

Access Now submission to the Universal Periodic Review

“Digital rights to privacy & freedom of expression”

Mali, Third Cycle

About Access Now

1. Access Now (www.accessnow.org) is an international organisation that works to defend and extend digital rights of users globally. Through representation in 10 countries around the world, including engagement with stakeholders and policymakers in India, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet’s continued openness and the protection of fundamental rights. We engage with an action focused global community, and our Technology Arm operates a 24/7 digital security helpline that provides real time direct technical assistance to users around the world.
2. Access Now advocates an approach to digital security that promotes good security policies that protect user rights, including privacy and freedom of expression.
3. With this submission, Access Now draws attention to threats to human rights and the open internet in Mali, including blocking of websites and communication services, invasive surveillance and unlawful invasions of privacy.

Domestic and international human rights obligations

4. This is the third review for Mali, last reviewed in 2013, under the Universal Periodic Review mechanism (UPR).
5. Mali has ratified many international human rights instruments, including the [International Covenant on Civil and Political Rights](#) (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the [Convention against Torture](#) (CAT), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
6. Mali has ratified the African Charter on Human and Peoples' Rights, which protects freedom of expression.
7. The Mali Constitution protects the freedom of expression (Art. 4) and the right to privacy (Article 6).

Developments of digital rights in Mali

8. The internet has enabled significant advances in health, education, and creativity, and it is now essential to fully realize human rights including participation in elections and access to information. Fixed-line and mobile internet connectivity is essential for economic, social, cultural, political, and civic development in the digital age.
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10. Access to mobile communications networks in Mali has increased greatly. According to 2015 ITU statistics, Malians enjoy more than one mobile-cellular telephone subscriptions per inhabitant.¹ However, access to broadband internet remains quite low.²
11. These low penetration rates show that Mali must take urgent steps to invest in digital communications infrastructure and networks, while improving its population's digital literacy and capacity to realize the benefits of digital information and communications technology (ICTs).
12. Despite the low rates of internet and mobile connectivity, according to various reports, the government of Mali appears to have ordered the shutdown of certain social media applications on the mobile internet in June 2017. As the street protests against the referendum on the constitutional reform project, Malian Internet users were deprived of Facebook and Twitter without explanation.³
13. Shutdowns and blocking of internet services delay and deter the benefits of these advances and economic development more broadly, by obstructing trust in the digital economy, undermining access to information, and frustrating personal communications and resources needed for crisis response.

Freedom of expression and internet shutdowns

14. The right to free expression should be protected online as it is offline.⁴ The internet is an essential enabler for the exercise of free expression in the 21st century and should be protected and promoted as the right itself.⁵
15. Blocking popular and affordable communications services, and surveillance and jailing prominent internet personalities, interferes with the human right to free expression. Blanket bans on entire communications services do not satisfy the recognized test for restrictions on freedom of expression.⁶
16. Mali's June 2017 block of popular social media and messaging applications, coming during public protests, appears to have targeted those exercising freedom of expression. The shutdowns represented an impermissible restriction on the right to freedom of expression. Public demonstrations do not warrant blanket bans on the communications platforms essential

¹ ITU Statistics, "Mobile-cellular subscriptions," *available at* <http://www.itu.int/en/ITU-D/Statistics/Documents/statistics/2016/Mobile_cellular_2000-2015.xls>.

² See Trading Economics, Mali - Fixed broadband Internet subscribers (per 100 people), <<https://tradingeconomics.com/mali/fixed-broadband-internet-subscribers-per-100-people-wb-data.html>>.

³ Morgane Bona, RFI, Accès à Internet en Afrique: «des coupures illégales» pour Me Julie Owono, 26 Juin 2017 <<http://www.rfi.fr/emission/20170626-internet-afrique-coupures-illegales-me-julie-owono>>.

⁴ See A/HRC/RES/32/13, "The promotion, protection and enjoyment of human rights on the Internet," 18 July 2016, available at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13>

⁵ "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue," 16 May 2011, available at <http://www2.ohchr.org/English/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.PDF>.

⁶ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, 30 March 2017, available at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/22>.

to realizing freedom of expression in the digital age. Civil society beseeched regional and international human rights experts to speak out on the blocking incident.⁷

17. The international community labels this type of blocking of telecommunications networks and services as an “internet shutdown.”⁸ Research shows that internet shutdowns and human rights infringements go hand-in-hand.⁹ Shutdowns disrupt the free flow of information and create a cover of darkness that allows state and non-state actors to persecute vulnerable groups without scrutiny. They also drastically harm the economy, especially by impacting mobile money transfers.
18. A growing body of jurisprudence declares shutdowns to violate international law. In 2015, experts from the United Nations (UN) Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples’ Rights (ACHPR), issued an historic statement declaring that internet “kill switches” can never be justified under international human rights law, even in times of conflict.¹⁰ In 2016, the Human Rights Council referred to internet shutdowns in its consensus Resolution 32/13, which “condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures”.¹¹

Privacy and data protection

19. Data protection regulations ensure the security of personal information collected, stored, processed, and transmitted online, thereby increasing trust in and growth of digital ecosystems across the public and private sectors.
20. Data protection is also affirmed as a right in the African Union Convention on Cyber Security and Personal Data Protection. In the Convention, each State party commits to establish a legal framework that strengthens fundamental rights, “particularly the protection of physical data.” The Convention’s Article 10.5 affirms that, “personal data processing undertaken on behalf of the Government, a public institution, a local community, a private corporate body operating a public service, shall be in accordance with a legislative or regulatory act enacted after an informed advice of the protection authority.”¹²

⁷ Morgane Bona, RFI, Accès à Internet en Afrique: «des coupures illégales» pour Me Julie Owono, 26 Juin 2017 <<http://www.rfi.fr/emission/20170626-internet-afrique-coupures-illegales-me-julie-owono>>.

⁸ “Fighting Internet Shutdowns” (Access Now) <<https://www.accessnow.org/internet-shutdowns>>

⁹ Sarah Myers West, ‘Research Shows Internet Shutdowns and State Violence Go Hand in Hand in Syria,’ Electronic Frontier Foundation, 1 July 2015, <<https://www.eff.org/deeplinks/2015/06/research-shows-internet-shutdowns-and-state-violence-go-hand-hand-syria>> accessed 18 February 2016.

¹⁰ Peter Micek, (Access Now 4 May 2015) ‘Internet kill switches are a violation of human rights law, declare major UN and rights experts’ <<https://www.accessnow.org/blog/2015/05/04/internet-kill-switches-are-a-violation-of-human-rights-law-declare-major-un>> accessed 18 February 2016.

¹¹ A/HRC/RES/32/13 (18 July 2016), available at <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13>.

¹² African Union, “African Union Convention on Cyber Security and Personal Data Protection,” available at <https://www.au.int/web/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf>.

21. Mali has not signed or ratified the Convention.¹³
22. Positively, Mali does has a data protection regulation. Mali's Personal Data Protection Authority ('APDP'), instituted by the Law n° 2013/015 on Personal Data Protection in the Republic of Mali, launched activities on 10 March 2016.

Recommendations

23. Mali can improve its human rights record and treatment of digital rights in several areas. We accordingly recommend that the government of Mali:
 - a. Commit to refrain from slowing, blocking, or shutting down internet and telecommunications services, including voice-over-internet-protocol (VoIP) and messaging applications, particularly during elections and public assemblies;
 - b. Sign and ratify the African Union Convention on Cyber Security and Personal Data Protection;
 - c. Ensure data protection legislation is robustly enforced and the APDP remains adequately resourced, empowered, and financed;
 - d. Commit to enhancing freedom of expression online and preventing violations by state and non-state actors, such as companies;
 - e. Commit to increasing access to and use of digital information and communications technologies;
 - f. Improve cooperation with United Nations treaty mechanisms and issue standing invitations to UN special procedures such as the UN special rapporteurs on the rights to freedom of expression and opinion, the right to and privacy;
 - g. Enact laws and telecommunications regulations protecting access to information and preventing network discrimination, also known as Net Neutrality.
9. The UPR is an important U.N. process aimed at addressing human rights issues all across the globe. It is a rare mechanism through which citizens around the world get to work with governments to improve human rights and hold them accountable to international law. Access Now is grateful to make this submission.
10. For additional information, please contact Access Now General Counsel Peter Micek (peter@accessnow.org).

¹³ List Of Countries Which Have Signed, Ratified/Acceded To The African Union Convention On Cyber Security And Personal Data Protection, https://www.au.int/web/sites/default/files/treaties/29560-sl-african_union_convention_on_cyber_security_and_personal_data_protection_.pdf.