

JAKARTA STATE ADMINISTRATIVE COURT

BETWEEN

**Aliansi Jurnalis Independen (AJI) and Pembela Kebebasan Berekspresi
Asia Tenggara (SAFE-net)**

Plaintiffs

-and-

**The Ministry of Communication and Information (Kominfo) and The President
of the Republic of Indonesia**

Defendants

AMICUS CURIAE SUBMISSION OF ACCESS NOW

Introduction

- 1) Access Now is a non-governmental organisation which seeks to defend and extend the digital rights of users at risk around the world, including the rights to freedom of expression and to receive and impart information. It was founded following Iran's contested presidential elections in 2009 in response to the actions of the Iranian government to block internet access, censor content, and undermine the online security of its opponents. Since that time, Access Now has grown to become an organisation with international reach, with staff members across 14 countries. Its activities include advocacy for digital rights, direct technical support, and maintaining a respected database of "internet shutdowns."¹ It is non-partisan, not-for-profit, and not affiliated with any country, corporation, or religion.
- 2) Access Now routinely files amicus briefs with domestic jurisdictions, including the United States, Cameroon, and Colombia,² as well as regional courts, such as

¹ The database available at <https://www.accessnow.org/keepit/> was cited by David Kaye, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in his report to the UN General Assembly (6 September 2016), UN Doc. A/71/373, para. 22, footnote 27, <https://undocs.org/pdf?symbol=en/a/71/373>.

² See Access Now, "Access Now Joins Legal Brief Supporting Privacy of Facebook Users" (12 January 2017), <https://www.accessnow.org/access-now-joins-legal-brief-supporting-privacy-facebook-users/>; Brief of Amici Curiae Brennan Center for Justice, Electronic Frontier Foundation, Access Now, and TechFreedom in re 381 Search Warrants Directed to Facebook, Inc., and Dated July 23, 2013, Facebook, Inc. v. New York County District Attorney's Office, New York State Court of Appeals (December 30, 2016),

the European Court of Human Rights and the Economic Community of West African States Court of Justice (ECOWAS).³ Access Now has sought leave to intervene in these proceedings, particularly dealing with State ordered internet shutdowns, because they raise questions of fundamental importance regarding State interference with the right to freedom of expression, the right to assembly, the right to receive and impart information, as well as the rights to work, health, education, scientific progress, and cultural rights in the internet age.

- 3) The unprecedented power of the internet to enable millions freely to express opinions, organize, and impart and receive information, is clear. However, the actions of governments around the world in recent years have shown with equal clarity that the internet has given States a hitherto unseen power to stem the flow of opinions and information by technical means, with immediate effect, and in a blanket fashion. This submission **first** sets out the wider context of State disruption of internet activity, or “internet shutdowns,” and the response of the United Nations to such activity; and, **secondly**, addresses the principles to be applied by this Court when considering the lawfulness of such State actions.

(i) Internet shutdowns

- 4) The phrase “internet shutdown” has been defined as an “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 free flow of information.”⁴ They range from blocks of service-specific platforms and apps to wider blocks, including of the mobile internet, the broadband internet, or even of the internet as a whole. They are also referred to as “blackouts,” “kill switches,” or “network disruptions.”⁵

<https://www.brennancenter.org/sites/default/files/FacebookvNYCoDA-amic-Brennan-amicbrf.pdf>; and Access Now, “Access Now & ISF File Legal Intervention against Cameroon Shutdown” (24 January 2018), <https://www.accessnow.org/access-now-isf-file-legal-intervention-cameroon-shutdown/>.

³ See Access Now, “Website Blocking in Russia Goes to the European Court of Human Rights. Access Now Intervenes” (17 November 2017),

<https://www.accessnow.org/website-blocking-russia-goes-european-court-human-rights-access-now-intervenes/>, <https://www.accessnow.org/delfi-as-v-estonia-a-blow-to-free-expression-online/>; Magyar Jeti Zrt v. Hungary, European Court of Human Rights, Application no. 11257/16 (4 December 2018),

<https://www.statewatch.org/news/2018/dec/echr-hu-magyar-jeti-zrt-v-hungary-hyperlinks-defamation-judgement-4-12-18.pdf>; Access Now Intervention, Big Brother Watch and Others v. the United Kingdom, European Court of Human Rights, Application No. 58170/13 (9 February 2016),

<https://www.accessnow.org/cms/assets/uploads/2016/02/ECtHRIntervention.pdf>; and Access Now, “Judges Raise the Gavel to #KeepItOn Around the World,” (23 September, 2019),

<https://www.accessnow.org/judges-raise-the-gavel-to-keepiton-around-the-world/>.

⁴ Access Now’s report “#KeepItOn: The State of Internet Shutdowns Around the World” (2018), p. 2, para.1.1, <https://www.accessnow.org/cms/assets/uploads/2019/07/KeepItOn-2018-Report.pdf>.

⁵ Id.

- 5) Access Now tracks worldwide instances of internet shutdowns and has documented a rise in shutdowns globally. In 2016, there were at least 75 verified incidents of internet shutdowns around the world. Fast forward to 2019, this number has tripled with at least 213 cases around the world including three incidents in Indonesia.⁶
- 6) Year after year, countries in Asia take the lion's share of shutdowns in the world. India, Pakistan, Bangladesh, and Indonesia make up the majority of countries that shutdown the internet in Asia. Official government justifications for such disruptive activity rarely coincide with the actual cause. For instance, in 2018 and 2019, governments' justification for shutdowns included combating "fake news," hate speech, and related violence; public safety; national security; and precautionary measures, among others.⁷ In reality, when authorities use these justifications, they often are either trying to quell protests, disrupt elections, or control the free flow of information.⁸
- 7) In 2019, according to our research, Indonesia has shut down the internet three times. The first shutdown affected the whole country while the last two targeted the Province of Papua and West Papua. The censorship and internet shutdown in Papua and West Papua first started with bandwidth throttling on 19 August 2019. Shortly after, the internet speed slowdown was followed by complete shutdown. On 21 August 2019, the communication blackout in Papua and West Papua was first introduced and lasted until 4 September 2019. The third internet shutdown affected Wamena and other regions and lasted for at least five days. The internet shutdowns were accompanied by phone network disruptions taking the region completely offline and leaving it in the dark.
- 8) While the Communication and Information Minister justified the shutdown as a means to "restore the security and order situation of the Province," human rights groups have suggested the shutdowns were likely implemented in response to the indigenous Papuan students' protests and subsequent criticism of the State violence, documented online.⁹
- 9) Significant and growing concern about State disruption of internet activity has been expressed by multiple United Nations bodies since an early stage in the widespread use of the internet. Thus, on 16 May 2011, Frank La Rue, the UN

⁶ Access Now, "Targeted, Cut off, and Left in the Dark, the #KeepItOn Report Internet Shutdowns in 2019" (2019), <https://www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf>

⁷ Id.

⁸ Id.

⁹ Human Rights Watch, "Indonesia: Investigate Deaths of Papuan Protesters," (7 September 2019), <https://www.hrw.org/news/2019/09/07/indonesia-investigate-deaths-papuan-protesters>; Access Now, "Targeted, Cut off, and Left in the Dark, the #KeepItOn Report Internet Shutdowns in 2019," p.6.

Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, issued a report, which focused on “some of the ways in which States are increasingly censoring information online,” including through “arbitrary blocking or filtering of content; criminalization of legitimate expression; [and] disconnecting users from Internet access.”¹⁰ He also noted that:

“The vast potential and benefits of the Internet are rooted in its unique characteristics, such as its speed, worldwide reach and relative anonymity. At the same time, these distinctive features of the Internet that enable individuals to disseminate information in “real time” and to mobilize people has also created fear amongst Governments and the powerful. This has led to increased restrictions on the Internet through the use of increasingly sophisticated technologies to block content, monitor and identify activists and critics, criminalization of legitimate expression, and adoption of restrictive legislation to justify such measures.”¹¹

10) A Joint Declaration on Freedom of Expression and the Internet was issued on 1 June 2011 by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; the Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information.¹² The declarations stated that restrictions on freedom of expression on the internet are “only acceptable if they comply with established international standards, including that they are provided for by law, and that they are necessary to protect an interest which is recognised under international law (the ‘three-part’ test).”¹³ However, “[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.”¹⁴

11) The Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye to the UN General Assembly, dated 6 September 2016, noted that governments have “disrupted Internet and telecommunications services in the name of national security and

¹⁰ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (16 May 2011), UN Doc. A/HRC/17/27, <https://www.refworld.org/docid/50f3db632.html>.

¹¹ Id., para. 23.

¹² Organization for Security and Co-operation in Europe, “Joint Declaration on Freedom of Expression and the Internet” (1 June 2011), <https://www.osce.org/fom/78309>.

¹³ Id., para. 1.a.

¹⁴ Id., para. 6.b.

public order,” including through the “shutdown of entire networks, the blocking of websites and platforms and the suspension of telecommunications and mobile services.”¹⁵ He also stated that “[t]he blocking of Internet platforms and the shutting down of telecommunications infrastructure are persistent threats, for even if they are premised on national security or public order, they tend to block the communications of often millions of individuals.”¹⁶ He also highlighted that “in a joint declaration in 2015, United Nations and regional experts in the field of freedom of expression condemned Internet shutdowns (or “kill switches”) as unlawful.”¹⁷

12) In 2017, the UN General Assembly, in its Resolution on the Safety of Journalists and the Issue of Impunity, passed by consensus, stated that it “[c]ondemns unequivocally measures in violation of international human rights law aiming to or that intentionally prevent or disrupt access to or dissemination of information online or 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 to build inclusive and peaceful knowledge societies and democracies.”¹⁸

13) The UN Human Rights Council has similarly, in two resolutions adopted by consensus in 2018, expressed concern about “the emerging trend 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,”¹⁹ and the “measures in violation of international human rights law that aim to or that intentionally prevent or disrupt access to or dissemination of information online.”²⁰ The Council has also “condemn[ed] unequivocally measures in violation of international human rights law that prevent or disrupt an individual’s ability to seek, receive or impart information online.”²¹ It has also called upon States to “refrain from and to cease such measures,” and “ensure that all domestic laws, policies and practices are consistent with their

¹⁵ UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (6 September 2016), UN Doc. A/71/373, para. 21, <https://undocs.org/en/A/71/373>.

¹⁶ Id., para. 22.

¹⁷ Id.

¹⁸ UN General Assembly, Resolution on the Safety of Journalists and the Issue of Impunity (19 December 2017), UN Doc. A/RES/72/175, para. 12, <https://undocs.org/en/A/RES/72/175>.

¹⁹ UN General Assembly, Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests (6 July 2018), UN Doc. A/HRC/RES/38/11 (“Peaceful Protests Resolution”), para. 2, <https://undocs.org/A/HRC/RES/38/11>.

²⁰ UN General Assembly, Human Rights Council, The Promotion, Protection and Enjoyment of Human Rights on the Internet (5 July 2018), UN Doc. A/HRC/RES/38/7 (“Internet Resolution”), para. 3, <https://undocs.org/A/HRC/RES/38/7>.

²¹ Internet Resolution, para. 13.

international human rights obligations with regard to freedom of opinion and expression online.”²²

14) The need for States to refrain from intentional internet disruption was reinforced by the UN General Assembly in late 2018, in its Resolution on the Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association, which “[c]all[ed] upon all States to ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law, particularly by refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law.”²³

15) In May 2019, the Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report to the Human Rights Council expressed concern that “[g]overnments are ordering Internet shutdowns more frequently [...] ahead of critical democratic moments such as elections and protests.”²⁴ The Special Rapporteur added that “network shutdowns are in clear violation of international law and cannot be justified in any circumstances,” and called for “repealing and amending any laws and policies that allow network disruptions and shutdowns, and refraining from adopting such laws and policies.”²⁵

16) In September 2019, several UN Special Rapporteurs, including the Special Rapporteurs on the Right to Peaceful Assembly and Association, have issued a joint statement on the internet shutdown in the Papua and West Papua of Indonesia, urging the government of Indonesia “to recognise the rights of all protesters and to ensure continuation of the internet service.”²⁶ The experts added that internet restrictions “on access to information [...] have a detrimental impact on the ability of individuals to express themselves, and to share and receive information.”²⁷ “On the other hand, access to the internet contributes to preventing disinformation and ensuring transparency and accountability,” the experts said.²⁸

²² Id.

²³ UN General Assembly, Resolution on Promotion and Protection of Human Rights and Fundamental Freedoms, Including the Rights to Peaceful Assembly and Freedom of Association (8 January 2019), UN Doc. A/RES/73/173, para. 4, <https://undocs.org/en/A/RES/73/173>.

²⁴ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, (17 May 2019), UN Doc. A/HRC/41/41, para. 3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>.

²⁵ Id., paras. 52, 73(b).

²⁶ “Indonesia must Protect Rights of Veronica Koman and Others Reporting on Papua and West Papua Protests - UN Experts” (16 September 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24990&LangID=E>.

²⁷ Id.

²⁸ Id.

- 17) Similarly, the UN High Commissioner for Human Rights Michelle Bachelet, speaking on the Indonesia shutdowns in Papua and West Papua, stated that “[b]lanket internet shutdowns are likely to contravene freedom of expression and limiting communications may exacerbate tensions.”²⁹
- 18) Most recently, in the light of the ongoing COVID-19 pandemic, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression David Kaye emphasized that internet shutdowns interfere not only with the right to freedom of expression, but also with other fundamental rights by risking the health and life of everyone who is denied internet access.³⁰ Similarly in her statement on COVID-19, the UN High Commissioner for Human Rights Michelle Bachelet called on ending “any blanket Internet and telecommunication shutdowns and denials of service.”³¹
- 19) There is accordingly a growing concern about States’ disruptive activity on the internet and its impact on individuals’ fundamental rights. It is no coincidence that such expressions of concern have been particularly frequent in the period since 2016, which has also seen a marked increase in the number of internet shutdowns. This brief accordingly provides the Jakarta State Administrative Court with an opportunity at a critical time to provide clear guidance on the lawfulness of State activity of the kind criticised in the aforementioned reports and statements.

(ii) Applicable principles

Right to Free Expression and Access to Information

- 20) Article 28E(3) of Indonesian Constitution guarantees all individuals the right to freely express their opinions.³² Article 28F also states that “[e]ach person has the right to communication and to acquiring information for his own and his social

²⁹ UN High Commissioner for Human Rights, “Comment by UN High Commissioner for Human Rights Michelle Bachelet on Indonesia (Papua and West Papua)” (4 September 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24942&LangID=E>.

³⁰ UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (23 April 2020), UN Doc. A/HRC/44/49, paras. 26-28, https://freedex.org/wp-content/blogs.dir/2015/files/2020/04/A_HRC_44_49_AdvanceEditedVersion.pdf.

³¹ UN High Commissioner for Human Rights, “COVID is “a colossal test of leadership” requiring coordinated action, High Commissioner tells Human Rights Council” (9 April 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>.

³² The Constitution of the Republic of Indonesia of 1945, Article 28E(3), <http://www.unesco.org/education/edurights/media/docs/b1ba8608010ce0c48966911957392ea8cda405d8.pdf>.

environment's development, as well as the right to seek, obtain, possess, store, process, and spread information via all kinds of channels available.”³³

- 21) Similarly, Under Article 14 of Indonesia's Law Number 39 of 1999 Concerning Human Rights, “everyone has the right to communicate and obtain information they need,” as well as “to seek, obtain, own, store, process, and impart information using all available facilities.”³⁴ Further, Article 73 states that these rights “may be limited only by and based on law.”³⁵ In addition, none of the Law's provisions “shall be interpreted to mean that the government, or any political parties, factions, or any party whosoever is permitted to degrade, impair or eradicate the basic rights and freedoms governed by this Act.”³⁶
- 22) Another law directly relevant to the right of freedom of expression is Article 4(2) of the Press Law No. 40 of 1999, which provides that “no censorship, prohibition or restriction of broadcasting will be imposed” upon the national press.³⁷ The Clarification of National Law No. 40 further states that Article 4(2) applies to the electronic media.³⁸
- 23) These principles contained in Indonesian law are in many respects similar to those listed in the International Covenant on Civil and Political Rights (ICCPR),³⁹ which Indonesia ratified by the Law No. 12 of 2005. Thus, Article 19(2) of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.”⁴⁰ Article 19(3) also states that any restrictions on such rights should be provided by law and be necessary.⁴¹
- 24) The UN Human Rights Committee (UNHRC)'s General Comment No. 34 on Article 19 ICCPR further clarifies the legality and necessity requirements of Article 19(3), specifically in relation to disruption of internet activity:

³³ Id., Article 28F.

³⁴ Indonesia Law No. 39 of 1999 on Human Rights (23 September 1999), Article 14(1)-(2), <https://www.refworld.org/docid/4da2ce862.html>.

³⁵ Id., Article 73.

³⁶ Id., Article 74.

³⁷ National Law of the Republic of Indonesia Number 40 of 1999 on Press, Article 4(2), <https://www.humanrightspapua.org/resources/nlaw/184-indonesian-law-no-40-in-1999-on-press>.

³⁸ Clarification of National Act of the Republic of Indonesia No. 40 of 1999 on Press, Article 4, Item (2) <https://www.humanrightspapua.org/resources/nlaw/184-indonesian-law-no-40-in-1999-on-press>.

³⁹ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴⁰ Id., Article 19(2).

⁴¹ Id., Article 19(3).

“Any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information-dissemination system, including systems to support such communication, such as Internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3 [of Article 19]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information-dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”⁴²

25) The UNHRC’s General Comment No. 34 also emphasizes the requirement of proportionality for imposing restrictions on the freedom of expression “in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”⁴³ Thus, the Comment provides, there is a need for the State party which invokes a legitimate ground for restriction of freedom of expression to “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴⁴

26) Thus, the right to freedom of expression and access to information are firmly rooted in both Indonesian and international law. Indonesian Constitution, Law Number 39 of 1999 on Human Rights, and Press Law No. 40 of 1999, as well as the ICCPR, establish the right to seek, obtain, and disseminate information as one of the most fundamental rights, which cannot be restricted unless based on law and through measures that are necessary and proportionate. Shutdowns of entire internet networks imposed by the government without a proper legal justification are clear violations of these rights.

Right to Peaceful Assembly and Association

27) Article 28E(3) of Indonesian Constitution guarantees the right to free association and assembly.⁴⁵ Article 21 of the ICCPR also recognizes this right.⁴⁶ Similarly to the right to freedom of expression, Article 21 also states that no restrictions shall

⁴² UN Human Rights Committee, General Comment No. 34, Article 19, Freedoms of Opinion and Expression (12 September 2011), UN Doc. CCPR/C/GC/34, para. 43, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁴³ Id., para. 34.

⁴⁴ Id., para. 35.

⁴⁵ The Constitution of the Republic of Indonesia of 1945, Article 28.

⁴⁶ International Covenant on Civil and Political Rights, Article 21.

be placed on the exercise of the right to assembly, “other than those imposed in conformity with the law and which are necessary in a democratic society.”⁴⁷

- 28) General Comment No. 34 clarifies that “freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association.”⁴⁸ This is confirmed by the Human Rights Council statements that the internet is essential for individuals’ ability to “organize and conduct assemblies.”⁴⁹ Thus, any internet restrictions that impair the ability of individuals to exercise their rights to freedom of expression would also be detrimental to the right to peaceful assembly and association. Shutting down the internet in order to either prevent organizing or retaliate against peaceful protests would be in violation of both of these rights.

Rights to Work, Health, Education, Scientific Progress, and Cultural Life

- 29) The internet is becoming increasingly essential to fundamental societal systems, including finance, business, banking, health, education, public administration, and social and cultural life. Thus, internet shutdowns affect not only political and civil rights, such as the rights to free expression, access to information, and peaceful assembly, but also economic and cultural rights, such as the rights to work, health, education, science, and culture.
- 30) A range of these rights are guaranteed by both the Indonesian law and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵⁰ ratified by Indonesia by the Law No. 11 of 2005. Thus, Indonesian Constitution establishes the right to well being and medical care, education, and culture, as well as “the right to partake in the benefits of science and technology,”⁵¹ while ICESCR provides for the right to work, health, education, and the right to take part in cultural life and to enjoy the benefits of scientific progress.⁵²
- 31) Internet shutdowns have an adverse impact on the right to work under Article 6 of the ICESCR through directly disrupting the digital economy and businesses which rely on the internet for sales, orders, and communication with partners. For example, the 2017 internet shutdown by the government of Togo cost the country over US\$200,000 per day of disruption, according to the research carried out by the Collaboration on International ICT Policy in East and Southern Africa

⁴⁷ Id.

⁴⁸ General Comment No. 34, Article 19, Freedoms of Opinion and Expression, para. 4.

⁴⁹ UN General Assembly, Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, para. 2.

⁵⁰ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, (16 December 1966), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

⁵¹ The Constitution of the Republic of Indonesia of 1945, Articles 28C, 28H, 31-32.

⁵² International Covenant on Economic, Social and Cultural Rights, Articles 6, 12, 13, 15.

(CIPESA).⁵³ The effect of internet shutdowns on small business and online banking has also been documented in Pakistan.⁵⁴

- 32) The importance of internet connectivity for the economy was also acknowledged by the State of Indonesia as a part of the Asia-Pacific Economic Cooperation (APEC) 2013 Leaders Declaration, where Member States that convened in Bali committed to pursuing “greater connectivity to [...] help economies to create better quality and more productive jobs.”⁵⁵ In Annex D to the APEC Connectivity Blueprint for 2015-2025, Indonesia further committed to “enhancing the access to ICT resources by using available technologies to reduce digital divide and increase greater connectivity in the region.”⁵⁶
- 33) Internet shutdowns also affect the right to health in Article 12 of ICESCR and Article 28H of the Indonesian Constitution by impacting online health services and individual’s access to lifesaving information. Thus, for example, internet shutdowns in Pakistan left doctors and health workers unable to access research and communicate in real time with each other or their patients.⁵⁷
- 34) The right to education, guaranteed by both the Indonesian Constitution and the ICESCR, is also affected by internet disruptions. Thus, both in Pakistan and Cameroon, students could not access online educational material during periods of network disruptions and shutdowns.⁵⁸
- 35) Finally, the right to take part in cultural life and to enjoy the benefits of scientific and technological progress guaranteed by the Indonesian Constitution and the ICESCR are also affected by internet shutdowns. Article 15 of ICESCR provides, inter alia, that State Parties “recognize the right of everyone: (a) to take part in cultural life; [and] (b) to enjoy the benefits of scientific progress and its

⁵³ The Collaboration on International ICT Policy in East and Southern Africa, “The Economic Impact of Internet Disruptions in Sub-Saharan Africa” (September 2017), https://cipesa.org/?wpfb_dl=249.

⁵⁴ See Institute for Human Rights and Business, “Security v Access: The Impact of Mobile Network Shutdowns, Case Study: Telenor Pakistan” (Case Study Number 3, September 2015), <http://globalnetpolicy.org/research/security-v-access-the-impact-of-mobile-network-shutdowns-case-study-telenor-pakistan/>.

⁵⁵ Asia-Pacific Economic Cooperation, 2013 Leaders Declaration (8 October 2013), para. 5, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2013/2013_aelm.

⁵⁶ Asia-Pacific Economic Cooperation, Annex D - APEC Connectivity Blueprint for 2015-2025 (2014), para. 20, https://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm/2014_aelm_annexd.

⁵⁷ Institute for Human Rights and Business, “Security v Access: The Impact of Mobile Network Shutdowns, Case Study: Telenor Pakistan,” p. 7.

⁵⁸ Institute for Human Rights and Business, “Security v Access: The Impact of Mobile Network Shutdowns, Case Study: Telenor Pakistan,” p. 7, 33; Slate, “The Damage Caused by the 93-Day Internet Blackout in Cameroon” (17 August 2017), <https://slate.com/technology/2017/08/the-damage-caused-by-cameroon-s-93-day-internet-blackout.html>

applications.”⁵⁹ In the modern era when by far the most convenient and economical mechanism for access to cultural products (literature, news content, popular entertainment, etc.) and scientific progress and its applications (scientific literature, computer coding, and web development resources and repositories, open source data for experimentation purposes) is provided by the internet, it follows that State disruption of that means of access constitutes an interference with the Article 15 affirmation of cultural rights. That is particularly the case given the longstanding position of UN institutions, expressed for instance in the UNESCO Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone,⁶⁰ that States ought to take proactive steps to render cultural access affordable to all persons.

Conclusion

36) The principles discussed in this submission relating to the right to free expression and access to information, peaceful assembly, and the rights to work, health, education, scientific progress, and cultural life, including through the use of the internet, are well-established. The context of this case – the increasing use of blanket and disproportionate shutdowns of access to the entire internet – is still relatively new. This brief provides the Jakarta State Administrative Court with an opportunity to provide clear guidance on how the existing principles apply to these new and deeply concerning developments in State activity.

7 May 2020

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Access Now

⁵⁹ International Covenant on Economic, Social and Cultural Rights, Article 15(1)(a)-(b).

⁶⁰ UNESCO, Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone (14 December 1960), para. 7, http://portal.unesco.org/en/ev.php-URL_ID=13063&URL_DO=DO_TOPIC&URL_SECTION=201.html.