

# Legal Advocacy Strategy on Internet Shutdowns in Senegal

**Author:** Astou DIOUF

Legal specialist - Researcher

PhD Candidate in Private Law

Digital Law Research Fellow at JONCTION

[dioufastou.ecf@yahoo.com](mailto:dioufastou.ecf@yahoo.com)

[www.jonctiondroitnumerique.org](http://www.jonctiondroitnumerique.org)

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## Introductory note

*"Senegal keeps writing its democratic history. Every time we thought we were in troubled times, wisdom always prevailed".*

### **Babacar Ndiaye, Political Specialist**

The Internet is a neutral network by principle. This neutrality implies that *"every user must be technically capable of communicating with any other one and exchanging any type of content"* <sup>2</sup>.

Based on open access to the Internet, "Users have the right to access and disseminate legal information and content of their choice, and to use and provide applications, services and terminal equipment of their choice, regardless of their location and that of the provider, and regardless of the location, origin or destination of the information communicated, the content disseminated, the application used or the service provided or used."<sup>3</sup>

Despite the importance of open access to the Internet, Senegal, which is intrinsically a democratic country, has experienced a turbulent pre-presidential election period. In addition to demonstrations, disruptions to telecommunications networks have been noted in order to block or sabotage the Internet. This is the case of the Internet shutdown affecting 3G and 4G mobile networks. The country

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<sup>1</sup> Le Sénégal est-il vraiment un modèle de démocratie ? [Le Sénégal est-il vraiment un modèle de démocratie ? | TV5MONDE Afrique.](#)

<sup>2</sup> RCEP, *Rapport au Parlement et au Gouvernement sur la neutralité de l'internet*, sept. 2012, p. 12, Quoted by Alexandre Tourette, Responsabilité civile et neutralité de l'internet. Essai de Conciliation, on January 2, 2017, available at : <https://tel.archives-ouvertes.fr/tel-01424230> .

<sup>3</sup> Article 25 of the Electronic Communications Code.

has also experienced Internet shutdowns targeting specific services of social media platforms and messaging applications.

Given that Internet shutdowns are forms of digital repression sometimes undertaken by States in situations of socio-political unrest in order to restore and maintain public order and national security. However, this practice by government authorities can, to a certain extent, lead to forms of information control, surveillance and violation of fundamental rights and freedoms.

In that regard, the legal advocacy on Internet shutdowns finds its full significance. Because, under international human rights law, Internet disruptions are a violation of the digital rights of Internet users and a breach of the Constitution of Senegal, which guarantees to all "*citizens fundamental individual freedoms, including the freedoms of opinion, expression, press, association, assembly, movement, and demonstration.*"

### **Recall of the pre-election context of Internet shutdowns**

*"The interruption of connectivity on social media is not due to Sonatel but is (rather) a State decision"*

**Sonatel Workers' Union (SYTS)<sup>4</sup>.**

Senegal is a West African country known for its rule of law and strong democracy. However, the country experienced a turbulent pre-presidential election period.

Indeed, the presidential election, originally scheduled for February 25, 2024, was postponed. Simultaneously, there were reports in Senegal of arrests, intimidation, and convictions of journalists, activists, politicians, and political party leaders, including opponent Ousmane Sonko and current President of the Republic H.E. Bassirou Diomaye Diakharr Faye. Furthermore, Internet outages, restrictions on Internet access, and suspensions of social media platforms, including TikTok,

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<sup>4</sup> <http://www.osiris.sn/Coupure-de-l-internet-au-Senegal,32925.html> .

have occurred. This situation has led to significant political unrest resulting in deaths.

In this context of political unrest and Internet disruption, the government of Senegal openly took responsibility for ordering Internet shutdowns through a communiqué from the Minister of Communication, Telecommunications, and Digital Economy. The government authority announced that "*mobile data Internet is temporarily suspended in some areas of the country and at certain times (...)*".<sup>5</sup>. The reasons put forward by the supervising minister aim to stop "the dissemination of hate messages and subversion in the context of public order disturbance"<sup>6</sup>.

- June 23, 2023: Restriction of Internet access on social media and mobile data for 7 days for: "dissemination of hate messages and subversion in a context of public order disturbance."
- July 31, 2023: The Ministry of Communication, Telecommunications, and Digital Economy announced the temporary suspension of mobile data Internet. These shutdowns lasted 8 days. The reason given would be to stop "*the dissemination of hateful and subversive messages relayed on social media*"<sup>7</sup>.
- Following protests against the postponement of the presidential election, mobile data Internet was cut off for three days. The Ministry<sup>8</sup> announced that "*mobile data Internet is temporarily suspended from Sunday, February 04 at 10:00 p.m.*". According to the communiqué, this cut was ordered due

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<sup>5</sup> See official communiqué of the MCTEN in Senegal. [https://senego.com/diffusion-de-messages-haineux-letat-decide-de-couper-linternet-mobile\\_1558999.html](https://senego.com/diffusion-de-messages-haineux-letat-decide-de-couper-linternet-mobile_1558999.html).

<sup>6</sup> THIOUBOU (M-W), « conséquences des émeutes : l'État suspend temporairement l'internet des données mobiles », publié le 05 juin 2023 sur : <https://lequotidien.sn/consequences-des-emeutes-letat-suspend-temporairement-linternet-des-donnees-mobiles/>, consulté le 19 juin 2023.

<sup>7</sup> Nouvelle restriction de l'internet au Sénégal : AfricTivistes interpelle le gouvernement ! <https://www.africtivistes.com/fr/nouvelle-restriction-de-linternet-au-senegal-africtivistes-interpelle-le-gouvernement>.

<sup>8</sup> [Le gouvernement coupe internet.](#)

to *"the dissemination of several hateful and subversive messages relayed on social media in a context of threats of public disorder"*.

- The government of Senegal had again cut off mobile Internet during a call to demonstrate against the postponement of the presidential election. In its communiqué<sup>9</sup>, the Ministry maintains *"Due to the dissemination on social media of several hateful and subversive messages that have already provoked violent demonstrations with deaths and significant material damage, mobile data Internet is suspended this Tuesday, February 13, 2024, according to certain time slots"*.

Additionally, during this period of political unrest, the State of Senegal had decided to suspend the social media TikTok. For the ministry *"the TikTok application is the social media preferred by malicious individuals to disseminate hateful and subversive messages threatening the stability of the country"*<sup>10</sup>.

That is why, the Secretary General of the National Union of Post-Office and Telecommunications Workers (SNTPT), Rose Marie Diouf Baloucouné, emphasizes that: *"despite the political crises that have shaken all the regimes that have succeeded each other in Senegal since independence, never have ICTs been the weapon of deprivation of what they are supposed to facilitate: freedom of expression."*<sup>11</sup>

## **Purpose of the legal advocacy strategy**

This legal advocacy fits into the context where the practice of Internet shutdowns can no longer be denied in Senegal. This is proved by shutdowns of mobile data Internet and restrictions on access to social media during political demonstrations.

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<sup>9</sup> Communiqué of February 13: Temporary suspension of mobile data Internet.

<sup>10</sup> Communiqué of the Minister of Communication, Telecommunications, and Digital Economy, August 2, 2023.

<sup>11</sup> <https://www.enqueteplus.com/content/coupure-dinternet-par-le-gouvernement-sonatel-free-et-expresso-montent-au-cr%C3%A9neau%C2%A0>.

In this specific case, it would be important for civil society actors in their advocacy to define a legal strategy describing an advocacy approach around Internet shutdowns in Senegal, in order to prevent all forms of Internet shutdowns, in the next couple of years, likely to compromise the promotion of digital rights and the dynamism of the digital economy or even democratic values.

This is precisely the purpose of this strategy, which aims to support civil society advocacy in the prevention and awareness raising on the issue of Internet shutdowns.

## **Legal and institutional analysis of Internet shutdowns**

As a reminder, the Ministry of Communication, Telecommunications and Digital Economy in its various communiqués has never referred to a specific text. The Ministry has always motivated its communiqués by invoking breach of the peace, *hate speech and subversive messages threatening the stability of the country*.

From this point of view, some provisions of the Senegalese positive law may be used as a legal basis.

First of all, the Constitution of <sup>12</sup> Senegal in its Article 25 - 3 paragraph 3 provides that: *"Every citizen has a duty to respect and ensure respect for public property, but also to refrain from any act likely to compromise public order, security, salubrity and tranquility."*

Article 52 of the same Constitution provides that *"When the institutions of the Republic, the independence of the Nation, the integrity of the national territory or the execution of international commitments are seriously and immediately*

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<sup>12</sup> Constitution of January 7, 2001 (Republic of Senegal's Official Gazette, n° 5963 of January 22, 2001).

*threatened, and the regular functioning of public powers or institutions is interrupted, the President of the Republic has exceptional powers. He may, after informing the Nation through a message, take any action to restore the regular functioning of public powers and institutions and ensure the safeguarding of the Nation.”*

The articulation of these constitutional provisions suggests that this could be a legal basis even if the Ministry, out of caution, has never motivated its decisions by referring to any law.

In the same vein, Article 1 of Law 2008-08 dated January 25, 2008, on electronic transactions<sup>13</sup> provides that "unless otherwise stated, electronic communication may only be limited to the extent required, on the one hand, by respect for the dignity of the human being ... and, on the other hand, by safeguarding public order, the needs of national defense, the requirements of public service and the technical constraints inherent in the means of communication". Undoubtedly, electronic networks such as the Internet have become real means of communication, allowing the dissemination of ideas, feelings and opinions of all kinds on a global scale with extreme speed.

Article 27 of Law No. 2018-28 dated December 12, 2018, on the Electronic Communications Code,<sup>14</sup> regarding reasonable traffic management measures, provides a legal basis. According to the last paragraph of this article: *“The Regulatory Authority may authorize or impose any traffic management measure deemed necessary to preserve competition in the electronic communications sector and ensure fair treatment of similar services.”* This article grants the Authority excessive powers, allowing it to authorize, impose, and even regulate the use of ICTs. Furthermore, Internet access providers have the power to block, slow down, filter, or even monitor access to social media through traffic

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<sup>13</sup> (Republic of Senegal's Official gazette, n° 6404 of April 26, 2008, p. 395).

<sup>14</sup> <https://www.sec.gouv.sn/publications/lois-et-reglements/code-des-communications-electroniques> .

management. This provision jeopardizes Net neutrality and poses a threat to the development of the digital economy and the entrepreneurship of young people in particular.

Besides, it is worth noting that jurisprudence may be a legal case enabling to justify Internet shutdowns or restrictions in Internet access. The ECOWAS Court of Justice decision ECW/CCJ/JUD/09/20 AMNESTY INTERNATIONAL TOGO & 7 ORS V TOGO, at item 45, states that to justify restrictions on Internet access, it is sufficient to establish the existence of a *"national legislation guaranteeing the exercise of this right while providing for the conditions under which it is possible to derogate from it. These conditions may include, but are not limited to, public interest, national security, public health, public order, etc."*

Besides, regarding the institutional framework:

- **Minister of Communication, Telecommunications and Digital Economy**

Decree No. 2022-1814 of September 26, 2022, outlines the Minister's powers. Article 1 of this decree states that *"under the authority of the Prime Minister, the Minister of Communication, Telecommunications and Digital Economy prepares and implements the policy defined by the Head of State in the areas of Communication, Telecommunications and Digital Economy."* The mission of the Minister is also *"to ensure the control and regulation of social media"*, as stated in Article 1, paragraph four of the 2022 Decree<sup>15</sup>.

The Ministry is responsible for the development and modernization of information means. It ensures the development of a high-performance telecommunications sector that is widely accessible to the public. The Ministry

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<sup>15</sup><https://www.sec.gouv.sn/publications/lois-et-reglements/decret-ndeg-2022-1814-du-26-septembre-2022-relatif-aux-attributions> .



also ensures the implementation of a policy promoting information and communication technologies.

In this regard, decisions to shut down mobile data Internet originate from this Ministry. This Ministry gave repetitive requisitions to Telecom operators to suspend the Internet in Senegal.

#### **- Telecommunications and Post-Office Regulatory Authority (ARTP)**

Under article 202 of the law n°2018-28 dated December 12, 2018, relating to the Electronic Communications Code, the Telecommunications and Post-Office Regulatory Authority (ARTP) is responsible, among others, for “*ensuring the monitoring and providing government authorities and regulated sector actors with relevant information about the performance of operators.*”

ARTP has established an Observatory which allows monitoring, analyzing and displaying on a regular basis the progress made on the e-communications market in Senegal. This Observatory is fed by information collected from licensed operators, the virtual mobile network operator Sirius Télécoms Afrique (PROMOBILE) and Internet Access providers (IAP).

However, even if ARTP has always put the consumer at the heart of its concerns, it has played a passive role during Internet shutdowns.

### **Possible remedies in case of Internet shutdowns**

There are many possibilities pertaining to dispute over Internet shutdowns.

At first, at national level, one may refer to the judge for a breach of fundamental rights and freedoms.

Let us remind that, referral to the Supreme Court of Senegal was made in accordance with the organic law n° 2017-09 of January 17, 2017, on the Supreme Court, as amended by the organic law no 2022-16 of May 23, 2022. This referral

occurred following Requisition n°000-20 of February 4, 2024, from the Minister of Communication, Telecommunications and Digital Economy who gives instruction to mobile phone operators to take any necessary actions, with immediate effect, to suspend mobile data Internet as from 22 hours until further notice. The reason put forward is to *“stop the current public order disturbance throughout the whole national territory and clearly aggravated by electronic means of communications.”*

For that purpose, SONATEL had introduced a summary procedure for suspension based on article 85 of the organic law on the Supreme Court by putting forward the emergency and the sufficiently serious and blatant disregard for a fundamental freedom. According to the terms of this article: *“When a request, justified by emergency, is submitted to the Judge in Chambers, s/he may order any necessary actions to safeguard a fundamental freedom a legal person governed by public law or an organization governed by private law in charge of managing a public service; when exercising its powers, would seriously and blatantly disregard: The Judge in Chambers may make a ruling within forty-eight hours.”*

From that referral, the high jurisdiction declared inadmissible the request for suspension of execution of the Requisition n°000-20 dated February 4, 2024, of the Minister of Communication, Telecommunications and Digital Economy due to the release made on February 6, 2024, by the Minister of Communication, Telecommunications and Digital Economy.

The Court reminded the importance of *“basic rights protective standards, i.e., the Declaration of the Rights of Man and the Citizen of 1789, the Universal Declaration of Human Rights of December 10, 1948, the African Charter on Human and Peoples’ Rights of June 27, 1981, to which the sovereign People of Senegal has acceded through the Constitution, as well as the International Covenant on Civil and Political rights do not consider freedom of expression, freedom to conduct a business and the right for plural information as absolute*

*rights and admit that those rights and liberties may be subject to restrictions like those set out in the above-reminded provisions, provided that those restrictions are strictly necessary and proportional to the sought objective”<sup>16</sup>.*

In other words, the suspension of mobile data was deemed contrary to fundamental freedoms and disproportionate. Amnesty International and other human rights organizations have welcomed that decision as a victory for civil liberties in Senegal<sup>17</sup>.

Additionally, *“Those restrictions to freedom of expression and information are arbitrary measures contrary to international law and cannot be justified by security requirements”* according to Seydi Gassama.

In so doing, civil society organizations may refer to ECOWAS Court of Justice for human rights violation, including freedom of expression. Indeed, to circumvent and protest against Internet shutdowns, the case was brought to the Economic Community of West African States (ECOWAS). The Court of justice had to rule on the case of Senegal. For this purpose, the Pan African Senegalese organization for democracy and human rights protection ‘AfricTivistes’ and two Senegalese journalists Moussa Ngom and Ayoba Faye announced having brought the case to ECOWAS High Court of Justice to denounce Internet shutdowns by Senegalese authorities in June, July and August 2023<sup>18</sup>. The appeal was filed on January 31, 2024, in collaboration with “Media defence”.

*“The appeal filed before Ecowas Court of Justice challenge the Senegalese government’s actions, by putting forward the harmful impact on freedom of expression, Media freedom and the right for labor”;* declared the President of “AfricTivistes’, Cheikh Fall. I underline that in a period of political turmoil,

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<sup>16</sup> Cour suprême : Coupures internet, le verdict tombe contre l’État du Sénégal :

[https://www.senenews.com/actualites/cour-supreme-coupures-internet-le-verdict-tombe-contre-letat-du-senegal\\_485138.html](https://www.senenews.com/actualites/cour-supreme-coupures-internet-le-verdict-tombe-contre-letat-du-senegal_485138.html) .

<sup>17</sup> <https://www.osiris.sn/Cour-supreme-Coupures-internet-le.html>.

<sup>18</sup> <https://aps.sn/restrictions-dacces-a-internet-une-organisation-et-deux-journalistes-saisissent-la-cour-de-justice-de-la-cedeao/>.

*“Access to information is crucial, and Internet shutdowns only deepen the gloom, impeding the flow of vital information and jeopardizing citizen’s safety”<sup>19</sup>.*

Likewise, ASUTIC has brought before ECOWAS Court of Justice a request for human rights abuses by the State of Senegal since September 15, 2023 (case ECW/CCJ/APP/37/23), while requesting a summary procedure. According to the President of ASUTIC, Ndiaga Gueye<sup>20</sup>, in the absence of a legal basis, the State of Senegal violated human rights, namely the right for freedom of expression, the right for freedom of assembly, the right for labor, the right for information, guaranteed by articles 19, 21 of the ICCPR, article 6 of the ICESCR and articles 9, 11, 15 of the ACHPR.

Under the provisions of articles 9 and 10 of the additional protocol on ECOWAS Court of Justice<sup>21</sup>, the Court has jurisdiction to hear cases of human rights violations in any Member State and may be referred to by any victim, either an individual or a legal person.

## Vague laws which may lead to political or social unrest

Freedom of expression is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. This is the aim of pluralism, tolerance and open-mindedness without which there is no democratic society (European Court of Human Rights (ECHR), 1976). Freedom is not absolute and article 10 of the Constitution limits freedom of expression only if public order, security and general interest are at stake.

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<sup>19</sup> Restrictions d'accès à Internet : "AfricTivistes" et deux journalistes saisissent la Cour de justice de la Cedeao : <https://aps.sn/restrictions-daccès-a-internet-une-organisation-et-deux-journalistes-saisissent-la-cour-de-justice-de-la-cedeao/>.

<sup>20</sup> [https://www.impact.sn/ASUTIC-recurrentes-d-internet-au-Senegal-sous-la-bienveillance-de-la-Cour-de-Justice-de-la-CEDEAO-Saisie-en-procedure\\_a43694.html](https://www.impact.sn/ASUTIC-recurrentes-d-internet-au-Senegal-sous-la-bienveillance-de-la-Cour-de-Justice-de-la-CEDEAO-Saisie-en-procedure_a43694.html).

<sup>21</sup>

In the chapter of catch-all laws restricting the freedom of the Senegalese citizen, we may quote the charge of Insult to the Head of State. Article 254 of the law n° 77-87 dated August 10, 1977, on the Senegalese Criminal Code: *“Insult to the President of the Republic by any means laid down in article 248 is punished with six months to two years of imprisonment and a fine ranging between 1,000,000 and 1,500,000 francs or one of both sentences only. The sentences provided in the foregoing paragraph shall be partly or wholly applicable to insult to the person exercising the prerogatives of President of the Republic”*.

This offense is behind the legal setbacks of several opponents under the outgoing regime. This offense is often opposed to activists, opponents criticizing the regime. That is why, leaders of human rights organizations such as Seydi Gassama, Executive Director of the Senegalese section of Amnesty International stepped in to demand the repeal of this offense in the Criminal Code.

In line with his principles, he adds, “the Insult to the Head of State offense (article 254 of the criminal code) must be repealed. The Head of State must file a complaint if he feels defamed or insulted and custodial sentences for both offenses (defamation and insult) must be repealed.”<sup>22</sup>

Additionally, article 80 of the Law n° 99-05 dated January 29, 1999, provides that: *“Conducts and acts likely to compromise public security or bring about serious political unrest, to infringe the rules of the country, will be punished with at least three years of imprisonment and at the most five years and a fine ranging between 1,000,000 and 1,500,000 francs. Besides, guilty persons may be denied entry. Any individual who has received, accepted, sought or agreed with donations, presents,*

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<sup>22</sup> Sénégal : le délit d'offense au chef de l'État doit être abrogé, selon Seydi Gassama, [https://www.pressafrik.com/Senegal-le-delit-d-offense-au-chef-de-l-Etat-doit-etre-abroge-selon-Seydi-Gassama\\_a249063.html](https://www.pressafrik.com/Senegal-le-delit-d-offense-au-chef-de-l-Etat-doit-etre-abroge-selon-Seydi-Gassama_a249063.html).

*incentives, offers, promises or any other means, with a view to indulge in propaganda likely to compromise public security or bring about serious political unrest, bring discredit upon political institutions or their operation, or incite citizens to infringe the laws of the country, will be punished with one year of imprisonment at least and five years at the most, and a fine doubling the value of promises agreed or things received or requested without such fine being below 100,000 francs. Besides, offenders may be denied entry. Things received or their value will never be refunded; they will be confiscated for the benefit of the Treasury.”*

In other words, article 80 of the Criminal Code<sup>23</sup> includes too broad provisions making illegal any acts compromising public security or causing serious political unrest. This provision is too vague and is a source of problem. It may be the cause of future political or social clashes. In a democratic state, this article is inappropriate.

Senegal is provided with a set of instruments regulating telecommunications, cyberspace and the media. The Senegalese legal provisions punish fake news considered as an offense. Article 255 of the Law n° 77-87 dated August 10, 1977, amending the Criminal Code of 1965 prior to the advent of social media provides that *“the publication, dissemination, disclosure or duplication, by any means whatsoever of fake news, information fabricated, falsified or wrongly assigned to third parties, will be punished with three (3) years of imprisonment and a fine ranging between 100,000 and 1,500,000 FCFA when the publication, dissemination, disclosure, duplication, made or not in bad faith leads to disobedience of the country’s laws or breaks the morale of the population, or bring discredit on public institutions or their operation”*.

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<sup>23</sup> Law n° 65-60 of July 21, 1965 on the Criminal Code (Republic of Senegal’s Official Gazette, n°3767 of September 6, 1965, p. 1009 and s.).

This article is problematic and does not establish clear data to see whether a news is “false” or not. Better still, the article does not specify either the required threshold to determine if the population’s morale has been broken or if public institutions have been discredited<sup>24</sup>.

It is worth noting that States have the duty to protect their population against terrorist threats and acts and freedom of expression may be restricted to protect public order and national security. However, limitations imposed to the rights of individuals must comply with international human rights standards. The opposite is happening with article 279-1 of the Criminal Code that includes a vague and broad definition of “terrorist acts”. In this sense, ARTICLE 19, a civil society organization believes that *“this lack of accuracy in the definition of ‘terrorist act’ leads to the risk of criminalization of a number of practices that are a legitimate exercise of the right for freedom of expression and right to protest. Furthermore, this ambiguity is likely to distort the interpretation and application of all the provisions of the law 279, or those referring to it, including terrorist acts”*<sup>25</sup>.

Undoubtedly, article 279- 1 of the Criminal Code is disconnected with the principles and guidelines on human rights and peoples in the fight against terrorism in Africa<sup>26</sup>, which stipulate that: *“States must not use the fight against terrorism as a pretext to restrict fundamental liberties, namely freedom of religion and conscience, expression, association, assembly and movement, as well as the right for privacy and property.”*

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<sup>24</sup> Sénégal : Les lois visant à lutter contre les ‘fausses nouvelles’ doivent être conformes aux normes internationales : <https://www.article19.org/fr/resources/senegal-laws-for-disinformation/#:~:text=Comme%20le%20souligne%20LEXOTA%20%3A%20L,la%20population%2C%20ou%20jet%C3%A9%20le>.

<sup>25</sup> Sénégal : La liberté d’expression menacée par les révisions du Code pénal : <https://www.article19.org/fr/resources/senegal-penal-code-amendments-threaten-free-speech/>.

<sup>26</sup>[https://achpr.au.int/public/Document/file/French/principes\\_et\\_directives\\_sur\\_les\\_droits\\_de\\_lhomme\\_et\\_de\\_s\\_peuples\\_dans\\_la\\_lutte\\_contre\\_le\\_terrorisme\\_en\\_afrique.pdf](https://achpr.au.int/public/Document/file/French/principes_et_directives_sur_les_droits_de_lhomme_et_de_s_peuples_dans_la_lutte_contre_le_terrorisme_en_afrique.pdf).

Concerning data surveillance and access, the law of 2016 relating to the revision of the Criminal Procedure Code extends the investigation powers of security forces in terms of surveillance and access to IT data and threatens the right for freedom of expression, freedom of opinion and the right for privacy<sup>27</sup>.

For that purpose, article 90-10 of the Criminal Procedure Code authorizes a criminal investigator upon authorization and under the supervision of the Public Prosecutor to *“use a remote software and install it in the IT system of the suspect so as to collect relevant evidence useful to the judge’s legal examination or to the investigation”*. This provision is against the recommendation of the Special rapporteur on the promotion and protection of human rights and fundamental freedoms in the fight against terrorism calling States to *“establish strong and independent control bodies, endowed with sufficient resources and entitled to make ex ante examinations, to review requests for authorizations not only with regard to internal law prescriptions but also depending on the necessity and proportionality criteria of the Covenant[International Covenant on Civil and Political Rights].”*<sup>28</sup>

## **Recommendations**

The African Union has adopted a model law for Africa on access to information which, as the name implies, aims at providing guidance to Member States in the development of a national legislation in this field <sup>29</sup>.

The Declaration of Principles on Freedom of Expression and Access to Information in Africa has been adopted by the African Commission on Human

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<sup>27</sup> <https://www.amnesty.org/fr/wp-content/uploads/sites/8/2021/05/AFR4952872016FRENCH.pdf> .

<sup>28</sup> 34 Rapport du Rapporteur spécial sur la promotion et la protection des droits de l’homme et des libertés fondamentales dans la lutte antiterroriste, A/69/397, para. 61, in <https://www.amnesty.org/fr/wp-content/uploads/sites/8/2021/05/AFR4952872016FRENCH.pdf> .

<sup>29</sup> <https://archives.au.int/bitstream/handle/123456789/2062/Model%2520Law%2520Access%2520to%2520Information%20F.PDF?sequence=2&isAllowed=y> .



and Peoples' Rights (the African Commission), during its 65th ordinary session held from October 21 to November 10, 2019<sup>30</sup>.

✚ Senegal has drafted a bill on access to information for some years now. This most important project aims at strengthening governance and transparency while guaranteeing to all citizens access to information held by public entities.

We recommend to State authorities the adoption of this bill for the moment to comply with the requirements of the Declaration. Adopting this bill will enhance participatory democracy and will facilitate access to information faced with phenomena of Internet shutdowns or restrictions to Internet access.

✚ Concerning restrictive provisions, it is important to note that the Constitution of Senegal explicitly guarantees freedom of expression and freedom of press. These rights are also enshrined in the Declaration of principles on freedom of expression and access to information in Africa and by the Windhoek+30 Declaration<sup>31</sup>. Both declarations underline the requirement to preserve the independence of the media and stipulate that any sanction targeting media activities must comply with strict legality, necessity and proportionality standards.

In this sense, we are asking the State of Senegal to undertake to respect fundamental rights and freedoms in pursuance with international norms and standards, so as to better guarantee freedom of expression, information and access to Internet.

✚ The lack of legal clarity on the legality or illegality of Internet shutdowns in Senegal creates an environment conducive to power abuse from State actors. It is crucial to amend the current legislation, for instance article 27

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<sup>30</sup> <https://www.article19.org/data/files/pdfs/igo-documents/declaration-of-principles-ua-french.pdf>.

<sup>31</sup> [https://unesdoc.unesco.org/ark:/48223/pf0000378158\\_f](https://unesdoc.unesco.org/ark:/48223/pf0000378158_f).

of the law of 2018 on electronic communications, which gives to the regulatory authority unreasonable powers to shut down, block, slow down or monitor access to social media. For a better legislation model, the State is called upon to revise the provisions of this article.

- ✚ For the appeal before the national judge, we recommend an amendment of instruments to give the opportunity for civil society organizations to refer to the national judge. In other words, extending the power of the civil society to bring cases to justice.
- ✚ It is recommended to establish a coalition for the defense of digital rights that can be mobilized promptly and effectively in case of Internet shutdown. This coalition should include civil society actors, human rights defenders and technology experts to guarantee a coordinated response.
- ✚ It is necessary to carry out awareness and information campaigns on the impacts of Internet shutdowns and on users' rights. This would allow citizens being better informed about their rights and being aware of the actions they may undertake to defend them.
- ✚ It is crucial for appeal systems to be established for Internet users affected by shutdowns. Those appeals should include accessible administrative and legal options so that citizens can claim their right for connectivity and access to information.
- ✚ Given the current spread of legal provisions related to Internet access, it is recommended to submit new legislative proposals aimed at guaranteeing the right for citizens to have an uninterrupted Internet access. These laws should also provide for sanctions for power abuse linked to Internet shutdown.

**As a concluding point**, this advocacy paper aims at enhancing the protection of digital rights in Senegal and ensuring that citizens can freely access to Internet, even in front of attempts for restrictions or shutdowns by authorities. To be able

to freely refer to relevant jurisdictional bodies and claim compensation for the damage suffered.