

IN THE CONSTITUTIONAL COUNCIL OF CAMEROON
HOLDEN AT YAOUNDE

CASE NO:

BETWEEN:

GLOBAL CONCERN CAMEROON

PETITIONER

VERSUS

**THE MINISTRY OF POST AND TELECOMMUNICATIONS
CAMEROON TELECOMMUNICATIONS (CAMTEL)
THE STATE OF CAMEROON**

**RESPONDENT
RESPONDENT
RESPONDENT**

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

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To

The Honorable President

Constitutional Council of Cameroon

Constitutional Council Building, Yaoundé, Cameroon

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

=AND=

**LAW No 2014/028 OF 23 DECEMBER 2014 ON ACTS OF
TERRORISM IN CAMEROON**

=AND=

**LAW No 2010/012 OF 21 DECEMBER 2010 ON CYBER
CRIMINALITY IN CAMEROON**

=AND=

**LAW NO 90/47 OF 19 DECEMBER 1990 ON THE STATE OF
EMERGENCY IN CAMEROON**

=AND=

**LAW NO 90/54 OF 19 DECEMBER 1990 ON THE
MAINTENANCE OF LAW AND ORDER IN CAMEROON**

This Petition seeks the determination of the following questions:

- 1. Whether the infringement on the right to freedom of expression and access to information arising from the total and partial shutdowns of internet in the South-west and North-west Regions of Cameroon is Constitutional?**

- 2. Whether the infringement on the right against discrimination based on language arising from the total and partial shutdowns of internet in the South-west and North-west Regions of Cameroon are consistent with the right against discrimination based on language?**

I. INTRODUCTION/FACTS

- 1.** The Petitioner is a duly registered rights-based civil society organization in the Republic of Cameroon. A copy of the Registration Certificate is attached and marked exhibit “A”.
- 2.** The First Respondent – The Ministry of Posts and Telecommunications is the government ministry that governs the postal and telecommunications systems in the Republic of Cameroon.
- 3.** The Second Respondent – Cameroon Telecommunications (CAMTEL) is the national telecommunications and Internet service provider in Republic of Cameroon, owned and managed by the Third Respondents – The State of Cameroon.
- 4.** In this Petition the term *Internet shutdown* shall be defined as the intentional disruption of Internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location often to exert control over the flow of information.
- 5.** A *total shutdown* occurs where all services on the Internet are blocked off, targeting mobile Internet access and/or fixed lines, such that users in a country or region are not able to access the Internet.
- 6.** A *partial shutdown* occurs where content blocking techniques are applied to restrict access to websites or applications, very often to block people from communicating or sharing information amongst them.
- 7.** That, on or about the 17th day of January 2017 up to, and including the 17th of April 2017, a continuous period of 94 days, the Respondents herein by their joint and several acts, caused the total shutdown of Internet in the entire South-west and North-west Regions; the two English speaking regions in Cameroon.
- 8.** That, on or about the 01 October 2017 up to, and including the 17th of January 2018, a continuous period lasting over 100 days, the Respondents herein by their joint and several acts, caused the *partial shutdown* of Internet by blocking all social media application platforms in the entire South-west and North-west Regions of Cameroon.
- 9.** Internet intermediaries such as Internet service providers, internet cafes, blog hosts, mobile operators, social networking platform providers, and search engines play critical roles in supporting online communication, allowing individuals access

critical services, and upholding freedom of expression and freedom of association by providing access to networks, and enabling online participation.

- 10.** According to CAMTEL, the shutdowns were ordered by the Ministry of Post and Telecommunications for reasons of security. The Internet shutdowns followed a series of protests organized by lawyers' and teachers' syndicates in these regions against unfair government policies affecting the legal and educational sectors in these regions, and many persons were arrested and remain in detention.
- 11.** The Internet shutdowns affected 20% of country's population, and disproportionately impacted all users, and unnecessarily restricted access to information and emergency services communications. For instance, social media applications were inaccessible, online communication was prevented and the services provided by banks, hospitals, schools and emergency services were severely curtailed, causing loss of over \$2 million dollars to the population inhabiting these areas.
- 12.** In addition, these Internet shutdowns disrupted the free flow of information and allowed human rights violations to occur without public scrutiny. Access to vital information was gravely impeded and the right to effective participation in national debates was seriously curtailed. As such, the media based in these Regions were no longer able to effectively report on matters of public interest, and communities in these regions, which relied on the free exchange of information for a whole range of reasons, were unable to access information.
- 13.** The Constitution of Cameroon contains specific and exhaustive provisions on the recognition and protection of fundamental rights. In addition, the Republic of Cameroon is a State-party to several important international human rights instruments, including but not limited to the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR).

II. ANALYSIS OF FACTS AND LEGAL ARGUMENTS IN ANSWER TO THE ISSUES FOR DETERMINATION.

- 14.** This Petition seeks to determine the constitutionality of the total and partial shutdowns of the Internet and its impact concerns the violations of two important constitutional rights, which are equally protected under international human rights law. First, the constitutional right to free expression under the Preambular Article of the Constitution of Cameroon as read with Article 65 thereof; a right which is equally guaranteed under Article 9 of the ACHPR, Article 19 of the ICCPR,

and Article 19 of the UDHR. Second, the constitutional right to freedom from discrimination under the Preamble Article of the Constitution of Cameroon as read with Article 65 thereof; a right which is also protected under Article 2 of the ACHPR, Article 7 of the UDHR, and Article 26 of the ICCPR. We now address the issues for determination seriatim.

Issue No I: The Admissibility of this Petition before the Constitutional Council of Cameroon

15. The legal question of admissibility is a threshold matter, and must be resolved before any further steps can be taken to examine the matter on its merits. The admissibility of this Petition turns on four important questions to wit:

- (a) Whether the Constitutional Council of Cameroon has jurisdiction to entertain and determine this Petition;
- (b) Whether the facts disclose a *prima facie* case of a constitutional nature;
- (c) Whether the Petitioners have the competence to bring this Petition before the Constitutional Council of Cameroon; and
- (d) Whether the issues for determination raise constitutional issues of fundamental significance.

16. The Jurisdiction of the Constitutional Council is prescribed in Article 46 of the Constitution, as well as in Articles 2 and 34 of Law No 2004/4 of 21 April 2004 on the Organization and Functioning of the Constitutional Council. While Article 2 provides that the Constitutional Council shall have jurisdiction in matters of constitutionality, Article 34 mandates the Constitutional Council *inter alia* to give an opinion in matters relating to the interpretation of the Constitution.

17. We submit that the rights to freedom of expression, access to information, and freedom from discrimination are constitutional rights within the meaning of Cameroon law and by virtue of Article 65 of the Constitution.

18. While Article 46 of the Constitution of Cameroon provides that the Constitutional Council shall have jurisdiction in matters pertaining to the Constitution and shall rule on the constitutionality of laws, Article 47 (1) of the Constitution empowers the Constitutional Council to determine the constitutionality of all acts including Ministerial Orders.

19. We submit that since this Petition seeks the interpretation of Article 65 of the Constitution and the determination of the constitutionality of these impugned Ministerial Orders, the action falls directly within the jurisdiction of the Constitutional Council and should be declared admissible.

- 20. The Facts demonstrates Prima Facie Case of a Constitutional Nature** because by virtue of Article 65 of the Constitution of Cameroon the right to free expression and access to information and the right to freedom from discrimination are constitutional rights within the meaning of Cameroonian law.
- 21.** We submit that when the legal existence or continued legal existence of an essential right is entrenched in the constitution, it becomes a constitutional right. The right to free expression is expressly and specifically guaranteed in the Preambular Article of the Constitution of Cameroon. The rights protected under the Preambular Article of the Constitution are made justiciable by virtue of Article 65 of the Constitution of Cameroon.
- 22.** The right to free expression and access to information is also protected under Article 9 of the ACHPR, and Article 19 of the ICCPR. These treaty provisions have been incorporated into the domestic legal order of Cameroon by virtue of Article 45 of the Constitution of Cameroon.
- 23.** We accordingly submit that the right to freedom of expression and access to information is a constitutional right within the meaning of Cameroon law. Further, the right to freedom from discrimination is also a constitutional right by virtue of 65 of the Constitution.
- 24. The Petitioner has *locus standi*** to seek judicial recourse in the nature of a constitutional remedy for acts that constitute a violation of fundamental constitutional rights. Pursuant to Article 46 of the Constitution of Cameroon and sections 2 and 34 of the Law Organizing the Constitutional Council, only the Constitutional Council of Cameroon is empowered to interpret the Constitution and determine the constitutionality of laws. As such, there is no other Court or Tribunal that can receive and determine this action.
- 25.** It is settled law, that where there is a constitutional violation, there must be an effective constitutional remedy, and the Constitution cannot be used as an instrument to suppress the right to justice. The Petitioner has an inherent right to seek a just and proper constitutional remedy from the Constitutional Council and this right cannot be validly circumscribed by law, even by the Constitution itself. Therefore, Article 47(2) of the Constitution is in itself unconstitutional to the extent that it circumscribes the right to bring an action before the Constitutional Council to the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or one-third of the Senators, and Presidents of Regional Executives.
- 26.** Legally, access to constitutional justice is the right to seek and obtain effective constitutional remedies from the Constitutional Council. This right is

inextricably linked to the broader notion of access to justice, and is recognized under the Constitution of Cameroon as well as under major international and regional human rights instruments ratified by Cameroon. According to Article 8 of UDHR, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 3 of the ICCPR provides for the same right in more detail by requiring each State Party to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity, and that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

27. Article 45 of the Constitution of Cameroon, provides that duly approved or ratified treaties and international agreements override/take precedence over national laws. It follows that the respective provisions of the UHDR and ICCPR on access to justice rights constitute justiciable and enforceable rights, and have an overriding effect over the provisions of Article 47(2) of the Constitution of Cameroon.

28. **The issues herein are of a Fundamental Constitutional Significance** as the impugned acts were widespread and present a rare opportunity for the Constitutional Council to provide legal clarity on a significant constitutional question.

29. This Petition concerns the violations of a number of fundamental constitutional rights – the rights to free expression and non-discrimination are protected under the Preambular Article of the Constitution of Cameroon as read with Article 65 thereof. These rights are also guaranteed under regional and international instruments relevant to Cameroon. While Article 9 of the ACHPR, and Article 19 of the ICCPR protect the right to free expression and access to information, Article 2 of the ACHPR, Article 7 of the UDHR, and Article 26 of the ICCPR protect the right against discrimination.

30. This Petition presents a rare opportunity for the Constitutional Council to provide legal clarity on critical questions of fundamental constitutional significance in Cameroon - the extent to which executive intrusion into constitutional rights are permissible under Cameroon law; whether access to the Internet is relevant to the realization of constitutional rights in Cameroon; and whether the impugned actions constitute a violation constitutional rights.

31. We submit that the Petition is properly commenced before the Constitutional Court and should be declared admissible.

Issue No 2: Whether the Internet shutdowns were inconsistent with the constitutional rights to freedom of expression and access to information.

32. To answer this constitutional question we shall split our submissions under this head of argument into four parts –whether the rights to freedom of expression and access to information is a constitutional right; whether the right to internet access forms an integral part of the right to freedom of expression and access to information; whether the right to freedom of expression and access to information is absolute; whether the complete shutdown of internet is within the acceptable limitations.

33. **The rights to freedom of expression and access to information are constitutional rights** by virtue of Article 65 of the Constitution of Cameroon as we have already demonstrated under paragraphs 14 to 16 above. These paragraphs sufficiently state the case that this is a constitutional right. We adopt same as our submissions under this head of argument.

34. **The right to Internet access forms part of the right to freedom of expression and access to information** in that the Internet is one of the principal means by which individuals exercise their rights to freedom of expression and access to information, providing as it does, essential tools for participation in activities and discussions concerning political issues and issues of general interest (*Yildirim v. Turkey*, ECtHR Application No. 3111/10). The right to free expression includes not only the right to impart, but also the right to receive information and ideas, and there is a growing body of jurisprudence finding that intentional disruptions to the Internet violate international law. In 2016 the United Nations Human Rights Council passed a resolution on freedom of expression and the Internet stating that it “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” (UNHRC Resolution A/HRC/RES/32/13).

35. Under international law relevant to Cameroon, the right to freedom of expression is guaranteed under Article 19 of the ICCPR. The Republic of Cameroon ratified the ICCPR in 1984, and explicitly recognized the treaty provisions of the ICCPR. Under international law, the UN Human Rights Council (17th Session, A/HRC/17/27) has held that internet platforms are essential for individuals to share critical views and find objective information. In this regard, the UN Human Rights Committee has recognized that the right to freedom of expression, as

guaranteed by Article 19(2) ICCPR, protects all forms of expression, including all forms of electronic and internet-based modes of expression. Accordingly, the Human Rights Committee has urged States to take account of the extent to which development in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world, and that States should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.

- 36.** Under regional human rights law, the right to freedom of expressions and access to information is guaranteed under Article 9 of the ACHPR. The Republic of Cameroon ratified the ACHPR in 1989 and explicitly recognized the treaty provisions of the ACHPR. Under regional human rights law, the African Commission has held that freedom of expression is a fundamental human right which is also a cornerstone of democracy and a means of ensuring the respect for all human rights and freedoms. That any laws restricting freedom of expression must conform to international human rights norms, and should not jeopardize the right itself (**Liesberth Zegvelt & Mussie Ephrem v. Eritrea – Comm. 250/02, para. 59-60**).
- 37.** The African Commission, in Article 1 of the Declaration of Principles on Freedom of Expression in Africa further states that - freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy; and that everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.
- 38.** In Article 3 of the Declaration of Principles on Freedom of Expression in Africa, the African Commission emphasized that the right to freedom of expression imposes an obligation on state authorities to take positive measures to promote diversity and concurrently protect pluralistic access to the media and other means of communication. Inherent in Article 3 of the Declaration of Principles on Freedom of Expression in Africa, is the fact that the right to Internet forms part of the right to freedom of expression and access to information. In November 2016 the ACHPR adopted a resolution on the right to freedom of information and expression on the internet in Africa, which noted its concern over the “emerging practice of State parties of interrupting or limiting access to telecommunications services such as the internet, social media and messaging services, increasingly during elections” (**ACHPT/Res. 362[LIX]**).

39. In its jurisprudence, the African Commission has articulated the significance of the right to freedom of expression as enshrined in Article 9 of the ACHPR. In *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria (Comm. 105/93; 128/94; 130/94; 152/96)*; and *Amnesty International v. Zambia (Comm. 212/98)* the African Commission held that Article 9 of the ACHPR reflects the fact that freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country.
40. The importance of the Internet has been recognized by other regional courts. The European Court of Human Rights in the case of *Times Newspapers Ltd v. the United Kingdom (App. No. 3002/03 and 23676/03)*, held that, 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. Therefore, State authorities have a negative obligation not to interfere with the right to receive and impart information online, or are otherwise prohibited from preventing a person from receiving information online that others wished or were willing to impart (*Kalda v. Estonia, App. No. 17429/10*). In the case of *Delfi v. Estonia (App. No. 64569/09 (2015), 66)* it was held that the Internet provides an unprecedented platform for the exercise of the right to freedom of expression by facilitating user-generated expressive activity.
41. **The right to freedom of expression and access to information is absolute**, and in evaluating whether a violation of freedom of expression has occurred, international legal standards require the adoption of a two-step inquiry that would determine: (i) whether there has been an interference with the right to freedom of expression and (ii) whether such an interference was justified in accordance with well established international human rights law standards. These standards provide that in order for an interference to be justified, it must (1) be prescribed by law; (2) pursue a legitimate aim; and (3) be necessary in a democratic society. The obligation is on the State to convincingly establish each of the three independent requirements of a permissible interference.
42. This approach is reflected in Article 19(3) of the ICCPR, where restrictions on the right to freedom of expression are only permissible where they are "provided by law" and are necessary to ensure respect for the rights or reputations of others and/or the protection of national security or of public order, or of public health or morals. As such, the right to freedom of expression online under Article 19 is not an absolute right and is subject to conditions and restrictions.

43. Under Cameroonian law, there is an impressive gamut of laws on the maintenance of law and order and the suppression of riotous conduct on the cyber space. However, none of these laws permit the complete shutdown of the internet as a measure to restore order during peace time.
44. **Sections 2 - 6 of Law No 90/54 of 19 December 1990 relating to the Maintenance of Law and Order in Cameroon** spells out clearly the powers and measures that can be employed by administrative authorities to restore law and order. But such measures do not envisage the disruption, interference, or complete shutdown of the internet.
45. **Sections 60-89 of Law No 2010/012 of 21 December 2010 relating to Cyber Security and Cyber Criminality** does not impose as a sanction the disruption, interference, or complete shutdown of the internet.
46. **Sections 2-10 of Law No 2014/028 of 23 December 2014 on the Suppression of Acts of Terrorism in Cameroon** do not envisage as a sanction the disruption, interference, or complete shutdown of the internet.
47. Although the African Charter does not permit derogation from the right to freedom of expression or any other right on the basis of emergencies (**Liesberth Zegvelt & Mussie Ephrem v. Eritrea – Comm. 250/02, para. 60**), Cameroonian law permits that, the State of Cameroon can, and as an extreme exceptional measure intentionally restricts the enjoyment of fundamental human rights in the interest of national security or of public order, but this must be in accordance with the law.
48. Under Cameroonian law the suspension, denial or restriction of fundamental human rights in the interest of national security can only be justified following the proclamation of a State of Emergency by the Head of State as provided for under **sections 1, 5(3) and 6(2) of Law No 90/47 of 19 December 1990** relating to the State of Emergency in Cameroon. However, in the particular circumstances of this case, the Head of State has not proclaimed a State of Emergency over the Southwest and Northwest Regions of Cameroon.
49. We accordingly submit that the complete shutdown of the internet in the Southwest and Northwest Regions of Cameroon is arbitrary and unjustified by law, and we urge the Constitutional Council to so hold.
50. **The total and partial shutdowns of the Internet were irrational because** freedom of expression is essential in a democratic society, such as Cameroon. When the Internet, an essential component of modern life, is arbitrarily shut down in a specific region for an indeterminate period, free expression is

effectively prevented. In 2015, various experts from the United Nations (UN) including the Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples' Rights (ACHPR), issued an historic statement declaring that Internet shutdowns such as the one currently ongoing in the Regions can never be justified under international human rights law, even in times of conflict (***Joint Declaration on Freedom of Expression and Responses to Conflict Situation***).

51. The order to shutdown the Internet was applied indiscriminately all over the Southwest and Northwest Regions of Cameroon. The order constituted an interference with the rights to freedom of expression in that it was not prescribed by law. The interference was not foreseeable based on (1) constitutional obligations (2) statutory language, and (3) the specific characteristics of the Internet. For a restriction to be prescribed by law, that restriction must be formulated with sufficient precision such that it would be foreseeable to those whose rights are being restricted. In particular, a foreseeable rule protects against arbitrary interference by public authorities, and against the extensive application of a restriction to any party's detriment.
52. An important rule of law is that, no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as collectively responsible. Social media blocking, slowing down, altering, restricting, or interference, degrading must be consistent with strict proportionality requirements. The penalty must necessarily be inflicted only on those who bear responsibility for the alleged contravening actions. If any wrongdoing did occur relating to the use of certain websites or platforms, which we submit did not occur in this instance, such wrongdoing can be properly addressed by taking steps consistent with international standards on free expression. Under international, where wrongdoing has been identified, the proper measures of censure have been to disable those platforms and applications which disseminate unlawful content, and to identify and impose the corresponding penalty only on those who bear responsibility for the contravening actions.
53. The complete and indiscriminate shutdown of the internet over the entire Southwest and Northwest Regions is arbitrary, disproportionate and unfairly affects users and platforms which cannot be regarded as having used any of the internet applications to further violence or hatred. Whereas blocking certain Internet applications or removing certain specific content may, in certain circumstances, be legally acceptable, a complete shutdown of the Internet is the most intrusive measure available to the State and cannot be justified in any circumstance. In this regard, the **UN Human Rights Committee** has explicitly

stated that Internet shutdowns are not permissible restrictions under Article 19 ICCPR.

54. Unequivocal measures to intentionally prevent or disrupt access to or dissemination of information online constitute a violation of international human rights law (**UN Human Rights Council 32nd Session, A/HRC/32/L.20**). Restrictions on access to the Internet aimed at preventing users from accessing or disseminating information at key political moments or times of social unrest, would constitute a violation of the right to freedom of expression – if 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; 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; 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; content is frequently blocked without the intervention of or possibility for review by a judicial or independent body (**UN Human Rights Council, 17th Session, A/HRC/17/27**).
55. In *Delfi v. Estonia* (**ECtHR, no. 64569/09 (2015), para. 47**) the Court agreed inter alia that restrictions may apply to expressions which incite discrimination, hatred or violence, but added that these restrictions must be lawful, narrowly tailored and executed with court oversight. Thus, in *Ekin v. France* (**ECtHR, no. 39288/98 (2001) para. 58**), the Court agreed that a legal framework is required to ensure both tight control over the scope of bans and effective judicial review to prevent any abuse of power. In is regard, national authorities have the obligation to make sure that any restriction of the right to freedom of expression is not only proportionate, but as unobtrusive as possible (*Yildirim v. Turkey, ECtHR, no. 3111/10 (2013), para. 21*).
56. The importance of providing and maintaining access to internet has been demonstrated in a report submitted by the UN Commission on Science and Technology for Development (**16th Session, E/CN.16/2013/3 (25.03.2013)**). They recognized that access to the Internet creates essential benefits for everybody. Firstly, Internet access facilitates economic development by the creation of online services, businesses and application which concurrently create jobs. Secondly, access to the Internet enhances education as the Internet provides a platform for exchange of information. Thirdly, it can be beneficial with regard to health care as it gives people, especially in rural areas, fast and direct access to consult about basic health questions. Fourthly, the Internet provides advantages with regard to

cultural and social development. Internet users can develop their understanding of different types of art and culture. Lastly, perhaps the most important reason for the protection of Internet access is to allow for the public to engage on matters relating to politics. The Internet and in particular social media is largely used for informative purposes, exchanging information and views on news and current events. Also, it is used to debate, exchange ideas and opinions and to organize activist movements and political reforms all over the world. In blocking access to the Internet or Internet services the Respondents are denying people the opportunity to engage in these activities.

57. The case of *Cengiz & Others v. Turkey* (ECtHR, nos. 48226/10 & 14027/11) demonstrates that a restriction to access certain websites not only restricts the access to the content and persons concerned, but it is a violation of the right to receive and impart information for many others. It is now settled law that restriction of internet access without a strict legal framework regulating the scope of the ban and affording the guarantee of access to courts to prevent possible abuses amounts to a violation of freedom of expression (*Yildirim v. Turkey*).

58. In *Yildirim* the blocking of access to an entire Internet domain, in that case to all Google sites was held to be too intrusive in order to achieve the foreseen aim. In that case a Turkish court's decision to block access to all Google Sites, because of one Internet site facing criminal proceedings for insulting the memory of their former President Atatürk, was held to have been arbitrary and the judicial review of the blocking of access had been insufficient to prevent abuses. Thus, it can be established that the complete shutdown of the Internet is not a legitimate measure to control certain illegal or disturbing content and a priori is not a legitimate measure when used for political purposes.

59. When the Internet, an essential component of modern life, is arbitrarily shut down in specific regions for an indeterminate period, free expression is effectively prevented. The order to shut down the Internet has been applied and enforced in violation of the Petitioners' human rights and in breach of Cameroon's international treaty obligations. As such, we submit that the complete shutdown of Internet access in the Southwest and Northwest Regions of Cameroon is not a legitimate measure and consequently a violation of the constitutional rights to freedom of expression and access to information.

60. The actions of the Respondents, in applying and enforcing the Ministerial Orders to completely shut down the Internet in the Southwest and Northwest Regions of Cameroon are both intrusive and derisive, and constitute a violation of the constitutional rights of the Petitioners to freedom of expression and access to information, as well as the constitutional rights of other internet users in these regions of Cameroon. Further, in continuing to maintain those orders, Cameroon

continues to violate the Petitioners' rights, together with the rights of other Internet users in Cameroon.

Issue No 3: Whether the shutdown of the Internet in the Southwest and Northwest Regions of Cameroon is inconsistent with the constitutional provisions prohibiting discrimination based on language?

61. Language is an essential means for social interaction and the development of personal identity, particularly so where language is the defining or distinguishing characteristic of a particular ethnic or cultural group. The link between language and the individual's identity has been emphasized in a number of international instruments while also frequently emphasizing the need for States to protect the linguistic identities of minorities and not to discriminate on linguistic grounds.
62. Support for the need to states to promote linguistic diversity is found in Article 7 of the Universal Declaration of Linguistic Rights 1990, which states that: "[a]ll languages are the expression of a collective identity and of a distinct way of perceiving and describing reality and must therefore be able to enjoy the conditions required for their development in all functions" on the basis that languages are "tools of cohesion, identification, communication and creative expression."
63. The fundamental link between language and identity has also been recognized by the UN Office of the High Commissioner in its guidance on implementation of minority rights whilst emphasizing the need for positive action to respect linguistic diversity: "Central to the rights of minorities are the promotion and protection of their identity. Promoting and protecting their identity prevent forced assimilation and the loss of cultures, religions and languages—the basis of the richness of the world and therefore part of its heritage. Non-assimilation requires diversity and plural identities to be not only tolerated but protected and respected. Minority rights are about ensuring respect for distinctive identities while ensuring that any differential treatment towards groups or persons belonging to such groups does not mask discriminatory practices and policies. Therefore, positive action is required to respect cultural, religious and linguistic diversity, and acknowledge that minorities enrich society through this diversity." (***Minority Rights: International Standards and Guidance for Implementation, Office of the High Commissioner for Human Rights, UN Doc HR/PUB/10/3, Geneva, 2010, p. 8.***)
64. In Europe the *Introduction to the Oslo Recommendations regarding the Linguistic Rights of National Minorities 1998* recognises that "On the one hand, language is a personal matter closely connected with identity. On the other hand, language is an essential tool of social organisation which in many situations

becomes a matter of public interest” whilst emphasizing that the use of language contributes to the “the essential social dimension of the human experience”.

65. Discrimination involves treating differently, without an objective and reasonable justification, persons in relevantly similar situations. If the Petitioner establishes a difference in treatment, the Respondents must then demonstrate that this difference in treatment has an objective and reasonable justification. It is well established in international law that an “objective and reasonable justification” is established if the measure in question has a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be realized.
66. Discrimination on the grounds of language is impermissible in international law. According to Article 2 of the ICCPR, which prohibits discrimination, each State Party undertakes “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, **language**, religion, political or other opinion, national or social origin, property, birth or other status.” (emphasis added) Furthermore, Article 2 of the ACHPR entitles individuals to the enjoyment of the rights and freedoms guaranteed under the Charter “without distinction of any kind such as race, ethnic group, color, sex, **language**, religion, political or any other opinion, national and social origin, fortune, birth or other status.” (emphasis added).
67. In the case of *Meldrum v Zimbabwe (Comm. 294/2004, para. 91)*, the African Commission referred to the principle of non-discrimination as essential to the spirit of the African Charter. In the case of *Legal Resources Foundation v. Zambia (Comm. 211/98 para. 63)* the African Commission examined the impact of discrimination in a growing number of African States, and rightly observed that these forms of discrimination have caused violence and socio-economic instability, which has benefited none but has rather casted doubt on the democratic credentials of states.
68. In ordering and enforcing the complete shutdown of the Internet in the English speaking regions of Cameroon, the Respondents have discriminated against the Petitioners on the basis of their language. There is no objective and reasonable justification for the Respondents actions such that they amount to unlawful discrimination in violation of Articles 2 and 3 of the Charter, the Preambular Articles of the Constitution as read with Articles 45 and 65 thereof.
69. The Petitioners maintain that, consistent with international law standards on discrimination, there is no need to prove an intention to discriminate, as the definition includes circumstances where an apparently neutral policy has the effect

of an unjustified distinction, resulting in discrimination. Accordingly, where a difference in treatment is justified on the basis it pursues a legitimate aim; it must be done in a way that is necessary and proportionate to that aim. The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained (***Media Rights Agenda & Others v. Nigeria, Comm. 105/93, 128/94, 130/94, 152/96, para. 69***). A limitation may never have as a consequence that the right itself becomes illusory.

70. The Petitioners have established a prima facie case that they are treated differently because of language as English speaking (Anglophone) Cameroonians. The burden of proof now lies on the Respondent State to provide an objective and reasonable justification for their differential treatment. International law makes clear that in cases of discrimination, once an applicant has established a difference in treatment, the burden is on the respondent government to prove that it was objectively justified, and that in the absence of a neutral explanation, it is legitimate to conclude that the difference in treatment is based on impermissible grounds.

III. CONCLUSIONS / PRAYERS

71. On the preponderance of evidence, based on the facts and submission set out above, we have established our case. We accordingly urge the Constitutional Council of Cameroon to hold and order as follows:

- (i) ***That the total and partial shutdown of the Internet in the Southwest and Northwest Regions of Cameroon violates the constitutional rights to freedom of expression and access to information.***
- (ii) ***That the total and partial shutdown of the Internet in the Southwest and Northwest Regions of Cameroon violates the constitutional provisions prohibiting discrimination based on language.***
- (iii) ***Urge the Respondents not to interfere with access to the Internet in the Northwest and Southwest Regions or any other Region or part of Cameroon in ways that are inconsistent with the constitutional rights of the Petitioners and other residents.***
- (iv) ***Costs of these proceedings be assessed and ordered against the Respondents herein.***

**DATED AT VERITAS LAW OFFICES BUEA
THIS 28th DAY OF JUNE 2018**

COUNSEL FOR THE PETITIONER

ADDRESSES FOR SERVICE:

- 1. THE PETITIONER
C/O THEIR COUNSEL,
VERITAS LAW OFFICES P.O. BOX 246 BUEA**

- 2. THE FIRST RESPONDENT
MINISTRY OF POST AND TELECOMMUNICATIONS
YAOUNDE**

- 3. THE SECOND RESPONDENT
CAMEROON TELECOMMUNICATIONS
CAMTEL HEAD OFFICE YAOUNDE**

- 4. THE THIRD RESPONDENT
THE STATE OF CAMEROON
C/O THE MINISTRY OF JUSTICE
YAOUNDE**