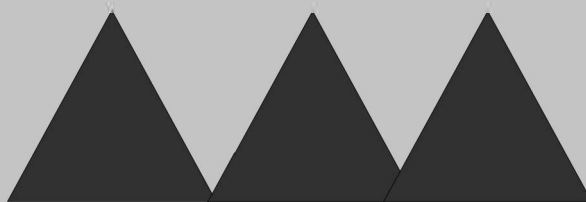
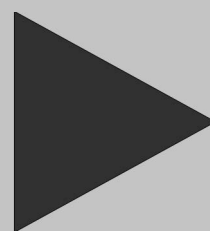
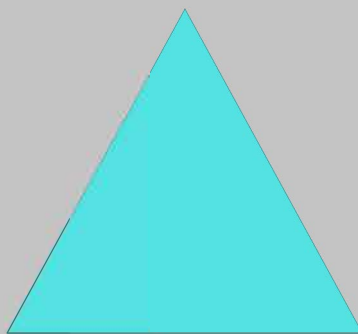
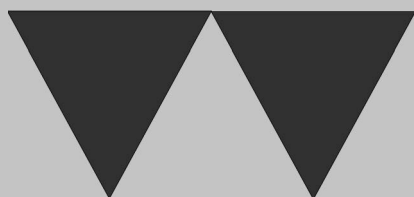


# Laws restricting disinformation in Sub-Saharan Africa: Impacts of their enforcement on freedom of expression

Policy Brief



## Summary

For the last several years, a consortium of civil society organisations<sup>1</sup> have been tracking and analysing government responses to online disinformation in Sub-Saharan Africa, examining their coherence with international and regional human rights law and standards. This brief explores how governments in the region are enforcing laws and policies on disinformation, drawing on the 80 examples of enforcement that are included on LEXOTA<sup>2</sup>. On analysis, four thematic trends around enforcement actions across the region emerge, all of which raise concerns for human rights:

- 1. Law enforcement action against disinformation is often aimed at silencing political criticism rather than preventing public harm;**
- 2. Law enforcement actions against disinformation often rest upon out-of-date or incorrect legislation;**
- 3. Individuals are often detained on suspicion of sharing disinformation but then released without charge;**
- 4. Many instances result in disproportionate penalties for individuals and entities.**

This brief lays out the context of different types of law enforcement actions in the region, exploring each of these trends in detail. It concludes with recommendations for states, civil society and multilateral bodies on how to design and implement initiatives to tackle disinformation in a rights-respecting manner.

## Background

While disinformation can pose threats to individuals' rights—such as the right to health, life, and participation in public affairs—poorly designed legislative responses to disinformation can in themselves, pose serious risks to human rights—particularly the right to freedom of expression. LEXOTA tracks and analyses government actions on disinformation across 48 countries in Sub-Saharan Africa. Each law and enforcement action on LEXOTA is analysed against a framework<sup>3</sup> based on international human rights law, notably the International Covenant on Civil and Political Rights (ICCPR), as well as regional instruments such as the African Charter on Human and Peoples' Rights (the Banjul Charter), the Declaration of Principles on Freedom of Expression and Access to Information in Africa and other relevant standards.

This brief focuses on the ways in which such laws are enforced in practice, drawing on 80 recent instances of law enforcement action across over 60% of the countries in the region. These include actions taken by law enforcement bodies, regulators, judicial authorities and government departments against individuals or entities in relation to sharing online disinformation, ranging from arrests and detainments to hefty imprisonment sentences and long-term suspensions for journalists and press outlets. In

most cases, the available information indicates that action taken in the name of “fighting disinformation” is disproportionate to the harm caused by the content in question and not in pursuit of what would be considered a legitimate aim for restrictions on freedom of expression under international and regional human rights law and standards.

## Theme 1: Law enforcement action against disinformation is often aimed at silencing political criticism rather than preventing public harm

The majority of law enforcement actions against online disinformation target individuals or news outlets expressing or publishing content considered critical of the state or political leadership. Out of the 80 examples of law enforcement action analysed across 48 countries, 38 actions were taken against press entities and journalists, 15 against activists, and seven against political opponents. In total, nearly 75% of incidents tracked in LEXOTA have questionable aims. While details of each incident often lack information or are difficult to interpret, in many instances the individuals or news outlets in question had not in fact shared information that was demonstrably false or objectively posed immediate harm to the public or to the rights of others. In contrast, most of the law enforcement actions were taken shortly after the individual or outlet had published content that was critical of a public figure or policy.

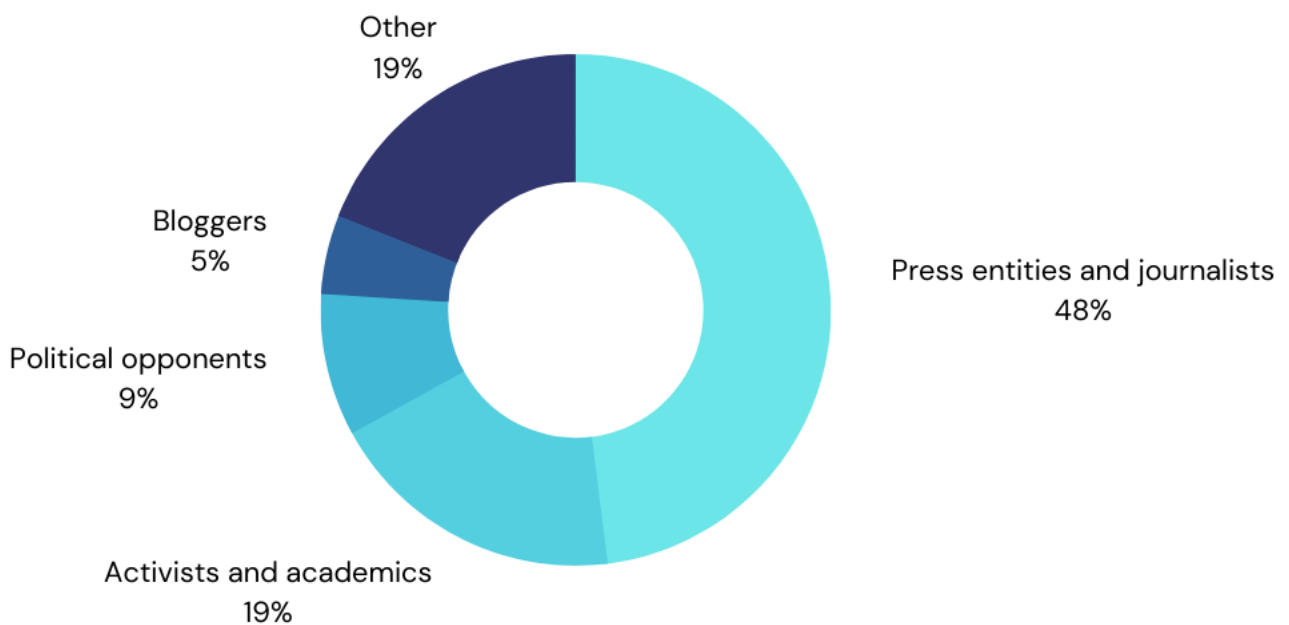


Figure 1: Targets of law enforcement action against disinformation in Sub-Saharan Africa

For example:

- In **Kenya**, Sections 22 and 23 of the Computer Misuse and Cybercrimes Act—which prohibit the publishing of false information—were used a number of times in 2020 to arrest and sanction bloggers and activists commenting online on the government’s handling of COVID-19, including Cyprian Nyakundi<sup>4</sup> and Robert Alai<sup>5</sup>.
- **Senegalese** authorities arrested the former Prime Minister Cheikh Hadjibou Soumaré in March 2023 on charges including sharing false information under Article 255 of the Penal Code, in relation to an open letter he wrote to the President questioning whether he had provided funds to a French far-right leader<sup>6</sup>. Separately, in March 2023 the communications manager of the opposition party, El Malick Ndiaye, was arrested and charged with dissemination of false news for a Facebook post he made criticising the government’s treatment of the opposition leader, Ousmane Sonko, during an ongoing court case<sup>7</sup>.
- **Tanzania’s** Communication Regulatory Authority suspended a local news outlet for 11 months in July 2020, after it shared a health alert from the United States embassy about the Tanzanian government’s failure to publish any COVID-19 figures on its Instagram page<sup>8</sup>. This action was based on charges of sharing “biased, misleading and disruptive content” under what was then Regulation 12 of Tanzania’s Electronic and Postal Communications (Online Content) Regulations, 2018<sup>9</sup>.

These actions were taken without the legitimate aim of protecting the interests of the public or individuals’ rights, but rather to protect political reputations or limit criticism. Such instances indicate the weaponisation of laws on disinformation to silence free expression and limit freedom of the press, and to restrict individuals’ ability to participate in political and public life, as protected by the ICCPR and the Banjul Charter. In the longer-term, these attempts by authorities to control political narratives and silence criticism impacts individuals’ right to access information, right to freedom of thought and right to free and fair elections.

## Theme 2: Law enforcement actions against disinformation often rest upon out-of-date or incorrect legislation

Many of the law enforcement actions use an out-of-date law or the wrong provision in a piece of legislation to arrest and charge individuals on allegations of sharing false information. In some instances, the relevant law or provision was not clearly stated on charge sheets or court decisions, making it difficult to evaluate the legality of the action. In a couple of instances, the arrests and trials of civilians and entities not affiliated with the military were illegitimately carried out by special forces or military courts, rather than appropriate bodies of law enforcement and judicial authorities. Examples include:

- **Cameroonian** journalist and news director Emanuel Matip was arrested by six armed men in civilian clothes in August 2020 in relation to posts made on his Facebook page about investigations into an alleged coup plot and a theft case in Togo involving senior Cameroonian officials<sup>10</sup>. He was detained for weeks at the State Secretariat for Defense before being brought before a military court judge, where he was charged with "spreading fake news" under Section 78 of the 2010 Law on Cybersecurity and Cybercrime in Cameroon, which prohibits the sharing of unverified information through electronic means. Matip was arbitrarily detained for 16 months without trial and finally released in December 2021 due to a lack of evidence<sup>11</sup>. The use of a military court and exceptional measures to detain a civilian journalist, which has been common practice in Cameroon in recent years, severely infringed on Matip's rights to freedom of movement and to a fair trial.
- **Chad's** High Authority for the Media and Audiovisual (HAMA) suspended a news outlet and banned its director from working as a journalist for 12 months in June 2020 on grounds including the publication of false news<sup>12</sup>. HAMA's decision referenced relevant legislation including Order N° 025/PR/2018 Regulating the Written Press and Electronic Media, but did not explicitly reference Article 93 relating to the publication of false news. Furthermore, Order N° 025/PR/2018 does not specifically lay out suspensions as penalties for this offence. Violation of Article 93 is punishable in accordance with the Penal Code, which does not contain a corresponding offence for the publication of false information. Therefore, the legal basis for this 12-month suspension was unclear.
- **Kenyan** journalists Isaac Kibet Yego and Emanuel Kimutai Kosgei were arrested and detained for several days in July 2020 for sharing a story online about a politician contracting COVID-19<sup>13</sup>. Statements by the authorities indicated that the action was taken under Section 29 of the Information and Telecommunications Act, 1998, which previously included a restriction on sending false messages causing others "annoyance, inconvenience or needless anxiety". However, the Kenyan High Court had already ruled in 2016 that Section 29 was unconstitutional because it unjustifiably limited freedom of expression and was worded in vague terms. The legality of the action taken against Yego and Kosgei is therefore unclear.
- A **Nigerian** human rights activist, Emperor Ogbonna, Esq., was arrested in March 2020 by Nigeria's Department of State Services (DSS) on suspicion of cyberterrorism and intentional publication of false and threatening messages through the internet, after he reshared a Facebook post critical of a local politician. Reports indicated that he was charged under Sections 27(1) (a) and 18(1) of the Cybercrimes (Prohibition, Prevention etc) Act 2015—neither of which actually refer to false messages<sup>14</sup>. Furthermore, despite him being granted bail by a court in April, the DSS detained Ogbonna illegally until his trial in August 2020, where the court ordered his unconditional release<sup>15</sup>.
- In **Zimbabwe**, a prominent political activist named Hopewell Chin'ono was arrested in January 2021 on charges of sharing false information under Section 31(a)(iii) of the Criminal Law (Codification and Reform) Act after he tweeted a story about police brutality<sup>16</sup>. However, part (iii) of Section 31(a) had been struck down by the Supreme Court years earlier on grounds that it was unconstitutional.

Chin'ono's case was therefore dismissed by Zimbabwe's High Court in April 2021<sup>17</sup>. Despite this, another political activist—Fadzayi Mahere—was convicted under the same provision in April 2023, based on arguments by the Court and prosecution that 31(a)(iii) has not yet been tested by the Supreme Court against the new 2013 Constitution<sup>18</sup>.

The lack of legal clarity in these and several other law enforcement actions is concerning. Not only do these examples fail the legality test for permissible restrictions on freedom of expression, they also implicate a range of other rights laid out in Article 9 of the ICCPR and Articles 6 and 7 of the Banjul Charter, including the right to liberty and security and freedom from arbitrary arrest, the right to be informed of the charges against you, the right to a fair trial and the right to compensation in the case of wrongful arrest.

### Theme 3: Individuals are often detained on suspicion of sharing disinformation but then released without charge

In 20% of the 80 law enforcement actions against disinformation, individuals were arrested and detained on suspicion of sharing disinformation but never formally sentenced. In nine instances, individuals were detained for periods ranging from one day to three weeks and then released without being charged, with an average detention period of eight days. In a further seven incidents, individuals were arrested and charged for sharing false news, but the charges were later dropped due to a lack of evidence or defective charge sheets. Other examples show trials being delayed months in order to extend the individual's detention.

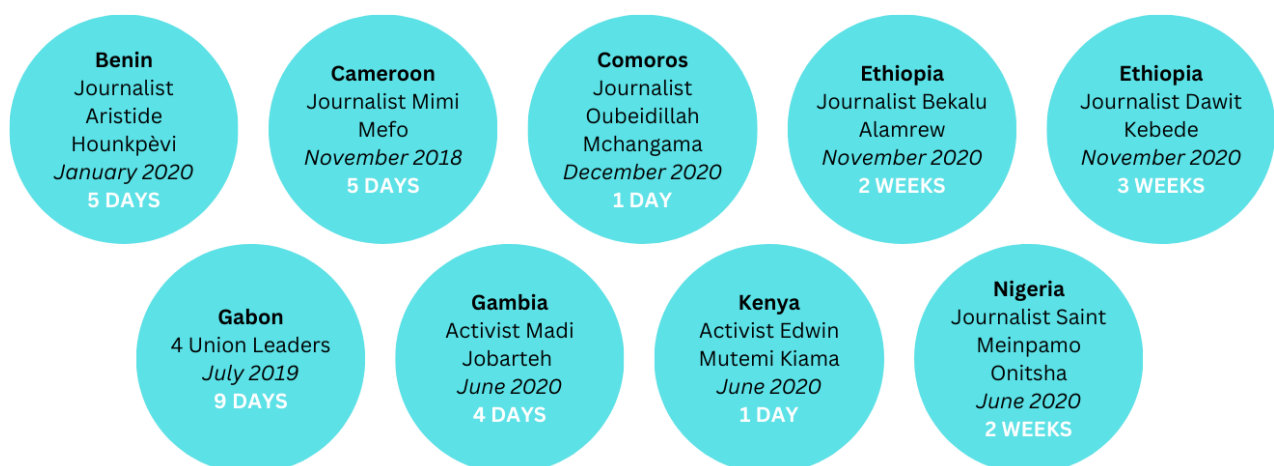


Figure 2: Individuals detained on suspicion of sharing disinformation before release without charge



Figure 3: Individuals detained on suspicion of sharing disinformation whose charges were later dropped or dismissed

Examples include:

- In **Benin**, journalist Aristide Hounkpèvi was arrested in January 2020 for allegedly publishing false news via social media, likely in relation to a tweet he made speculating that a minister would soon be appointed as an ambassador<sup>19</sup>. The arrest was made for suspected violation of Article 550(3) of Law No. 2017–20 on the Digital Code in the Republic of Benin. Hounkpèvi was kept in custody for five days before being released for lack of evidence.
- **Ethiopian** journalist and editor for a well-known news outlet, Dawit Kebede was arrested in November 2020 on accusations including disseminating false news. Sources did not cite particular legal grounds for his arrest and detention or a specific publication as the cause of this action<sup>20</sup>. Kebede was kept in custody for over three weeks before being released without charge. A month later, he was tragically shot and killed in suspicious circumstances<sup>21</sup>.
- **Nigerian** authorities detained and intimidated journalist Saint Mienpamo Onitsha in May 2020, threatening him with criminal prosecution on false news charges presumably under Section 24(b) of the 2015 Cybercrime Act. This action was taken in connection to his reporting for an online news outlet on the alleged collapse of a COVID-19 isolation centre<sup>22</sup>. He was held by security services for 15 days and then released without charge after a forced apology for his reporting, violating the Nigerian constitution which requires that detained persons are arraigned in court within 24 hours.

While publicly available information and official statements about many incidents are scarce, these examples indicate that arrests and weak charges are frequently used to intimidate or harass journalists and human rights defenders. Beyond constituting violations of individuals' rights to liberty and security and associated rights laid out in Article 9 of the ICCPR, such tactics have a chilling effect on freedom of expression, forcing advocates and journalists to self-censor so as not to be targeted by the authorities, and restricting the free flow of information that is essential for healthy



democratic societies. Furthermore, multi-day detentions are a disproportionate response to comments or videos shared online, which have not caused objective public harm or damage to the rights or reputations of others.

## Theme 4: Many instances result in disproportionate penalties for individuals and entities

Even where the correct legislation is used and the law enforcement action results in sentencing or penalties, the sanctions levied were often disproportionate to the degree of harm actually caused by the allegedly “false” content in question. Of the 80 examples on LEXOTA, 21 resulted in penalties or sanctions for charges including sharing disinformation<sup>23</sup>. Some of these penalties were fines; 10 were imprisonment terms for individuals of between one and 36 months, with an average imprisonment term of 16 months; and six were suspensions of outlets or publications from two weeks to 12 months. For example:

- **Guinean** activist Oumar Sylla was sentenced to three years’ imprisonment in June 2021 for “communication and dissemination of false information, violence and threat of death,” likely under Article 875 of the Penal Code, by the Court of Appeals. This sentence was decided on charges previously dropped in 2020 relating to his web coverage of arbitrary arrests during Guinea’s elections. He was eventually freed in September 2021 after a coup and change in government.<sup>24</sup>
- In **Togo**, two journalists were arrested and placed under judicial control in December 2021 on grounds of criminal insult and authoring and disseminating false news under the Penal Code<sup>25</sup>. This action was taken in relation to an online broadcast they made. While they fled the country, in March 2023 they were sentenced in absentia to three years in prison and a fine.
- In 2020, **Tanzania’s** Communication Regulatory Authority banned the *Mwananchi* newspaper from publishing online for six months<sup>26</sup> and *Kwanza Online TV* for 11 months. In both cases the outlets were banned for generating and disseminating misleading content against Regulation 12 of the Electronic and Postal Communications (Online Content) Regulations, 2018<sup>27</sup>. Another Tanzanian regulatory body—the Information Services Department—issued a 14 day suspension of *Uhuru* newspaper in August 2021<sup>28</sup> and a month-long suspension of the *Raia Mwema* newspaper in September 2021<sup>29</sup> under Sections 50 and 54 of the Media Services Act relating to the publication of harmful false content.

Finally, in some instances, governments responded to concerns about disinformation by restricting access to websites without warning or shutting down communications platforms. For example, in the **Central African Republic**, the Ministry of Posts and Telecommunications instructed internet operators to block the websites of two newspapers until further notice in February 2021—with no warning or no specific legal provisions cited—alleging that the outlets had spread hate speech and fake news amid a security crisis<sup>30</sup>. Elsewhere, the **Nigerian** government banned Twitter from June 2021 to



January 2022, likely due to Twitter’s decision to remove controversial tweets made by President Buhari and suspend his account. However, a government spokesperson said that the ban was imposed because of “a litany of problems with the social media platform in Nigeria, where misinformation and fake news spread through it have had real world violent consequences”.<sup>31</sup> This Twitter ban was successfully challenged at the ECOWAS Court of Justice, which held in 2022 that the suspension of Twitter was unlawful and inconsistent with the provisions of Article 9 of the Banjul Charter and Article 19 of the ICCPR<sup>32</sup>.

These types of enforcement actions against individuals, entities and platforms constitute disproportionate sanctions as they do not consider the degree of public harm or risk actually caused by the allegedly false content shared or hosted. Blocking or suspending entire news websites—particularly with no warning or opportunity for appeal or where no prior enforcement actions have been taken to address the problem—is detrimental to freedom of expression and the operation of affected news outlets, who may be unable to earn revenue for several months. Harsh imprisonment terms for individuals, even where such terms are provided for by law, also constitute a disproportionate response, particularly where the content or publication is not false or harmful or where the action is taken without a legitimate aim, without which no response or sanction would be proportionate<sup>33</sup>.

## Conclusion and Recommendations

### **Conclusions**

- A lack of alignment of laws and policies on disinformation in Sub-Saharan Africa with international and regional human rights law and standards has resulted in their widespread misuse for the persecution of individuals and entities with a chilling effect on freedom of expression.
- Many law enforcement actions relating to online disinformation fail the three-part test for permissible restrictions of freedom of expression as they do not satisfy the principles of legality, legitimacy or necessity and proportionality, or a combination of these requirements.
- Beyond impacting freedom of expression and access to information, many of the law enforcement actions also constitute a violation of other human rights, including the right to liberty and security and freedom from arbitrary arrest, the right to be informed of the charges against you, the right to a fair trial, the right to compensation in the case of wrongful arrest, and the right to participate in public life, including through free and fair elections.

### **Recommendations**

- States should immediately release any individuals detained on grounds of sharing disinformation and drop any disinformation-related criminal charges standing against individuals whose content has not caused any objective public harm.

- States should review and revise laws on disinformation which are not aligned with international and regional human rights law and standards to ensure that the laws are formulated with a suitably narrow scope and sufficient safeguards and that they cannot be weaponised to intimidate or detain journalists, human rights defenders and other politically-critical voices.
- States should not try to address or respond to disinformation through disproportionate means, such as internet shutdowns or website blockages, particularly where such actions take place outside a clear legal framework. States should not justify the use of such measures by the need to “fight disinformation” but instead ensure that citizens have meaningful access to diverse sources of reliable and accurate information.
- Civil society organisations should continue to monitor and raise awareness of instances where individuals are illegitimately detained or imprisoned on disinformation-related charges.
- Regional and international bodies, such as the African Commission on Human and People’s Rights, should issue clear guidance on how states should develop and enforce legislation on disinformation in a rights-respecting way, including through open, inclusive and transparent policy processes and through multistakeholder consultation. Such bodies should also clearly denounce the use of laws on disinformation to achieve political ends or disable or restrict the work of journalists and other legitimate actors.

---

<sup>1</sup> Article 19 West Africa; the Collaboration on International ICT Policy for East and Southern Africa (CIPESA); Centre for Human Rights, University Pretoria; PROTEGE QV; Global Partners Digital (GPD)

<sup>2</sup> LEXOTA, [www.lexota.org](http://www.lexota.org), accessed July 2023

<sup>3</sup> See Global Partners Digital, [A framework for analysing disinformation laws and policies from a human rights perspective](#)

<sup>4</sup> Cyrus Ombati, “[Blogger Cyprian Nyakundi arrested over coronavirus post](#)”, *The Standard*, 2020

<sup>5</sup> Japheth Ogila, “[Blogger Robert Alai freed on Sh50,000 cash bail over Covid-19 post](#)”, *The Standard*, 2020

<sup>6</sup> “[Former Senegalese PM under judicial supervision](#)”, *AfricaNews*, 16 March 2023

<sup>7</sup> “[Senegal Opposition Spokesman Charged Over 'Fake News'](#)”, *AFP*, 28 March 2023

<sup>8</sup> Reporters Without Borders (RSF), “[Tanzania suspends another media outlet over its Covid-19 coverage](#)”, 10 July 2020

<sup>9</sup> Regulation 16 of the version currently in force

<sup>10</sup> Committee to Protect Journalists (CPJ), “[Le journaliste camerounais Emmanuel Mbombog Mbog Matip détenu depuis août 2020](#)”, 19 April 2021

<sup>11</sup> RSF, “[Cameroonian newspaper editor finally acquitted, released after 16 months](#)”, 21 December 2021

<sup>12</sup> Ezechiel Kita Kamdar, “[Média : La suspension de Abba Garde, une décision unique](#)”, *Tachad.com*, 9 June 2020

<sup>13</sup> Fay Ngina, “[Two arrested for posting false information about CS Matiangi on social media](#)”, *The Standard (Kenya)*, 2021

<sup>14</sup> Unini Chioma, “[The Facebook Post That Landed A Human Rights Activist, Emperor Ogbonna, Esq, In Jail](#)”, 21 April 2020

- 
- <sup>15</sup> [“Court Grants Abia-based Lawyer, Emperor Ogbonna, Bail, Orders Release By DSS”](#), *Sahare Reporters*, 18 August 2020
- <sup>16</sup> Associated Press in Harare, [“Zimbabwe journalist Hopewell Chin’ono arrested for third time in six months”](#), *The Guardian*, 8 January 2021
- <sup>17</sup> Agence France–Presse in Harare, [“Zimbabwe court quashes charges against journalist Hopewell Chin’ono”](#), *The Guardian*, 28 April 2021
- <sup>18</sup> American Bar Association, [“Conviction of Fadzayi Mahere for Issuing a False Statement “Undermining Public Confidence in a Law Enforcement Agency” in Zimbabwe”](#) 11 July 2023
- <sup>19</sup> Parfait Folly, [“Bénin: le journaliste Aristide Hounkpèvi libre de ses mouvements”](#), *Benin WebTV*, 9 January 2020
- <sup>20</sup> CPJ, [“Ethiopian journalist Dawit Kebede detained without charge since November 30”](#), 18 December 2020
- <sup>21</sup> CPJ, [“Reporter Dawit Kebede Araya shot and killed in Ethiopia”](#), 28 January 2021
- <sup>22</sup> CPJ, [“Nigerian journalist detained by security forces, interrogated over sources”](#), 19 May 2020
- <sup>23</sup> In some cases, it was unclear if the law enforcement action resulted in sanctions or not.
- <sup>24</sup> Amnesty International, [“Guinea: Further information: Guinean activist released from detention: Oumar Sylla”](#), 13 October 2021
- <sup>25</sup> CPJ, [“Togo journalists Ferdinand Ayité and Isidore Kouwonou summoned over insult, false news allegations”](#), 6 March 2023
- <sup>26</sup> CPJ, [“Tanzanian newspaper banned from publishing online for 6 months over COVID-19 report”](#), 11 May 2020
- <sup>27</sup> Regulation 16 of the current Regulations in force.
- <sup>28</sup> CPJ, [“Tanzania ruling party newspaper Uhuru returns after two-week suspension”](#), 10 September 2021
- <sup>29</sup> CPJ, [“Tanzanian authorities suspend Raia Mwema newspaper for 1 month”](#), 15 September 2021
- <sup>30</sup> RSF, [“RSF decries arbitrary blocking of two CAR news websites”](#), 6 April 2021
- <sup>31</sup> [“Nigeria’s Twitter ban: Government orders prosecution of violators”](#), *BBC*, 5 June 2021
- <sup>32</sup> ECOWAS Court of Justice, *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) & 2 ORS v. Federal Republic of Nigeria*, Judgement No [ECW/CCJ/JUD/40/22](#) (14 July 2022)
- <sup>33</sup> For further guidance, see The Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 22.