IN THE CONSTITUTIONAL COUNCIL OF CAMEROON
HOLDEN AT YAOUNDE

THE HONOURABLE PRESIDENT,
THE CONSTITUTIONAL COUNCIL OF CAMEROON
YAOUNDE, CAMEROON

PETITION FOR A DECLARATORY JUDGMENT IN TERMS OF ARTICLE 65 OF THE CONSTITUTION OF CAMEROON

GLOBAL CONCERN CAMEROON	**PETITIONER**
VERSUS	
THE MINISTRY OF POST AND TELECOMUNICATIONS	**RESPONDENT**
CAMEROON TELECOMMUNICATIONS (CAMTEL).	**RESPONDENT**
THE STATE OF CAMEROON	**RESPONDENT**

PRINCE LAW FIRM MUTENGENE
P.O. BOX 235 TIKO, SW. REGION
REPUBLIC OF CAMEROON
AMICUS COUNSEL

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BETWEEN:

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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***, to issue these submissions, further to, and in support of the submissions already filed in this matter now pending before the Constitutional Council, by Barrister NKEA A. Emmanuel of Veritas Law Offices, Buea.

II. SUBMISSION ON INTERNATIONAL LAW

1. Cameroon has committed to uphold international law

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

The Cameroonian Constitution recognizes the government's commitment to upholding human rights pursuant to these international treaties. Specifically, the country's magna carta:

> "Affirm[s] our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions"[1];

and declares that:

> "Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement."[2]

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[1] *See* Preamble to Constitution of the Republic of Cameroon, <http://confinder.richmond.edu/admin/docs/Cameroon.pdf> accessed 12 June 2018.
[2] *Ibid.* at Art. 45

2. The right to freedom of expression is robustly affirmed under international law and applies online.

The right to freedom of expression is affirmed under the Universal Declaration of Human Rights (UDHR)[3] and the International Covenant on Civil and Political Rights (ICCPR).[4] 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.[5] 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).[6] This provision recognises that the right encompasses the freedom to receive, express and disseminate opinions and information.[7]

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 cost.[8] It has strengthened the voices of billions of people around the world.[9] 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.[10] In *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*,[11] 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

[3] UN General Assembly, *Universal Declaration of Human Rights* (hereafter UDHR), adopted by General Assembly Resolution 217 A(III) of 10 December 1948.

[4] UN General Assembly, *International Covenant on Civil and Political Rights* (hereafter ICCPR), 16 December 1966, United Nations Treaty Series, vol. 999.

[5] *Id.*, Article 19(2).

[6] 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.

[7] *Id.*

[8] *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, p.1.

[9] 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.

[10] 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.").

[11] 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).

> enhancing the public's access to news and facilitating the dissemination of information in general."[12]

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 undermine the right to freedom of expression under Article 19(2) of the ICCPR and Article 9 of the African Charter. The UN Human Rights Committee, interpreting Article 19(2) of the ICCPR, finds that the right 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."[13]
In 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression affirmed the unique importance 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.[14]

In 2012, the UN Human Rights Council passed by consensus the resolution "The promotion, protection and enjoyment of human rights on the Internet"[15] The resolution, "[a]ffirms that the same rights that people have offline must also be protected online, in particular freedom of expression." It also "[r]ecognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms," and "[c]alls upon all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries." The resolution has been renewed, by consensus, in 2014, 2016, and 2018.[16]

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[12] *Id*., par. 27.
[13] 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.
[14] 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.
[15] United Nations Human Rights Council, UN Doc. A/HRC/RES/20/8 (2012), *available at* http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20340.
[16] United Nations Human Rights Council, UN Doc. A/HRC/26/13 (2014), *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/83/PDF/G1408283.pdf?OpenElement.
United Nations Human Rights Council, UN Doc. A/HRC/32/13 (2016), *available at* http://digitallibrary.un.org/record/845727/files/A_HRC_RES_32_13-EN.pdf.
United Nations Human Rights Council, UN Doc. A/HRC/38/L.10 (2018), *available at* http://ap.ohchr.org/documents/alldocs.aspx?doc_id=29960.

3. Restrictions on freedom of expression are strictly limited under international law.

According to Article 19(3) of the ICCPR, Articles 9 and 27(2) of the African Charter, as well as Chapter II of the Declaration of Principles on Freedom of Expression in Africa, restrictions on the right to freedom of expression are justifiable only where the restriction is (i) provided by law, (ii) serves a legitimate interest, and (iii) is truly necessary in a democratic society.[17] Where a State's restriction fails to meet any one of these criteria, the interference amounts 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 conveyed particular concern about the emerging trend of the timed blocking of internet services, including of social media platforms. Such targeted disruptions prevent users from accessing or disseminating information during key political moments such as elections, times of social unrest, or anniversaries of politically or historically significant events.[18] 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 described in an overly broad and vague manner, leading to the risk of information being blocked arbitrarily and excessively.[19]
(b) The blocking does not pursue aims listed under Article 19(3) ICCPR, and blocking orders and the scope of their restrictions are generally kept secret, which makes it difficult to assess whether the interference is for a legitimate purpose.[20]
(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.[21]

[17] 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).
[18] 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.
[19] *Id*., par. 31.
[20] *Id*.
[21] *Id*.

(d) Content and networks are frequently blocked without the intervention of or possibility for review by a judicial or independent body.[22]

The African Commission, in *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*,[23] established three guiding questions that must be asked when determining whether a measure restricting freedom of expression 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 Charter?"[24]

4. International forums, courts, and experts 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 global, regional, and domestic courts and human rights bodies.

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".[25]

In doing so, the African Commission aligned itself with the UN General Assembly, which in 2017 adopted by consensus the resolution, "The safety of journalists and the issue of impunity." This resolution contains an operative paragraph on shutdowns:

> *"Condemns unequivocally* measures in violation of international human rights lawn 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

[22] *Id.*
[23] African Commission on Human and Peoples' Rights, *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, Communication No. 284/03.
[24] *Id.*, par. 176.
[25] African Commission on Human and Peoples' Rights, *Resolution on the Right to Freedom of Information and Expression on the Internet in Africa*, 59th Ordinary Session, held Banjul, Islamic Republic of The Gambia, from 21 October to 04 November 2016, ACHPR/Res. 362(LIX) 2016.

> cause irreparable harm to efforts at building inclusive and peaceful knowledge societies and democracies."[26]

The UN Human Rights Council adopted a resolution in June 2016 that appealed for the promotion, protection, and enjoyment of human rights on the internet.[27] In this "Internet 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."[28]

In 2018, the UN Human Rights Council renewed the "Internet Resolution," adopting by consensus a text that:

> "*Condemns unequivocally* measures in violation of international human rights law that prevent or disrupt an individual's ability to seek, receive or impart information online, calls upon all States to refrain from and cease such measures, and also calls upon States to ensure that all domestic laws, policies and practices are consistent with their international human rights obligations with regard to freedom of opinion and expression online."[29]

Additionally, in a resolution on the right to peaceful protest, the Council stated by consensus that it remains:

> "*Concerned about* the emerging trend of disinformation and of undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies,"

and

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[26] UN General Assembly, *The safety of journalists and the issue of impunity*, UN Doc. A/C.3/72/L.35/Rev.1 (2017).
[27] UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/32/L.20 (2016).
[28] *Id*., par. 10.
[29] UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/38/7 (2018).

> "*Calls upon* all States to refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online."[30]

Independent experts have informed these resolutions by States.

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:

> "[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."[31]

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."[32]

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

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[30] UN Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, UN Doc. A/HRC/RES/38/11, a*vailable at* https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Pages/ResDecStat.aspx.

[31] 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).

[32] *Id*., par. 3(a).

> communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law."[33]

Despite these clear condemnations, however, such shutdowns continue in many regions of the world, in violation of international human rights law. In March 2017, the thirty governments comprising 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".[34]

5. Cameroon has shut down the internet and impeded access to information online, causing widespread harm.

On January 17, 2017, the government ordered the suspension of internet services in the Northwest and Southwest regions of Cameroon. The shutdown lasted ninety-four days and adversely impacted the region's five million residents. For three months, the shutdown went nearly unacknowledged by the Cameroonian government and telecommunications companies. Yet the evidence shows that the government ordered these companies to shut down internet access in these two regions, which are home to anglophone Cameroonian communities. 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".[35]

The internet outage came amidst protests against the dominance of French-language use in courts and schools, in contravention of Cameroon's constitutional mandate for the co-equal use of French and English. The country's Anglophone minority maintains that public services, including the educational and judicial systems, favor Francophones and discriminate against Anglophones, a frequent complaint raised in demonstrations by teachers and

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[33] 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).

[34] *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>.

[35] 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.

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 asked members of the public to stay at home and to close shops and businesses. In response, Cameroonian government banned these organizations, and on the same day, Jan. 17, shut off the internet.

Shutting off the internet resulted in serious violations of Cameroonians' freedom of expression, a fundamental right affirmed by international laws and treaties, and protected in Cameroon's Constitution. Affected people:

- Were unable to share/read posts on social media or read news updates;
- Could not listen to online radio stations;
- Could not upload or download any pictures, documents, or files, or watch videos;
- Could not publicize information about what was going on in Cameroon, or access facts about civilian casualties during the protests; and
- Could not share the news, contact journalists, or report on the protest.

The internet blackout forced affected Cameroonians to travel into Francophone regions or Nigeria for internet access. The "Silicon Mountain", which is located in the affected region suffered significant financial loss because of the internet shutdown. After weeks of commuting for almost 74 kilometers 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.[36]

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

6. Cameroon's restrictions on internet access violate Article 19 of the ICCPR.

The Cameroon government's blocking violates all three requirements for permissible restrictions of free expression, as interpreted in General Comment 34.

[36] 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

The Cameroonian government's restriction fails to meet its burden to prove the restriction was permissible. The disruption beginning Jan. 17, 2017 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. The telecommunications companies charged with executing the government's secret shutdown order enjoyed complete discretion, given the lack of public oversight, transparency, or accountability over the order or their execution of it.

The shutdowns were not directed against dissemination of disinformation, but against the exchange of all forms of information, including regarding the protests. Soldiers undertook phone searches and arrested individuals whose phones contained protest-related messages. [37]

In addition, research indicates that imposing internet blackouts during civil protests actually exacerbates instability. Shutdowns prevent the circulation of important information, such as how to find safe zones and to access emergency services.[38] It also prevents people from documenting human rights violations, such as the disproportionate use of force by the police or military actors.[39] Moreover, the failure to explain or acknowledge shutdowns creates the perception that they are designed to suppress reporting, criticisms, and dissent. The Cameroonian government's internet shutdown fuelled tensions in Northwest and Southwest regions by exacerbating the marginalization of Anglophones.

The final criterion mandates that the limitation of the right to freedom of expression be strictly necessary to achieve a legitimate aim and that it be proportionate to the interest to be protected.[40] 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.[41]

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[37] *See* BBC News, "Why has Cameroon blocked the Internet?" 8 Feb 2017, ("The government responded by arresting activists and warning against protests and "malicious use of social media"), available at https://www.bbc.com/news/world-africa-38895541. *See also* Cameroon's Worsening Anglophone Crisis Calls for Strong Measures, International Crisis Group, available at https://www.crisisgroup.org/africa/central-africa/cameroon/130-cameroon-worsening-anglophone-crisis-calls-strong-measures.

[38] Monique Kwachou, 'Cameroon: Life in No-Internet Cameroon' (All Africa, 1 March 2017)

[39] Bijan Stephen, 'How Black Lives Matter Uses Social Media to Fight the Power' (Wired, November 2015)

[40] 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.

[41] 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.

Applying the test from *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*,[42] we see that the government did not justify the harsh and disproportionate blocking; less restrictive alternatives were not adequately pursued; the decision-making process was opaque and not procedurally fair, and the action therefore destroyed the essence of the rights guaranteed by the Charter."[43]

7. Violations of related rights: assembly and association

Attacking people's ability to communicate in order to silence protests constitutes a breach of Article 21 of the ICCPR, which affirms the freedoms of peaceful assembly and association.

The former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, found that the ability to use communication technologies is vital for enjoyment of an individual's right to organize and conduct assemblies, and that the blocking of communications rarely satisfies the necessity and proportionality tests for restrictions on free association.[44]

Indeed, the internet shutdowns in Cameroon imposed needless and excessive restrictions on the assembly rights of many people, in many respects.

Members of large non-governmental organizations (NGOs) experienced serious disruptions in communications with hundreds of their colleagues.

- Prior to the internet shutdown, NGO members could share documents with and send messages to all of their colleagues at once, utilizing mobile applications and social media. But during the shutdown, they had to call or text each one of their colleagues, incurring exorbitant time and costs.
- Further, because of the internet shutdown, NGOs were unable to reach their contacts to monitor the situation on the ground or report the difficulties faced by their colleagues or work with journalists. Civic organizations and media workers risked losing credibility with partners

[42] African Commission on Human and Peoples' Rights, *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*, Communication No. 284/03.
[43] *Id*., par. 176.
[44] 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.
See also *UN expert urges Cameroon to restore internet services cut off in rights, at violation.* In February 2017, Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, appointed in 2014, commented directly on the shutdown that "A network shutdown of this scale violates international law- it not only suppresses public debate, but also deprives Cameroonians of access to essential services and basic resources".
https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21165&LangID=E

and readers because they could not submit their reports or articles on time due to the internet shutdowns.

The government-ordered shutdown undermined individuals' freedom of assembly and information rights by substantially interfering with their ability to communicate and to gather for peaceful demonstrations, without adequate justification.

8. Violations of related rights: economic, social, and cultural rights

Cameroon is also a signatory of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Articles 1, 2, and 6 guarantee rights to the benefits of science and technology, education, work, and economic self-determination. All of these rights require internet access to realize in the digital age.[45]

Additionally, our research and engagement with the affected communities has uncovered numerous violations of other rights affirmed by the International Covenant on Economic, Social, and Cultural Rights, including:

a. Article 1(2)

The shutdowns resulted in frequent and systematic violations of Article 1 (2) of ICESCR stipulating that, "In no case may a people be deprived of its own means of subsistence."

The shutdowns threatened individuals' right to subsistence and caused significant financial loss, specifically:[46]

- Families dependent on remittances for their subsistence were unable to receive these critical funds. In some cases their inability to access remittance funds led to their starvation.
- Online businesses were detrimentally affected by the shutdown because they were deprived of their primary means to reach suppliers and clients, and fulfill orders.
- Some online business owners tried to use Virtual Private Network (VPN) services to circumvent the internet shutdowns. Their attempts were often

[45] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly Resolution 2200A (XXI)of 16 December 1966,

[46] Otto Akama, community manager of Activspaces in Cameroon's "Silicon Mountain", lamented in his interview with CNN that "(Due to the shutdown) We have empty offices all over the city. All tech companies are down. Most banks are down and ATM machines are not working so people don't have access to cash." Kieron Monks, *Cameroon goes offline after Anglophone revolt*, Jan. 2, 2018, CNN, https://www.cnn.com/2017/02/03/africa/internet-shutdown-cameroon/index.html

unsuccessful and they had to travel to cyber cafes to conduct their business. Travel time and costs placed them in economically pernicious situations.[47]

b. Article 2

According to Article 2 of ICESCR, the signatory states should guarantee people's rights provided by the covenant "without discrimination of any kind as to race… language… or other status." However, the fact that the shutdowns were targeted exclusively towards all those living in English-speaking parts of Cameroon demonstrates that the government violated the Covenant by engaging in discriminatory infringement on people's rights affirmed by ICESCR.

c. Article 10

The Covenant's Article 10 also requires the signatory states to accord "the widest possible protection and assistance to the family, which is the natural and fundamental group unit of society." However, the government failed to provide such protection since abrupt internet shutdowns in the region severely curtailed communications among family members.

- Many found it difficult to contact family members and relatives overseas or other regions.
- Many men who emigrated overseas could not communicate with their children and partners in Cameroon because calling cards were too expensive for them to afford. Some children, who had seen their fathers on video calls almost everyday, did not understand the situation, and thought that their mothers did not want to show them their fathers.
- People abroad felt isolated because they were unable to communicate with their families for a long time while in strange lands.
- Many people who were worried about their family members' safety due to recent incidents of unrest were even unable to ascertain whether their family members were still alive.

In particular, those with family members who were seriously ill met with most lamentable situations due to the shutdowns. Some could not figure out how their

[47] According to Judith Nwana, a US-based Cameroonian human rights activist with a background in telecommunications, VPNs are expensive and not everyone can afford one or had budgeted for one. She added in her interview with Al Jazeera, "Regardless, businesses, the tech industry, healthcare and education are seriously affected". Yanro Ritzen, *Cameroon internet shutdowns cost Anglophones millions*, Jan. 26, 2018, Al Jazeera, https://www.aljazeera.com/news/2018/01/cameroon-internet-shutdowns-cost-anglophones-millions-180123202824701.html

sick parents were doing. Some could not call or video chat with their dying grandparents they had not seen for years to send their last goodbyes.

d. Article 12

Article 12 of ICESCR requires all signatory states to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." In a joint report on the right to health, Office of United Nations High Commissioner of Human Rights and World Health Organization (WHO) elucidates that this right includes people's entitlement to the provision of health-related education and information, as well as the right to prevention, treatment, and control of diseases. [48] The report also adds that "[a]ll services, goods, and facilities must be available, accessible, acceptable and of good quality". [49]

The realities of the internet shutdown unfortunately reveal that the Cameroonian Government ignored and violated people's right to health, despite its obligations as a signatory state of the Covenant. The shutdowns detrimentally affected healthcare delivery, negatively impacting all stakeholders, including patients, clinicians, and district health services.

The shutdowns seriously limited people's entitlement to the provision of health-related education and information.

- Online health services and digital applications used by clinical staff to share medical knowledge and to mentor less experienced colleagues were inoperable.
- The internet shutdown also compromised medical care because it hindered communication between patients and medical personnel, as online communication platforms were unaccessible. For example, doctors and patients were unable to access online applications and securely exchange medical information vital for effectively treating infants with malaria.
- The internet shutdown undermined patients' rights to the "highest attainable standard of physical and mental health" care because for 94 days their doctors were unable to access online medical databases and update their practices to reflect new medical developments. For instance, physicians were unable to access online databases, such as Center for Development of Best Practices in Health (CDBPH) and Effective Basic Services (eBASE) that have assisted them with gathering evidence to guide their practice.

[48] The Right to Health, Fact Sheet No.31, p.3, https://www.ohchr.org/Documents/Publications/Factsheet31.pdf
[49] *Ibid.*, p.4

- In addition, Performance Based Financing (PBF), an innovative approach of health financing, has achieved promising results in strengthening health care systems in Cameroon. PBF enables efficient allocation of funds to health facilities by monitoring performances and production by health facilities, community workers, and communities via the internet. However, the internet shutdown rendered PBF unusable, undermining the efficiency of the healthcare system.
- Apps used to assist patients and clinicians were all inaccessible due to the shutdown. For example, 'GiftedMom', Taammunde, and other apps allowed pregnant women, especially those living in rural areas, to quickly reach out to clinicians when they were in distress. Audio communications were also available in those apps, which helped overcome the barrier of illiteracy unfortunately common to rural women. However, pregnant women could not utilize these Apps due to shutdowns.

People's right to prevention, treatment, and control of diseases were also violated due to the internet shutdown. Medical personnel were unable to upload and share data on regional medical and vaccination needs using the Expanded Program for Immunization (EPI) and Prevention of Mother to Child Transmission of HIV (PMTCT) web-based platforms, for prompt provision of medications and vaccinations.

Data had to be transported by paper or on flash drives on very bad roads, significantly delaying the provision process. These delays likely caused drug stock-outs and disturbed the timely administration of vaccines and medicines to acute risk patients. Failing to treat the patients could have led to drug resistance and viral mutations. This is particularly critical given that Cameroon is a high-risk zone for virus mutations.

e. Article 13

ICESCR Article 13 provides for the right of everyone to education, recognizing an individual's rights to both primary and higher education. However, the shutdowns significantly infringed upon the right to education as well.

The shutdown undermined pupils' rights to education because the service disruption deprived them, and their instructors, from access to valuable educational materials online. Students were unable to access and participate in their online courses, training, webinars, and virtual meetings. They also experienced difficulties in communicating with educational personnel, including teachers and mentors. Students were unable to complete online courses for

which they had paid expensive fees or lost opportunities provided by scholarships they had legitimately earned. Online instructors were also unable to teach their courses. Some students could not continue their research projects and studies. Others had to move to the capital city or other French regions and stayed there to continue their online studies or researches, suffering economic hardships.

Teachers - in all levels of education - also found it difficult to meet their pedagogical duties. Specifically, the internet shutdown limited teachers' ability to conduct online research for their lectures and lesson plans. This is particularly true for computer science teachers, who rely heavily on online experiential learning curriculum due to limited availability of computer science textbooks and materials. Sophie Monkam Ngasse Epse Fon Nsoh is one of the technology teachers adversely affected by the government shutdown. The instructor planned to run a coding initiative for girls age 10 through 18 when the Jan. 2017 shutdown struck.[50] She was unable to register twelve of her students - from Government Technical High School in Bamenda - for the 2017 Technovation Challenge because she did not have internet access.[51]

The cumulative and deep impacts of this discrimination could be described as "internet segregation" and should be roundly rejected by this Council.

Conclusion

In light of the comparative and international law outlined above, we submit that the Constitutional Council should account for a number of legal principles when addressing the rights to freedom of expression, association and peaceful assembly, and economic, social, and cultural rights, and how restrictions on access to information and communications online infringe upon these rights. For example, the uniquely valuable role the internet plays in facilitating free expression has been internationally recognized and is relevant when considering the necessity and proportionality of restrictions on access to the internet. Furthermore, international and regional courts and human rights institutions have determined that disrupting or blocking internet access is incompatible with the right to free expression. These findings are based on the recognition that such actions are not "provided by law", or are unnecessary and disproportionate

[50] Sophie Ngassa, Slate, "The Damage Caused by the 93-Day Internet Blackout in Cameroon," *available at* http://www.slate.com/blogs/future_tense/2017/08/17/the_damage_caused_by_cameroon_s_93_day_internet_blackout.html.

[51] https://www.oneyoungworld.com/blog/cameroons-internet-shutdown-human-factor

means to achieve the purported aims. The Interested Parties respectfully request that the Constitutional Council of Cameroon take these observations into account when reaching its judgement in the present case.

DATED AT PRINCE LAW MUTENGENE
THIS 20 DAY OF JULY 2018

Amicus-Counsel