

<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b> <i>African Commission on Human &amp; Peoples' Rights</i>		<b>UNIÃO AFRICANA</b> <i>Commission Africaine des Droits de l'Homme &amp; des Peuples</i>
31 Bijilo Annex Layout, Kombo North District, Western Region, P. O. Box 673, Banjul, TheGambia Tel: (220) 4410505 / 4410506; Fax: (220) 4410504 E-mail: <a href="mailto:au-banjul@africa-union.org">au-banjul@africa-union.org</a> ; Web <a href="http://www.achpr.org">www.achpr.org</a>		

## **Communication 742/20**

### **African Freedom of Expression Exchange & 15 Others (Represented by FOI Attorneys)**

**v**

### **Algeria & 27 Others**

*Adopted by the  
African Commission on Human and Peoples' Rights  
During the 66<sup>th</sup> Ordinary Session done virtually from 13 July to 7 August 2020*



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**Commissioner Solomon Ayele Dersso**  
**Chairperson of the African Commission**  
**Human and Peoples' Rights**




.....  
**Ms. Lindiwe Khumalo**  
**Ag. Executive Secretary to the African on**  
**Commission on Human and Peoples' Rights**

## Decision of the African Commission on Human and Peoples' Rights on Non-seizure

### Communication 742/20 – African Freedom of Expression Exchange & 15 Others (Represented by FOI Attorneys) v Algeria & 27 Others

#### Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 27 February 2020 from African Freedom of Expression Exchange (AFEX), Africa Freedom of Information Centre (AFIC), Association for Media Development in South Sudan (AMDISS), L'association Pour Le Development Integre Et La Solidarite Interactive (ADISI-Cameroon), Centre for Media Studies and Peace Building (CEMESP), Collaboration on International ICT Policy in Eastern and Southern Africa (CIPESA), Freedom of Expression Institute (FXI), Gambia Press Union (GPU), Human Right Network for Journalists in Uganda (HRNJ-U), Institute for Media and Society (IMS), International Press Centre (IPC), Journaliste en Danger (JED), Media Foundation for West Africa (MFWA), Media Institute for Southern Africa (MISA), Media Rights Agenda (MRA) and West African Journalists Association (WAJA) (the Complainants), represented by Freedom of Information (FOI) Attorneys.
2. The Complaint is submitted against Algeria,<sup>1</sup> Benin,<sup>2</sup> Burundi,<sup>3</sup> Cameroon,<sup>4</sup> Central African Republic,<sup>5</sup> Chad,<sup>6</sup> Congo Brazzaville,<sup>7</sup> Democratic Republic of Congo,<sup>8</sup> Egypt,<sup>9</sup> Equatorial Guinea,<sup>10</sup> Eritrea,<sup>11</sup> Ethiopia,<sup>12</sup> Gabon,<sup>13</sup> Libya,<sup>14</sup>

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<sup>1</sup> Algeria ratified the African Charter on Human and Peoples' Rights (African Charter) on 20 March 1987.

<sup>2</sup> Benin ratified the African Charter on 25 February 1986.

<sup>3</sup> Burundi ratified the African Charter on 30 August 1989.

<sup>4</sup> Cameroon ratified the African Charter on 18 September 1989.

<sup>5</sup> Central African Republic ratified the African Charter on 27 July 1986.

<sup>6</sup> Chad ratified the African Charter on 11 November 1986.

<sup>7</sup> Congo Brazzaville ratified the African Charter on 17 January 1983.

<sup>8</sup> Democratic Republic of Congo ratified the African Charter on 28 July 1987.

<sup>9</sup> Egypt ratified the African Charter on 3 April 1984.

<sup>10</sup> Equatorial Guinea ratified the African Charter on 18 August 1986.

<sup>11</sup> Eritrea ratified the African Charter on 15 March 1999.

<sup>12</sup> Ethiopia ratified the African Charter on 22 June 1998.

<sup>13</sup> Gabon ratified the African Charter on 26 June 1986.

<sup>14</sup> Libya ratified the African Charter on 26 March 1987.



Liberia,<sup>15</sup> Malawi,<sup>16</sup> Mali,<sup>17</sup> Mauritania,<sup>18</sup> Morocco,<sup>19</sup> Niger,<sup>20</sup> Nigeria,<sup>21</sup> Sierra Leone,<sup>22</sup> Somaliland,<sup>23</sup> Sudan,<sup>24</sup> The Gambia,<sup>25</sup> Togo,<sup>26</sup> Uganda<sup>27</sup> and Zimbabwe,<sup>28</sup> States Parties to the African Charter on Human and Peoples' Rights (the African Charter).

3. The Complainants allege that each of the Respondent States have on at least one occasion intentionally disrupted or limited access to telecommunication services, including the internet, for reasons which are unjustifiable and incompatible with the African Charter.
4. The Complainants aver that in June 2016, the government of Algeria blocked social media access in a bid to curtail examination malpractices among secondary school students. They claim that the same ploy was used by the government in 2019 to disrupt access to the internet over protests calling for the resignation of President Abdelaziz Bouteflika. Further averring that the government shut down internet access in places like TiziOuzou, Bejaia and some parts of the capital city. The Complainants aver that network data from the netblocks internet observatory showed that internet access was restricted in regions of Algeria from the 14 to 15 September 2019.
5. The Complainants aver that on 28 April 2019, at approximately midnight, the authorities in Benin shut down the internet hours before polling was to begin in the country's parliamentary elections. They aver that the shutdown lasted for fifteen (15) hours and this severely affected the ability of media organizations and civil societies to report on the election. The Complainants allege that Virtual Private Networks (VPNs) which made it possible for most organizations to circumvent online censorships were also rendered inaccessible in the country.
6. The Complainants aver that on 19 April 2015 protests erupted in Burundi against the bid by President Nkurunziza to extend his term in office. They

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<sup>15</sup> Liberia ratified the African Charter on 29 December 1982.

<sup>16</sup> Malawi ratified the African Charter on 23 February 1990.

<sup>17</sup> Mali ratified the African Charter on 22 January 1982.

<sup>18</sup> Mauritania ratified the African Charter on 26 June 1986.

<sup>19</sup> Morocco is not a party to the African Charter.

<sup>20</sup> Niger ratified the African Charter on 21 July 1986.

<sup>21</sup> Nigeria ratified the African Charter on 22 July 1983.

<sup>22</sup> Sierra Leone ratified the African Charter on 27 January 1984.

<sup>23</sup> Somaliland is neither a party to the African Charter nor a member State of the African Union.

<sup>24</sup> Sudan ratified the African Charter on 11 March 1986.

<sup>25</sup> The Gambia ratified the African Charter on 13 June 1983.

<sup>26</sup> Togo ratified the African Charter on 22 November 1982.

<sup>27</sup> Uganda ratified the African Charter on 27 May 1986.

<sup>28</sup> Zimbabwe ratified the African Charter on 12 June 1986.



allege that in response to the protest, the government shut down social media platforms without stating any reason for the disruption. They allege that access was subsequently restored on 13 May 2015.

7. The Complainants aver that on 17 January 2017 Cameroon's national telecommunication and internet service provider shut down internet services in the North-west and South-west regions of the country. They allege that the disruption lasted for ninety-four (94) days and was subsequently restored on 20 April 2017. They allege that barely six (6) months after the internet was restored, the government effected another shut down on 1 October 2017 during clashes between protesters and security agents in the Anglophone regions of the country. They allege that the internet shut down disrupted all facets of life, and was designed to undermine people's ability to peacefully protest, access information and share their stories - including documentation on police brutality and other human rights abuses.
8. The Complainants aver that on 2 June 2014 a suspension order from the Telecommunication Ministry of Central African Republic was addressed to telecommunication companies, directing them to shut down Short Message System (SMS) services in the country and sever all international roaming connections. They allege that the government lifted its order on 26 July 2014 after coordinated resistance from four telecommunication companies operating within the country.
9. The Complainants aver that on 28 March 2018 the government of Chad ordered mobile operators to disconnect access to social media platforms following public protest in the country. They allege that internet shut down has become a reoccurring event in the country, the first shut down was on 18 February 2016, when electronic email services were disconnected following wide circulation of a video evidencing the sexual assault of a high school student. The Complainants allege that during the 2016 presidential elections the government shut down the internet for 48 hours and again on May 9 2016, and only restored it on 2 December 2016.
10. The Complainants aver that in March 2016, Raymond Mboulou, the Interior Minister of Congo Brazzaville wrote to telecommunication companies directing the shutdown of telephone, internet and SMS services for 48 hours, for "reasons of security and national safety". They allege that this happened while citizens were headed to the polling units, and it was subsequently reported that the shutdown was intended to prevent any illegal publication of the results of the elections.



11. The Complainants aver that on 31 December 2018, the government of the Democratic Republic of Congo (DRC) ordered the shutdown of the internet and all telephone services during the country's presidential elections. They aver that the connection was only restored on 20 January 2019. The Complainants allege that similar orders were given in the past. They aver that on 28 February 2018 the government ordered internet service providers to block access from 9am to 9pm during a nationwide protest over President Joseph Kabila's refusal to leave office upon expiration of his tenure. They further aver that in January 2015, the government ordered a complete shutdown of internet and SMS services during demonstrations against a proposed electoral bill to extend President Kabila's term beyond the constitutional limits.
12. The Complainants aver that on 28 January 2011 the government of Egypt instigated a total internet shut down, so as to contain street protests in major cities around the country. They aver that in January 2016 social media access was blocked in the weeks leading to the anniversary of the 2011 uprising and fall of President Hosni Mubarak's regime. They allege that on 24 May 2017 an unknown body within the Egyptian government blocked at least 50 websites. They further allege that on September 2019 access to social media and news platforms were disrupted amidst public protests.
13. The Complainants aver that on 27 October 2017 the government of Equatorial Guinea authorized that internet access be blocked ahead of a nationwide election, and subsequently deployed security forces across the country. They allege that access to the websites of opposition parties have been blocked since 2013.
14. The Complainants aver that sometime in May 2019 media and internet services were disrupted by the government of Eritrea without any explanation or comment as to the disruption. The Complainants believe that disruption begun on 8 May 2019 and was used as a tool to prevent the organization of protests that could have disrupted the Independence Day celebration on May 24.
15. The Complainants aver that on 11 July 2016, 30 May 2017 and 11 June 2019, Ethiopian authorities shut down the internet for nearly twenty-four (24) hours. They allege that the government resorted to this repressive measure under the pretext of protecting the integrity of national examinations. They further allege that on 18 September 2018, access to the internet was shut down in Jijiga, Dire Dawa and Harar (Eastern Ethiopia) following violent protests in the region.
16. The Complainants aver that on 7 January 2019 soldiers in Gabonese Republic took control of Radio Télévision Gabonaise, the national television station and



announced their coup attempt. They allege that a few hours later an internet shut down which lasted for twenty-eight (28) hours was effected.

17. The Complainants aver that on 18 February 2011, an internet shut down which lasted 15 hours was experienced in Libya, in an effort to prevent anti-government protests. They allege that another shut down was effected in June 2018 and in September 2018 facebook was temporarily blocked in Tripoli and several other cities. The Complainants allege that the blockage coincided with militant groups clashes in the capital. They further allege that a similar situation had occurred in April 2015 and the Libyan Post Telecommunications and information Technology Company (LPTIC) denies responsibility for the disruption.
18. The Complainants aver that on 7 June 2019 the government of Liberia ordered mobile internet service providers to shut down social media platforms during anti-corruption protests. They allege that access to these platforms were restored on the evening of the same day, with the government citing national security as the reason for the shutdown.
19. The Complainants aver that on 21 May 2019 Malawi experienced poor internet connectivity nationwide after voting was conducted on the Presidential, Parliamentary and local councillors' elections. They allege that nationwide connectivity fell to eighty (80) percent of the normal levels during the counting and announcement of initial polling results.
20. The Complainants aver that Mali experienced its first internet shut down on the eve of the run-off of the Presidential elections and again on 15 and 16 August 2018 at 11pm and 5am respectively. They allege that the outage happened hours before the election winner was to be announced.
21. The Complainants aver that on 22 and 23 of June 2019, the government of Mauritania imposed a near-total internet blackout following Presidential elections held on 22 June 2019. They allege that similar shut down had been experienced from 27 to 31 May 2019 during the nationwide high school entrance test and the high school diploma examinations. They allege that the shutdown was effected under the pretext of preventing examination malpractices.
22. The Complainant avers that in the new year of 2016, Morocco's Telecommunication Regulatory National Agency (ANRT) banned the use of free mobile internet calls made through mobile phone connections. They allege that the ANRT justified the ban by asserting that none of the service providers had the required licence to grant the service.



23. The Complainants aver that from 22 to 24 January 2015 officials in Niger ordered a total internet shut down blocking text messages and social networks, ostensibly to prevent potential riots.
24. The Complainants aver that in 2013 the Nigerian military shut down mobile telephone services in Adamawa, Borno and Yobe state (North-east Nigeria), as part of the counter-terrorism operations against the Boko Haram insurgency. They allege that the Nigerian military failed to accomplish its objective and the attacks continued throughout the period telecommunication services were cut off. They allege that this had a catastrophic effect on persons affected, as the sick and injured were cut off from medical help, commercial and food supplies.
25. The Complainants aver that on 31 March 2018 the government of Sierra Leone ordered an internet shut down and disconnected all mobile communication services during the run-off of the Presidential elections. They allege that all internet carriers were shut down while the vote counting process was ongoing, and the outage lasted for nine hours.
26. The Complainants aver that prior to the Presidential elections on 11 November 2017, the National Electoral Commission (NEC) of Somaliland announced that it had ordered telecommunication companies to block social media access in Somaliland from 13 November 2017 until elections results are declared. The Complainants allege that this order was subsequently effected under the guise of it being necessary to curb fake news and rumour mongering.
27. The Complainants aver that in September 2013 the government of Sudan shut down the internet for twenty-four (24) hours in order to prevent the spread of a peaceful protest following the government's decision to lift state subsidies from basic food items and fuel. They allege that on 19 December 2018, another shut down was ordered by the government following wide spread protests demanding an improvement in the quality of living. The Complainants further allege that on 3 June 2019, an internet shut down was ordered by the government following a brutal dispersal of protesters who were demanding a return to civilian rule. They allege that internet access was only restored following a court decision on 19 July 2019 ordering all providers to restore access to the internet.
28. The Complainants aver that on 30 November 2016, the government of The Gambia ordered the shutdown of access to the internet and international phone calls, while the country prepared for its Presidential elections scheduled for 1 December 2016.



29. The Complainants aver that in September 2017 the government of Togo ordered a countrywide internet shut down during anti-government protests. They allege that the first incident happened on 5 September 2017 when internet access was shut down a day before a scheduled anti-government protest. The second incident they allege happened on 20 and 21 September 2017, when access to social media was blocked, several platforms rendered inaccessible and SMS services disrupted.
30. The Complainants aver that from the 18 to 21 February 2016, the government of Uganda ordered that social media platforms and mobile money apps be blocked for 72 hours. They allege that this was done during the parliamentary elections, in an evident attempt by the government to control the flow of information. The Complainants further allege that in May 2016 during the inauguration of President Yoweri Museveni, the government shut down access to the internet without warning or notification.
31. The Complainants aver that in July 2016 Zimbabwe's telecommunications regulator, the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) ordered service providers to block access to WhatsApp during social unrest in the country. They allege that on 18 January 2019 Econet Wireless Zimbabwe, the country's largest mobile phone operator, announced that it had been directed by the government to shut down all internet access until further notice. They allege that although no reason was provided, there was speculations that the government decided to cut off access to prevent or limit the circulation of images showing security forces responding violently to protests. They further allege that after a week of no internet connection in the country, a High Court on 21 January 2019 ruled that the Minister of State who ordered the internet shutdown did not have the authority to do so under the Interception of Communications Act 2007, and ordered the restoration of access.
32. The Complainants aver that internet in the above-mentioned States had been shut down under the guise of national security, protests, strikes and exam malpractices. They aver that it only serves to provide the government with the power to intimidate and discourage journalists and ordinary citizens from expressing critical views that might be deemed offensive or insulting.
33. The Complainants contend that the internet shutdowns, especially those that disable all means of communications, constitute a violation of human rights as they are a wholesale, indiscriminate attack on entire populations which unjustifiably restricts their rights to freedom of expression, access to information, freedom of association in the online environment, disrupt their economic and business activities and interfere with their rights to education amongst others.





34. The Complainants state that they are unable to pursue or exhaust domestic remedies as none of the Respondent States have the jurisdiction to hear and determine an action by the Complainants against all the State Parties, and for the violations which affect a vast majority of people on the African Continent. They contend that the serious violations perpetrated by the Respondent States requires special measures to remedy the situation

### **Articles alleged to have been violated**

35. The Complainants alleges violation of Articles 9, 10 and 11 of the African Charter.

### **Prayers**

36. The Complainants request the African Commission on Human and Peoples' Rights (the African Commission) to make:

- (a) A declaration that the actions of the Respondent States in shutting down or instigating the shutdown of the internet in their respective countries violates Articles 9, 10 and 11 of the African Charter, and amounts to unlawful and unjustifiable interference with the complainants' rights to freedom of expression, freedom of assembly and freedom of association.
- (b) A declaration that the actions of the Respondent States in shutting down or instigating the shutdown of the internet in their respective countries amounts to unlawful and unjustifiable interference with the rights of all the citizens of the affected countries as it is incompatible with the African Charter.
- (c) An order that the matter be brought to the attention of the Assembly of Heads of States and Government of the African Union and request it to take urgent measures to prohibit the practice of internet shutdowns in Africa or other measures to prevent its reoccurrence.

### **Procedure**

37. The Secretariat received the Complaint on 27 February 2020 and acknowledged receipt of the same on 17 March 2020.

### **Analysis of the African Commission**

38. Rule 115(2) of the African Commission's Rules of Procedure 2020 lists the requirements to be met prior to the seizure of a Complaint, including a



preliminary assessment of the requirements under Article 56 of the African Charter).<sup>29</sup>

39. To this end, the African Commission notes that the present Complaint has been submitted against twenty-eight (28) States. Evidently, Somaliland Republic is neither a member of the African Union nor a State party to the African Charter. Accordingly the Commission lacks the requisite jurisdiction, pursuant to Rule 115(2) (g) of its Rules of Procedure 2020 to consider the Complaint against Somaliland.
40. The African Commission notes that the present Complaint has also been submitted against the Kingdom of Morocco, which is not a State Party to the African Charter as it has neither signed nor ratified the treaty. Accordingly, the Commission lacks the jurisdiction, pursuant to Rule 115(2) (g) of its Rules of Procedure 2020.
41. Therefore, the only States concerned by the present decision are: Algeria, Benin, Burundi, Cameroon, Central African Republic, Chad, Congo Brazzaville, Democratic Republic of Congo, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Libya, Liberia, Malawi, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Sudan, The Gambia, Togo, Uganda and Zimbabwe.
42. Rule 93 (2) of the Commission's Rules of Procedure (2010) empowers the Commission to seize Complaints alleging *prima facie* violations of the African Charter by a State Party. The Commission has held in its jurisprudence that '*prima facie* is a decision or conclusion that could be reached from preliminary observation of an issue or a case without deeply scrutinising or investigating into its validity or soundness'.<sup>30</sup> In order for the Commission to arrive at a finding of a *prima facie* violation, the Complainant is required to submit facts which point to the likelihood that a right protected in the African Charter has been violated. In this sense, facts submitted should at least raise a rebuttable presumption that a violation has occurred.
43. The Commission notes the vagueness of the Complainants' submissions on the nature of the alleged violations. The Complainants contend that the alleged internet disruptions are in violation of Articles 9, 10 and 11 of the African Charter, as they unjustifiably restrict the rights to freedom of expression, access to information and association in the online environment. However, a cursory review of the facts surrounding the Complaint reveals that the assertions therein are largely vague, as the submissions reference general allegations attributed to 'the government' of the Respondent States without information or evidence on the specific incidents of the alleged violations. A clear example can

<sup>29</sup> Communication 661/17 *Amir Fam & 141 Others v Egypt* para 24.

<sup>30</sup> Communication 306/05: *Samuel T. Muzerengwa & 110 Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe* para 55.



be seen in the narrative contained in paragraphs 18 to 23 above, which excludes information on the authorities/bodies responsible or the consequence and effect of the alleged disruption in each of the Respondent States. Given the fact that the Complaint has been instituted on behalf of a broad spectrum of alleged victims in the twenty - six (26) Respondent States, the vagueness of the Complainants' submissions is clear indication that proper information and facts surrounding the Complaint are yet to be ascertained.

The Commission reiterates that a finding of a *prima facie* case requires that the Complainant must have submitted preliminary evidence indicative of a violation.<sup>31</sup> In the present instance, the Commission notes that the Complainants have not formulated specific allegations nor provided evidence which allows the Commission to reasonably infer that a *prima facie* violation of the African Charter arises from the facts adduced.

44. Considering that the Complainants have failed to substantiate and adduce evidence in support of the allegations raised against the Respondent States, it therefore follows that the Complaint does not meet the criteria provided under Rule 93 (2) (d) of the Commission's Rules of Procedure (2010).

#### **Decision of the Commission**

45. Based on its analysis, the African Commission decides not to be seized of this Communication as it does not fulfil the criteria for Seizure provided under Rule 93 (2) of the Commission's Rules of Procedure (2010).

**Done Virtually, this 66<sup>th</sup> Ordinary Session,  
held from 13 July to 7 August 2020**



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<sup>31</sup> Communication 383/10: *Mohammed Abdullah Saleh Al-Sad v The Republic of Djibouti* para. 143