

**IN THE SUPREME COURT OF CAMEROON**  
**SITTING AS THE CONSTITUTIONAL COUNCIL OF CAMEROON**  
**HOLDEN AT YAOUNDE**

**S/No:439**

**BETWEEN:**

RESEAU DES DEFENSEURS DES DROITS HUMAINS EN AFRIQUE  
CENTRALE (REDHAC).  
PETITIONER  
GLOBAL FORUM FOR THE DEFENSE OF THE LESS PRIVILEGED  
PETITIONER  
GLOBAL CONSCIENCE INITIATIVE  
PETITIONER  
GLOBAL LINKS INTERNATIONAL  
PETITIONER  
GLOBAL CONCERN  
PETITIONER

**VERSUS**

THE MINISTRY OF POST AND TELECOMUNICATIONS  
RESPONDENT  
CAMEROON TELECOMMUNICATIONS (CAMTEL).  
RESPONDENT  
THE STATE OF CAMEROON  
RESPONDENT

*The Honorable President of the Supreme Court of Cameroon  
(Sitting in for the President of the Constitutional Council of Cameroon)*

*Through*

*The Registrar-in-Chief of the Supreme Court of Cameroon  
(Sitting as Registrar-in-Chief of the Constitutional Council of Cameroon)  
Supreme Court Building, Yaoundé, Cameroon*

**IN THE MATTER OF A PETITION FOR A DECLARATORY JUDGMENT AND IN  
THE MATTER OF AN INTERPRETATION OF ARTICLE 65 OF THE  
CONSTITUTION OF CAMEROON**

=AND=

**IN THE MATTER OF A DECLARATION THAT THE INTERNET SHUTDOWN IN THE SOUTHWEST AND NORTHWEST REGIONS OF CAMEROON IS A VIOLATION OF THE CONSTITUTIONAL RIGHTS TO FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION AND FREEDOM FROM DISCRIMINATION IN CAMEROON**

**I. NOTICE OF LEGAL REPRESENTATION**

I **PRINCE AMAH JOHN SUH**, an adult male Cameroonian Christian, Advocate, Solicitor and Notary of the Supreme Court of Cameroon, Member of the Cameroon Bar Association and Nigeria Bar Association, and of Prince Law Firm, Tiko Road, Mutengene, do hereby Give Notice that, I have been duly constituted as *amicus*-counsel with instructions from *Access Now* and *Internet Sans Frontières*, to issue these submissions, further to, and in support of the submissions already filed in this matter now pending before the Supreme Court *qua* Constitutional Council, by Barrister NKEA A. Emmanuel of Veritas Law Offices, Buea.

**II. SUBMISSION ON INTERNATIONAL LAW**

**1. Right to Freedom of Expression under International Law**

The right to freedom of expression is affirmed under the Universal Declaration of Human Rights (UDHR)<sup>1</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup> Article 19(2) of the ICCPR states that the right to freedom of expression includes the right to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>3</sup> Within the African Union, the right to freedom of expression is guaranteed by Article 9 of the African Charter on Human and Peoples' Rights (African Charter).<sup>4</sup> This provision recognises that the right encompasses the freedom to receive, express and disseminate opinions and information.<sup>5</sup>

The internet provides individuals with the means of communicating, disseminating, receiving and seeking information and ideas instantaneously, on a global scale, and at a relatively low

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<sup>1</sup> UN General Assembly, *Universal Declaration of Human Rights* (hereafter UDHR), adopted by General Assembly Resolution 217 A(III) of 10 December 1948.

<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights* (hereafter ICCPR), 16 December 1966, United Nations Treaty Series, vol. 999.

<sup>3</sup> *Id.*, Article 19(2).

<sup>4</sup> African Union, *African Charter on Human and Peoples' Rights* (hereafter African Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 9.

<sup>5</sup> *Id.*

cost.<sup>6</sup> It has strengthened the voices of billions of people around the world.<sup>7</sup> These factors have contributed to the internet becoming one of the primary and principal means for individuals to exercise their right to freedom of expression.<sup>8</sup> In *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*,<sup>9</sup> the European Court of Human Rights recognised the crucial role the internet now plays in facilitating the right to freedom of expression:

“In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general.”<sup>10</sup>

As the internet is a uniquely valuable means by which individuals can exercise their right to freedom of expression, any interference with an individual’s or peoples’ freedom to seek, receive, and impart information and ideas through the internet will engage the right to freedom of expression under Article 19(2) of the ICCPR and Article 9 of the African Charter. As has been observed by the UN Human Rights Committee, Article 19(2) of the ICCPR explicitly states that it protects both the form of expression adopted by an individual and the means they have used for its dissemination, this necessarily includes “electronic and internet-based modes of expression.”<sup>11</sup>

In 2011, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression affirmed the unique importance of the right of freedom of expression as the “enabler” of other rights, including economic, social and cultural rights. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights.<sup>12</sup>

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<sup>6</sup> See for example United Nations Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/17/27 (2011), par. 67; Article 19, *Background Paper on Freedom of Expression and Internet Regulation* (2001), available at: [www.goo.gl/qA95IL](http://www.goo.gl/qA95IL), p.1.

<sup>7</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and African Commission Special Rapporteur on Freedom of Expression and Access to Information, *Joint declaration on freedom of expression and the Internet*, 1 June 2011.

<sup>8</sup> See European Court of Human Rights, *Ahmet Yildirim v. Turkey*, Application No. 3111/10 (18 December 2012), par. 54 (“Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.”).

<sup>9</sup> European Court of Human Rights, *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, Application No. 3002/03 and 23676/03 (10 March 2009).

<sup>10</sup> *Id.*, par. 27.

<sup>11</sup> UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, UN Doc. CCPR/C/GC/34 , par. 12.

<sup>12</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/17/27 (2011), par. 22.

## 2. International and Regional Courts Have Widely Condemned Internet Shutdowns and Website Blocking

Measures amounting to internet service disruption, website blocking, and online “kill switches” or “shutdowns” have been widely condemned by international, regional and domestic courts and human rights bodies. Most recently, in November 2016, the African Commission adopted a Resolution in which it expressed its concern over “the emerging practice of State Parties of interrupting or limiting access to telecommunication services such as the Internet, social media and messaging services, increasingly during elections”.<sup>13</sup>

In doing so, the African Commission aligned itself with the Human Rights Council of the UN General Assembly, which adopted a Resolution in June 2016 that appealed for the promotion, protection, and enjoyment of human rights on the internet.<sup>14</sup> The Human Rights Council stated that it was deeply concerned “by measures aiming to or that intentionally prevent or disrupt access to or dissemination of information online, in violation of international human rights law”.<sup>15</sup> In the Resolution, the Council “condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures.”<sup>16</sup>

In December 2017, the UN General Assembly adopted by consensus the resolution, "The safety of journalists and the issue of impunity", which contains an operative paragraph on shutdowns:

*“Condemns unequivocally measures in violation of international human rights law aiming to or that intentionally prevent or disrupt access to or dissemination of information online and offline, aiming to undermine the work of journalists in informing the public, and calls upon all States to cease and refrain from these measures, which cause irreparable harm to efforts at building inclusive and peaceful knowledge societies and democracies.”*<sup>17</sup>

In 2011, the UN Special Rapporteur on freedom of opinion and expression, the African Commission Special Rapporteur on Freedom of Expression and Access to Information, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression jointly declared that the;

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<sup>13</sup> African Commission on Human and Peoples' Rights, *Resolution on the Right to Freedom of Information and Expression on the Internet in Africa*, 59<sup>th</sup> Ordinary Session, held Banjul, Islamic Republic of The Gambia, from 21 October to 04 November 2016, ACHPR/Res. 362(LIX) 2016.

<sup>14</sup> UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/32/L.20 (2016).

<sup>15</sup> *Id.*, p. 3.

<sup>16</sup> *Id.*, par. 10.

<sup>17</sup> UN General Assembly, *The safety of journalists and the issue of impunity*, UN Doc. A/C.3/72/L.35/Rev.1 (2017).

“[c]utting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.”<sup>18</sup>

The special experts also declared that the;

“[m]andatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.”<sup>19</sup>

In 2015, the special mandate holders including from the African Commission addressed these issues again, declaring that the;

“[f]iltering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.”<sup>20</sup>

Despite these clear condemnations, however, such shutdowns continue in several regions of the world, in violation of international human rights law. In March 2017, the 30 governments in the Freedom Online Coalition issued a joint statement “expressing deep concern over the growing trend of intentional state-sponsored disruptions of access to or dissemination of information online”.<sup>21</sup>

### **3. Cameroon Commitments to International Law**

The preamble of the Cameroonian Constitution explicitly commits the government to respect regional and international frameworks that support human rights, including the African Charter on Human and Peoples’ Rights, the Universal Declaration of Human Rights and the United

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<sup>18</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and African Commission Special Rapporteur on Freedom of Expression and Access to Information, *Joint declaration on freedom of expression and the Internet*, 1 June 2011, par. 6(b).

<sup>19</sup> *Id.*, par. 3(a).

<sup>20</sup> UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and African Commission Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Freedom of Expression and responses to conflict situations*, par. 4(c).

<sup>21</sup> See Freedom Online Coalition, “FOC Issues Joint Statement and Accompanying Good Practices for Government on State-Sponsored Network Disruptions”, *available at* <<https://www.freedomonlinecoalition.com/news/foc-issues-joint-statement-and-accompanying-good-practices-for-government-on-state-sponsored-network-disruptions>>.

Nations Charter. Cameroon has also signed onto various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR).

#### **4. Violations of Freedom of Expression**

On January 17, 2017, the government ordered the suspension of internet services in the Northwest and Southwest Anglophone regions of Cameroon. The shutdown lasted 94 days and adversely impacted the region's 5 million residents. For three months, the shutdown went nearly unacknowledged by the Cameroonian government or mobile phone companies. Yet the evidence shows that the government ordered telecommunications companies to shut down internet access in Anglophone regions. A letter from Cameroon Telecommunications (CAMTEL), Cameroon's national telecommunications company, to the minister for post and telecommunications confirms that the company "coercively enforced" the government's instructions to suspend internet services "in certain sensitive regions".<sup>22</sup>

The internet outage came amidst a new wave of government repression, after months of protests against the dominance of French-language use in courts and schools. In Cameroon's Constitution, French and English are meant to be co-equal languages. However, the country's Anglophone minority maintains that public services, including the educational and judicial systems, favor French and discriminate against Anglophones, a frequent complaint raised in demonstrations by teachers and lawyers. In December 2016, these protests escalated into clashes with the police in which at least four were killed and many others were injured. In response, the Cameroon Anglophone Civil Society Consortium (CACSC) and Southern Cameroons National Council (SCNC) led "Ghost Town" strikes, in which they ask members of the public to stay at home and shops and businesses to close. On the same day these organizations were banned, the internet was shut off.

The internet blackout created "internet refugees", as Anglophone Cameroonians were forced to travel into Francophone regions or Nigeria to get internet access. The "Silicon Mountain", which is located in the affected region, was especially crippled by the loss of internet. After weeks of commuting to the almost 74 km from Buea to the commercial capital of Douala to access the internet, tech developers built an internet "refugee camp" in Bonako, a village near the toll gate separating the Southwest from the Francophone region of Littoral.<sup>23</sup>

The lengths to which Anglophone Cameroonian internet users went to restore their connections underscores the critical role of the internet in providing access to economic, social, cultural, and

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<sup>22</sup> Bergelene Domou (Dbergeline). 'Quand la souveraineté du Cameroun tient à la suspension d'Internet par l'État..en y forçant les opérateurs privés #FreeFreedom #FreeCameroon.' 21 Jan 2017, 5:28 AM. Tweet.

<sup>23</sup> Abdhi Latif Dahir, 'Reeling from an internet shutdown, startups in Cameroon have created an "internet refugee camp' (Quartz Africa, 28 March 2017), <<https://qz.com/942879/an-internet-shutdown-in-cameroon-has-forced-startups-to-create-an-internet-refugee-camp-in-bonako-village/>> accessed August 1, 2017

civic resources in the digital age. Depriving people of the internet interferes with a range of fundamental human rights.

## **5. Conditions for Acceptable Restrictions of Free Expression in International Law**

According to Article 19(3) of the ICCPR and Article 9 and 27(2) of the African Charter, a limitation or restriction on the right to freedom of expression will only be justifiable where it is (i) provided by law, (ii) serves a legitimate interest, and (iii) is necessary in a democratic society.<sup>24</sup> Where a State's restriction or limitation fails to meet any one of these cumulative criteria, it will amount to a violation of the right to freedom of expression.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has expressed his particular concern about the emerging trend of the timed blocking of internet services, such as the blocking of social media platforms, preventing users from accessing or disseminating information at key political moments such as during elections, times of social unrest, or anniversaries of politically or historically significant events.<sup>25</sup> The UN Special Rapporteur noted that such blocking is frequently in violation of Article 19 of the ICCPR because:

- (a) The specific conditions justifying the blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively.<sup>26</sup>
- (b) The blocking is not justified to pursue aims which are listed under Article 19(3) ICCPR, and blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose.<sup>27</sup>
- (c) Even where a legitimate aim is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal.<sup>28</sup>
- (d) Content is frequently blocked without the intervention of or possibility for review by a judicial or independent body.<sup>29</sup>

## **6. Cameroon Shutdown's Violation of Article 19**

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<sup>24</sup> African Commission on Human and Peoples' Rights, *Declaration of Principles on Freedom of Expression in Africa*, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, Principle II(2).

<sup>25</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/17/27 (2011), par. 30.

<sup>26</sup> *Id.*, par. 31.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

The Cameroon government's shutdown of internet services violates all three requirements for permissible restrictions of free expression outlined in Article 19:

The first criterion requires that the measure be imposed pursuant to a law that (i) is accessible to the public, (ii) is formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly, and (iii) provides adequate safeguards against unfettered discretion for the restriction of freedom of expression on those charged with its execution.<sup>30</sup> The internet disruption in the Anglophone regions was unacknowledged by the Cameroonian government until services were restored three months later, and it was not publicly justified through any Cameroonian law. Additionally, it broadly affected all users in the Northwest and Southwest regions including Francophones and Anglophones who did not participate in protests. The telecommunications companies charged with executing the government's secret shutdown order enjoyed complete discretion, given that no public oversight, transparency, or accountability could challenge the unpublished order or its execution.

The second criterion requires that the restriction be for the purpose of respecting the rights or reputations of others, or for the purpose of protecting national security, public order, public health or public morals.<sup>31</sup> Research indicates that imposing internet blackouts when people are protesting does not increase safety. Rather, it stops important information from reaching citizens — like how to find areas of safety or contact emergency services.<sup>32</sup> It also prevents people from documenting human rights violations such as the disproportionate use of force by the police or military.<sup>33</sup> Moreover, the failure to explain or acknowledge shutdowns creates the perception that they are designed to suppress reporting, criticism or dissent. In the case of Cameroon, this served only fuel tensions in the region by exacerbating the marginalization of Anglophones.

The final criterion mandates that the limitation be strictly necessary to achieve a legitimate aim and that it be proportionate to the interest to be protected.<sup>34</sup> The African Commission, in *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*,<sup>35</sup> has set out three guiding questions that must be asked when determining whether a measure is proportionate: “[Were] there sufficient reasons to justify the action? Was there a less restrictive alternative? Was the decision-making process procedurally fair? Were there any safeguards against abuse? Does the action destroy the essence of the rights guaranteed by the

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<sup>30</sup> UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, UN Doc. CCPR/C/GC/34 , par. 25.

<sup>31</sup> See also African Court on Human and Peoples' Rights, *Konaté v. Burkina Faso*, App. No. 004/2013 (2014), par. 134.

<sup>32</sup> Monique Kwachou, 'Cameroon: Life in No-Internet Cameroon' (All Africa, 1 March 2017)

<sup>33</sup> Bijan Stephen, 'How Black Lives Matter Uses Social Media to Fight the Power' (Wired, November 2015)

<sup>34</sup> UN Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, UN Doc. CCPR/C/GC/34 , par. 22.

<sup>35</sup> African Commission on Human and Peoples' Rights, *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, Communication No. 284/03.

Charter?”<sup>36</sup>The shutdown in Cameroon fails to meet the standard for necessity as it occurred in direct response to anglophone protests, ostensibly to quell their dissent. In international law, restrictions on expression may never be invoked to justify the suppression of advocacy for democratic rights.<sup>37</sup>

## **7. Violations of related rights**

The targeting of majority-Anglophone regions in order to silence protests from English-speaking Cameroonians breaches Article 21 of the ICCPR’s requirement of freedom of association. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has affirmed that the ability to use communication technologies is key to the organization and conduct of assemblies, and that the blocking of communications rarely satisfies the necessity and proportionality tests for restrictions on free association.<sup>38</sup> Cameroon is also a signatory of the International Covenant on Economic, Social and Cultural Rights. Articles 1, 2, and 6 guarantees rights to the benefits of science and technology, education, work, and economic self-determination, which the shutdown impermissibly impeded.<sup>39</sup>

## **8. Conclusion**

In light of the comparative and international law outlined above, a number of legal principles should be considered by courts when considering the right to free expression and how it related to restrictions on online communication. For example, the uniquely valuable role that the internet plays in facilitating free expression has been internationally recognized and is relevant to considering the necessity of restrictions on access to the internet. Furthermore, international and regional courts and human rights institutions have determined that disrupting or blocking internet access are incompatible with the right to free expression. These findings are based primarily on the basis that such actions are not “provided by law”, or are an unnecessary and disproportionate means of achieving their aim. The Interested Parties respectfully requests that the Honourable Court take these observations into account when reaching its judgement in the present case.

**DATED AT PRINCE LAW MUTENGENE  
THIS DAY OF            2018**

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<sup>36</sup> *Id.*, par. 176.

<sup>37</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/35/22 (2017), par. 11.

<sup>38</sup> United Nations Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UN Doc. A/HRC/31/66 (2016), par. 75.

<sup>39</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966,

**Amicus-Counsel**