet connectivity cited article 6(j) and article 7(1) and article 7(2)(a) of the law of TPRA of 2018. Article 6(j) provides that one of TPRA's mandate is “protecting the national security and the higher interests of Sudan in the field of Telecommunication, Post and ICT”. Articles 7(1) and 7(2)(a) state that among the powers of the TPRA is to protect the state's obligations and requirements in the field of national security and defence, and national, regional and international policies, in coordination with the competent authorities and licensees. The judge subsequently issued an arrest warrant for the chief executive officers of the telecom companies for not restoring internet access. On November 18, 2021, the telecom companies restored internet for all subscribers.

Earlier in 2019, Sudanese lawyer Abdelazim Hassan lodged a lawsuit against the internet shutdown. He won the case and his service provider restored internet service but only for his SIM card while maintaining the block on access for the rest of its customers. This was because Hassan had filed the case in a personal capacity as a customer of telecom provider Zain. Hassan subsequently launched a class action suit, and on July 9, 2019 the court ordered MTN, Sudani and Zain to restore services for all their customers. The telecom providers complied promptly. In September 2019, court ordered telecom companies Sudani and MTN to apologise to customers for disrupting access to their networks at the behest of the military authorities in June of that year.

Conclusion

While there have been some improvements in the enjoyment of freedom of expression and press freedom in the last two years, civil liberties remain gravely in danger. The latest power machinations that saw a short-lived coup, are making matters worse. The state for digital rights remains precarious, with the cybercrimes law enabling the government, particularly the military, to harass dissenters and critics under the guise of fighting false information. Meanwhile, the latest internet disruption is a reminder that the government will go to any lengths to control access to and use of digital technologies in a bid to assert its repressive control over the citizenry.



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