

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST
AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA**

SUIT NO: ECW/CCJ/APP/23/21

**THE REGISTERED TRUSTEES OF THE
SOCIO-ECONOMIC RIGHTS AND
ACCOUNTABILITY PROJECT (SERAP)**

APPLICANT

[Suing for itself and on behalf of concerned Nigerians]

AND

THE FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

SUBMISSION OF AMICUS CURIAE BRIEF BY ROBERT F. KENNEDY HUMAN RIGHTS

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A. Introduction:

1. This is the submission of the Robert F. Kennedy Human Rights (hereafter referred to as the *Amicus Curiae*) filed pursuant to the leave of the Honourable Court in the matter of the Registered Trustees of the Socio-Economic Rights and Accountability Project (the Applicant) and the Federal Republic of Nigeria (the Respondent).
2. The subject matter of the substantive application is the legality and compatibility of the indefinite suspension of Twitter microblogging services by the Respondent through its Federal Minister of Information and Culture with the guarantees of the rights to freedom of expression, access to information and media freedom enshrined in Articles 8 and 9 of the African Charter on Human and Peoples' Rights; Articles 7, 9 & 19 of the International Covenant on Civil and Political Rights; Articles II, XII, and XIII of the Declaration of Principles on Freedom of Expression in Africa 2002; Articles 1, 6, 7, 10, and 11 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa 2010; and Article 32 Supplementary Act (A/SA.1/01/10) on Personal Data Protection within Economic Community of West African States.
3. The substantive application equally raises questions around the legality of the directive of the Respondent through the National Broadcasting Commission prohibiting the use of Twitter by the press and the threat by the Respondent's Attorney General and Minister of Justice to prosecute Nigerians including the press who continue to use Twitter by deploying encryption technology such as Virtual Private Network (VPN).
4. This submission addresses the following with respect to the subject matter of the substantive suit:
 - a. The interpretation of the right to freedom of expression (including online expression) under international and regional human rights law applicable to the Respondent.
 - b. The limited circumstances in which States may restrict freedom of expression (including online expression) and the three-pronged test for determining whether a restriction complies with international and regional human rights law applicable to the Respondent; and
 - c. Comparative analysis of international and regional law, jurisprudence and standards on freedom of expression (including online expression)
5. The *Amicus Curiae* notes the positive jurisprudence of this Honourable Court on freedom of expression, media freedom and access to information through the internet, especially the decisions of this Honourable Court in the case between the *Federation of African Journalists & 4 ors v. The Republic of the Gambia (2018)* and *Amnesty International Togo vs. Togolese Republic (2020)*.
6. Given the position of this Honourable Court as an international court and its previous reference to jurisprudence and standards from human rights systems outside Africa, this submission presents analysis on the subject matter of the substantive suit from the Inter-American and European human rights systems.

B. Interpretation of the right to freedom of expression including online expression under international and regional human rights law applicable to the Respondent.

7. The Respondent is a party to a number of international and regional human rights instruments which explicitly guarantee the right to freedom of expression including:

International: The International Covenant on Civil and Political Rights (ICCPR) (Article 19)¹. Freedom of expression is further recognized as customary international law, through its provisions in the Universal Declaration of Human Rights (Article 19), and other instruments.²

Regional: The African Charter on Human and Peoples' Rights³ (African Charter) (Article 9). Articles 1, 6, 7, 10, and 11 of the Supplementary Act (A/SA.1/6/10) on Freedom of Expression and Right to Information in West Africa (2010); and Article 32 Supplementary Act (A/SA.1/01/10) on Personal Data Protection within the Economic Community of West African States⁴ recognizes the right to freedom of expression.

8. There are equally many other principles, guidelines and standards on the right to freedom of expression by the African human rights institutions and mechanisms.⁵
9. Domestically, the right to freedom of expression is recognized and protected under Section 39 of the Nigerian Constitution⁶. The Constitution provides, among other provisions that "every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinion"⁷.
10. As a member of the United Nations, the African Union, and the Economic Community of West African States, the interpretation of relevant law and standards, as well as the findings of bodies and experts under the procedures and mechanisms established within

¹ International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9(1) [hereinafter ICCPR]. Adopted in 1966 and came into force in 1976. Available at : <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

² A key instrument is the Joint Declaration on Freedom of Expression and the Internet United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Organization of American States (OAS) Special Rapporteur on Freedom of Expression and African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (hereinafter Joint Declaration) adopted on June 1, 2011. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=849&IID=1>

³ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Adopted 27 June 1981 entered into force 21 October 1986 [hereinafter ACHPR]. Available at: <https://www.achpr.org/legalinstruments/detail?id=49>

⁴ Enacted by the ECOWAS Parliament in 2010. Available at: <http://www.tit.comm.ecowas.int/wp-content/uploads/2015/11/SIGNED-Data-Protection-Act.pdf>

⁵ Declaration of Principles on Freedom of Expression and Access to Information in Africa adopted by the African Commission on Human and Peoples' Rights (hereinafter African Commission) at its 65th Ordinary Session in 2019 (hereinafter Declaration of Principles on Freedom of Expression in Africa). Available at: <https://www.achpr.org/legalinstruments/detail?id=69>

⁶ Constitution of the Federal Republic of Nigeria 1999 (hereinafter Nigerian Constitution). Available at: <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

⁷ Id, Section 39(2)

those systems, are particularly relevant to the Respondent.

- **Right to Freedom of Expression and States' Obligations**

11. Article 19(2) ICCPR provides that “[e]veryone shall have the right of freedom of expression; this right shall include 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 of his choice.”⁸
12. The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights⁹ (UDHR), providing that “[e]veryone has the right to freedom of opinion and expression” and that “this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁰
13. Article 2 ICCPR provides for the obligation of State Parties 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”.¹¹
14. The United Nations Human Rights Committee's General Comment 34 on the Freedom of opinion and expression (hereafter referred to as General Comment 34) established that the right to freedom of expression includes “every form of idea and opinion capable of transmission to others” including among other things “political discourse,” “commentary on one’s own and on public affairs,” “discussion of human rights,” and “journalism.”¹² Article 19(2) ICCPR “embraces even expression that may be regarded as deeply offensive, (...)”¹³
15. Article 19 ICCPR “implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”¹⁴. “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society”.¹⁵ The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function.¹⁶ The free communication of information and ideas about public and political issues between

⁸ ICCPR, supra note 1, Article 9(2)

⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 9 (1948) [hereinafter Universal Declaration] Available at: <https://www.un.org/sites/un2.un.org/files/udhr.pdf>

¹⁰ Id, Article 19

¹¹ ICCPR, supra note 1, Article 2

¹² U.N. Human Rights Committee (HRC), General Comment no. 34, Article 19: Freedoms of opinion and expression. CCPR/C/GC/34, para. 11. [hereinafter “Gen. Comment No. 34”] Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹³ Gen. Comment No. 34, para. 11.

¹⁴ See the Committee’s general comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote), para. 25, Official Records of the General Assembly, Fifty-first Session, Supplement No. 40, vol. I (A/51/40 (Vol. I)), annex V.

¹⁵ See communication No. 1128/2002, Marques v. Angola, Views adopted on 29 March 2005.

¹⁶ See communication No. 633/95, Gauthier v. Canada.

citizens, candidates and elected representatives is essential. The public also has a corresponding right to receive media output.¹⁷

16. Under the African Charter, Article 9 provides that “[e]very individual shall have the right to receive information and [e]very individual shall have the right to express and disseminate his opinions within the law.”¹⁸
17. Article 1 of the African Charter provides for the obligation of State Parties to “recognize the rights, duties and freedoms enshrined in [the Charter]”¹⁹ and “...undertake to adopt legislative or other measures to give effect to them”²⁰.
18. The Declaration of Principles on Freedom of Expression in Africa states that the right to freedom of expression includes “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 or medium, including across frontiers**, is a fundamental and inalienable human right and an indispensable component of democracy”²¹ [Emphasis added].
19. The African Commission recognizes that the right to freedom of expression and access to information are “important components for the promotion of participation, accountability and democracy on the continent.”²²
20. The right to freedom of expression is also affirmed in the African Charter on the Rights and Welfare of the Child²³, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa²⁴, the African Union Convention on Preventing and Combating Corruption²⁵, the African Charter on Statistics²⁶, the African Youth Charter²⁷, the African Charter on Democracy, Elections and Governance²⁸, the

¹⁷ See communication No. 1334/2004, Mavlonov and Sa’di v. Uzbekistan

¹⁸ ACHPR, supra note 2, Article 9

¹⁹ ACHPR, supra note 2, Article 1

²⁰ Id.

²¹ Declaration of Principles on Freedom of Expression in Africa, Principle 10.

²² Resolution on the Deteriorating Situation of Freedom of expression and Access to Information in Africa, African Comm’n H.P.R. Res. 166, ACPHR XLVII (2010).

²³ Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), Article 7, available at: <https://www.refworld.org/docid/3ae6b38c18.html>

²⁴ African Union (AU), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (2018), Article 23, available at : https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf

²⁵ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003, Article 9, available at: https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf

²⁶ African Union, African Union African Charter on Statistics, February 04, 2009, (entered into force on February 08, 2015), Principle 4, https://au.int/sites/default/files/treaties/36412-treaty-african_charter_on_statistics_eng.pdf

²⁷ African Union, African Youth Charter, July 02, 2006 (entered into force on August 08, 2009), Article 4, available at <https://au.int/en/treaties/african-youth-charter>

²⁸ African Union, African Charter on Democracy, Elections and Governance, January 30, 2007 (entered into force on February 15, 2012) Article 27(8), available at: <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf>

African Charter on Values and Principles of Public Service and Administration²⁹, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa³⁰.

21. The American Convention on Human Rights protects Freedom of thought and of expression under Article 13 including “freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.”³¹ Further, Art 13(3) establishes that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”³² [emphasis added]
22. The European Convention on Human Rights³³ provides for the right to freedom of expression and opinion under Article 10 including “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”³⁴. The Convention further establishes that “the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”³⁵

- **Right to Freedom of Expression on the Internet**

23. Article 19(2) ICCPR provides that right to freedom of expression “includes freedom to seek, receive and impart information and ideas of all kinds, **regardless of frontiers...**and through **any other media of his choice.**” [emphasis added].
24. The UN Human Rights Committee has established that Article 19(2) protects “all forms of expression and their **means of dissemination,**” including “**electronic and internet-based modes of expression.**”³⁶ [emphasis added].

²⁹ African Union, African Charter on Values and Principles of Public Service and Administration, January 31, 2011, Article 15, available at https://au.int/sites/default/files/treaties/36386-treaty-charter_on_the_principles_of_public_service_and_administration.pdf

³⁰ African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 01, 2003 (entered into force November 25, 2005), https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf

³¹Organization of American States, American Convention on Human Rights, 22 November 1969 (entered into force 18 July 1978). Article 13(1). <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>

³² id, Art. 13(3)

³³ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, (hereinafter European Convention on Human Rights) Article 10, available at: https://www.echr.coe.int/documents/convention_eng.pdf

³⁴ European Convention on Human Rights, Article 13(1)

³⁵ Id, Article 13 (2)

³⁶ Gen. Comment No. 34, para. 12.

25. In a binding resolution, the Human Rights Council affirmed that “the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice.”³⁷ The resolution calls on States to “promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries”³⁸.

26. Human Rights Council resolution 26/13 on the promotion, protection and enjoyment of human rights on the Internet³⁹; General Assembly resolution 68/167 on the right to privacy in the digital age⁴⁰; and Council of Europe recommendation CM/Rec (2014) of the Committee of Ministers to member States on the guide to human rights for internet users⁴¹ among other instruments assert that right holders must enjoy the same rights online that they enjoy offline and States have the obligation to protect the exercise and enjoyment of those rights.

27. General Comment 34 describes States obligation in relation to online expression thus:

“[S]tates parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world”. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps **to foster the independence of these new media and to ensure access of individuals thereto**⁴² [emphasis added].

28. On the obligation of States, the report on content regulation stated that human rights law of the UN SR on Freedom of Expression stresses that human rights law “imposes duties on States to ensure enabling environments for freedom of expression and to protect its exercise”.⁴³ States therefore have an obligation to promote and protect online expression including through social media.

³⁷ HRC Resolution 20/8, available at https://digitallibrary.un.org/record/731540/files/A_HRC_RES_20_8-EN.pdf. (16 June 2012).

³⁸ *id.*

³⁹ Human Rights Council, Resolution 26/12 on the Promotion, Protection and Enjoyment of Human Rights on the Internet, 14 July 2014 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/83/PDF/G1408283.pdf?OpenElement>

⁴⁰ General Assembly Resolution 68/167 on the right to privacy in the digital age, 18 December 2013 available at <https://undocs.org/A/RES/68/167>

⁴¹ Council of Europe recommendation CM/Rec (2014) of the Committee of Ministers to member States on the guide to human rights for internet users. Para 16

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5b31>

⁴² Gen. Comment No. 34, para. 15.

⁴³ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on Online Content Regulation, 6 April 2018. Available at: <https://www.undocs.org/A/HRC/38/35> . Para 6

29. As described by the United Nations Human Rights Committee, “States parties should take particular care to encourage an independent and diverse media...[and] take all necessary steps to foster the independence of [sic] new media and to ensure access of individuals thereto.”⁴⁴
30. Interpreting Article 9(2) of the African Charter, the Declaration on Freedom of Expression stresses that States have an obligation to “facilitate the rights to freedom of expression and access to information **online and the means necessary to exercise these rights**”⁴⁵ [emphasis added]. The Declaration on Freedom of Expression adds that “meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights”⁴⁶.
31. This Declaration on Freedom of Expression highlights, among others, the importance of promoting the free flow of information and ideas; the role of new digital technologies in the realization of the rights to freedom of expression and access to information; and recognizing the key role the media plays in ensuring full respect for freedom of expression, promoting the free flow of information and ideas, assisting people to make informed decisions, and facilitating and strengthening democracy.⁴⁷
32. On State obligations for the protection of freedom of expression online, the Declaration on Freedom of Expression States to support the operation of “...broadcast, print and **online media** to publicly disclose all forms of media ownership and any subsequent acquisitions or change in ownership”⁴⁸
33. The African Commission’s Resolution 362 on the Right to Freedom of Information and Expression on the Internet in Africa recognized the “importance of the Internet in advancing human and peoples’ rights in Africa, particularly the right to freedom of information and expression”⁴⁹ and called on States to “respect and take legislative and other measures to guarantee, respect and protect citizen’s right to freedom of information and expression through access to Internet services”⁵⁰.
34. The European Court on Human Rights, has recognized the centrality of the internet in serving as a means for individuals to exercise their rights to freedom of expression and access to information, and in facilitating their participation in activities and discussion on public interest and political issues⁵¹. As a result, States should not interfere with the right

⁴⁴ Gen. Comment No. 34, para. 15.

⁴⁵ Declaration on Freedom of Expression, supra note 5, principle 37(1)

⁴⁶ Declaration on Freedom of Expression, supra note 5, principle 37(2)

⁴⁷ Id

⁴⁸ Declaration on Freedom of Expression, supra note 5, principle 14(2)

⁴⁹ African Commission, Resolution 362 on the Right to Freedom of Information and Expression on the Internet in Africa - ACHPR/Res.362(LIX) 2016 available at <https://www.achpr.org/sessions/resolutions?id=374>

⁵⁰ Id

⁵¹ See ECtHR, *Ahmet Yildirim v Turkey*, No. 3111/10 (18 March 2013); *Times Newspapers Ltd v the United Kingdom* (App. No. 3002/03 and 23676/03); ECtHR, *Delfi v Estonia*, No. 64569/09 (16 June 2015)

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.⁵²

35. This Honourable Court found, in the landmark decision of *Amnesty International Togo v. Togolese Republic*, that “since internet service provides a platform to enhance the exercise of freedom of expression, it then becomes a derivative right that it is a component to the exercise of the right to freedom of expression”⁵³. Your Lordships added that “[s]ince access to internet is complementary to the enjoyment of the right to freedom of expression, it is necessary that access to internet and the right to freedom of expression be deemed to be an integral part of human right that requires protection by law and makes its violation actionable”⁵⁴
36. The protection of freedom of expression online is particularly important for journalists and media workers, as has been found by the African Commission and other international and regional human rights mechanisms⁵⁵. The Council of Ministers of the European Union stated in a declaration that “Journalists and others who perform public watchdog functions through the media are often in a vulnerable position vis-à-vis the public authorities or powerful interests groups because of their role in informing the public and provoking debate on issues of public interest.”⁵⁶ Therefore, the Declaration states that “Surveillance of journalists and other media actors, and the tracking of their online activities, can endanger the legitimate exercise of freedom of expression if carried out without the necessary safeguards and can even threaten the safety of the persons concerned. It can also undermine the protection of journalists’ sources.”⁵⁷
37. In *Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development (on behalf of Meldrum) v. Zimbabwe* the African Commission affirmed the protection of freedom of expression online when it found that the deportation of a journalist for an online publication critical of the government was a violation of Article 9 of the African Charter on Freedom of expression.⁵⁸
38. In the *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*⁵⁹ the European Court of Human Rights Court, acknowledged that Article 10 of the Convention had to be interpreted as imposing on States a positive obligation to create an appropriate regulatory framework to ensure effective protection of journalists’ freedom of expression on the Internet. The

⁵² ECtHR, *Kalda v Estonia*, No. 17429/10 (19 January 2016).

⁵³ *Amnesty International Togo vs. The Togolese Republic* (ECW/CCJ/JUD/09/20) para 38.

⁵⁴ *id*

⁵⁵ Joint Declaration, *supra* note 2

⁵⁶ EU Council of Ministers, Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors. 30 April 2014 para 10

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5e9d

⁵⁷ *Id*, para 4

⁵⁸ African Commission on Human and Peoples' Rights, 294/04 *Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) / Zimbabwe*, 3 April 2009, available at: <https://www.refworld.org/docid/51092beb2.html> [accessed 5 July 2021]

⁵⁹ ECtHR, *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* (no. 33014/05), 5 May 2011 available at <https://dokumen.tips/reader/f/case-of-editorial-board-of-pravoye-delo-and-board-of-pravoye-delo-and-shtekel>

court further held that since the domestic law for journalists using information obtained from the Internet, the applicants could not foresee to the appropriate degree the consequences which the impugned publication might entail. This enables the Court to conclude that the requirement of lawfulness contained in the second paragraph of Article 10 of the Convention was not met⁶⁰.

39. In sum, under international human rights law the scope of the right to freedom of expression and the obligations of States relating to the protection, respect and promotion of the right extends to the internet and internet based communication systems or services such as Twitter.

- **Anonymity and Encryption as components of Freedom of Expression:**

40. Article 19(2) ICCPR protects anonymity and encryption as a means of expressing the right to freedom of expression without interference especially in an environment of censorship and reprisal. .

41. In his 2021 report, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted that “Internet shutdowns are a growing global phenomenon”⁶¹. Since 2016, the report adds “at least 768 government-ordered internet disruptions in about 63 countries”⁶² have occurred. Further, [s]tates are designing shutdowns to directly block access to the communications platforms and services most used by protesters, like Facebook, Twitter, WhatsApp, or Telegram [and] circumventions tools, such as VPN services”⁶³

42. To exercise the right to seek, receive and impart information in an environment of prevalent State sponsored censorship and reprisal, right holders resort to technology for anonymity and encryption to circumvent restrictions and attacks. The UN Special Rapporteur on Freedom of Expression has noted that “VPN connection, or use of Tor or a proxy server, combined with encryption, may be the only way in which an individual is able to access or share information in such environments.”⁶⁴

43. International instruments that guarantee the right to freedom of expression provide that expression can be through any media and regardless of frontiers. Encryption enables individuals to “avoid filtering, allowing information to flow across borders”⁶⁵ and therefore is regarded as a medium for exchange of information and ideas. The UN Special Rapporteur of Freedom of Expression has opined that encryption and anonymity enable

⁶⁰ Id.

⁶¹ Special Rapporteur on the right to peaceful assembly and association, Report on the impact of Internet shutdowns in relation to peaceful protests, 15 June 2021. Para 23 Available at:https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_47_24_Add.2_E.pdf

⁶² Id

⁶³ Id, para 25

⁶⁴ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on the use of encryption and anonymity in digital communications. 22 May 2015 para 23, available at <https://www.undocs.org/A/HRC/29/32>

⁶⁵ Id, para 25

individuals “exercise freedom of expression without arbitrary and unlawful interference or attacks”⁶⁶.

44. Principle 40 of the Declaration on Freedom of Expression of the African Commission elaborates on the right to freedom of expression noting that everyone has the “right to privacy” and to “communicate anonymously or use pseudonyms on the internet”⁶⁷. It adds that everyone has the right to “secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies”.⁶⁸
45. The Declaration notes that States must “not adopt measures prohibiting or weakening encryption, including backdoors, key escrows and data localisation requirements, unless such measures are justifiable and compatible with international human rights law and standards”⁶⁹.
46. The Special Rapporteur on Freedom of Expression of the Inter American Commission of Human Rights has noted that “anonymous spaces that are free of observation and where identities and activities are not documented must be guaranteed”⁷⁰ In addition, the Special Rapporteur stresses that “[s]tates have an obligation to respect anonymous discourse as an exercise of privacy and freedom of expression and may only exceptionally require authentication or proof of identity from the person expressing it, applying a standard of proportionality”⁷¹.
47. The European Court of Human Rights in *Engels vs. Russia*⁷² held that the ban of the use of encryption technology was similar to banning the use of printers because they could be used for producing extremist ideas. The Court noted that “the utility of filter-bypassing technologies cannot be reduced to a tool for malevolently seeking to obtain extremist content.”⁷³ The Court added that “filter-bypassing technologies primarily serve a multitude of legitimate purposes, such as enabling secure links to remote servers, channelling data through faster servers to reduce page-loading time on slow connections, and providing a quick and free online translation”⁷⁴.
48. There is therefore international consensus that the use of technology for anonymity and encryption is protected under and subject to the principles of international human rights law on Freedom of Expression.

⁶⁶ Id, para 58

⁶⁷ Declaration on Freedom of Expression, supra note 5, principle 40(2)

⁶⁸ Declaration on Freedom of Expression, supra note 5, principle 40(2)

⁶⁹ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on the use of encryption and anonymity in digital communications. 22 May 2015 para 60, available at <https://www.undocs.org/A/HRC/29/32>

⁷⁰ Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Standards for a Free, Open and Inclusive Internet. March 15, 2017. Para 227 http://www.oas.org/en/iachr/expression/docs/publications/internet_2016_eng.pdf

⁷¹ Id, para 228

⁷² *Engels v. Russia* (Application no. 61919/16). 23 June 2020. Available at <http://hudoc.echr.coe.int/fre?i=001-203180>

⁷³ Id, para 29

⁷⁴ Id.

C. Limited circumstances in which States may restrict freedom of expression (including online expression):

49. The right to freedom of expression is not absolute, but limitations are subject to strict guidelines. Article 19(3) of the ICCPR provides that restrictions on the right to freedom of expression are permissible only when they are 1) “provided by law;” and 2) pursue a legitimate aim, such as be “necessary for respect of the rights or reputations of others [or] for the protection of national security or of public order [sic] or of public health or morals.”⁷⁵
50. Expounding on Article 19(3), General Comment 34 asserts that restriction may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and must conform to the strict tests of necessity and proportionality.” The restrictions are limited to the grounds mentioned in Article 19(3), “even if such grounds would justify restrictions to other rights protected in the Covenant”⁷⁶. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.⁷⁷
51. Thus, there exists a three-part test for determining whether or not a limitation of a fundamental freedom, the right to freedom of expression is justifiable:
- a. A restriction on the right must be prescribed by law.
 - b. The restriction on the right must pursue a legitimate aim.
 - c. The restriction must be necessary and proportionate to achieve that legitimate aim (necessary in a democratic society).
52. To be “provided by law,” a law must be “formulated with sufficient precision to enable an individual to regulate his or her own conduct accordingly.”⁷⁸ A law cannot allow for unfettered discretion upon those charged with its execution. Rather, “laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expressions are properly restricted and what sorts are not.”⁷⁹
53. For a restriction...to be “provided for by law”, it must be precise, public and transparent, and avoid providing State authorities with unbounded discretion to apply the limitation.⁸⁰ Proposals to impose restrictions...should be subject to public comment and only adopted, if at all, according to regular legislative process. Strong procedural and judicial safeguards should also be applied to guarantee the due process rights of any individual...subject to

⁷⁵ ICCPR, supra note 1, Article 19(3)

⁷⁶ Gen. Comment No. 34, para. 22.

⁷⁷ Id.

⁷⁸ Gen. Comment No. 34, para. 25.

⁷⁹ Gen. Comment No. 34, para. 25.

⁸⁰ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on the regulation of online hate speech. 9 October 2019 para 6(a)
https://www.ohchr.org/Documents/Issues/Opinion/A_74_486.pdf

restriction. In particular, a court, tribunal or other independent adjudicatory body must supervise the application of the restriction.⁸¹

54. When effecting restrictions to protect the rights or reputations of others, States must take care to ensure that the restrictions do not negatively impact other forms of expression not covered by the restrictions. The rights for which the restrictions are enforced must be a right within the scope of the convention or treaty.

55. Even when purportedly acting in the interest of national security or public order, it is not permissible to invoke such laws to “suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists...for having disseminated such information.”⁸² Restrictions cannot be overbroad, and must be applied in a “specific and individualized fashion” with a “direct and immediate connection” between the expression and the threat.⁸³

56. In its General Comment No. 31 on the nature of the general obligation imposed on States parties to the ICCPR (2004), the Human Rights Committee states that:

“Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.”⁸⁴

57. The Human Rights Committee has clarified that States must demonstrate that the restrictions placed on the right are, in fact, necessary to avert a real and not only a hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.⁸⁵

58. Principle 9 of the African Declaration on Freedom of Expression reflects the standards of General Comment 34 stating that limitations must be “prescribed by law”, “serve a legitimate aim” and be “a necessary and proportionate means to achieve the stated aim in a democratic society”⁸⁶.

59. To be necessary and proportionate, the Declaration notes that the limitation must meet the following standards⁸⁷:

- a. originate from a pressing and substantial need that is relevant and sufficient;

⁸¹ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on the use of encryption and anonymity in digital communications. 22 May 2015 para 32, available at <https://www.undocs.org/A/HRC/29/32>

⁸² Gen. Comment No. 34, para. 30.

⁸³ Gen. Comment No. 34, paras. 34-35.

⁸⁴ U.N. Human Rights Committee (HRC), *General Comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 6.

⁸⁵ See, e.g. U.N. Human Rights Committee, *Lee v Republic of Korea*, Comm. No 1119/2002, CCPR/C/84/D/1119/2002 paras.7.2 and 7.3 (2005); U.N. Human Rights Committee, *Aleksander Belyatsky et al v. Belarus*, supra note 27, para. 7.3

⁸⁶ Declaration on Freedom of Expression, supra note 5, principle 9

⁸⁷ Declaration on Freedom of Expression, supra note 5, principle 9(4)

- b. have a direct and immediate connection to the expression and disclosure of information, and be the least restrictive means of
- c. achieving the stated aim; and be such that the benefit of protecting the stated interest outweighs the harm to the expression and disclosure of information, including with respect to the sanctions authorized.

60. As described by the African Court on Human and Peoples' Rights, a proportionality test is one that "weighs the impact, nature and extent of the limitation against the legitimate State interest [in] serving a particular goal."⁸⁸ "The legitimate interest must be proportionate with and absolutely necessary for the advantages which are to be obtained".⁸⁹ This approach "requires a determination of whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights"⁹⁰. In Communications No 105/93, 128/94, 130/94, 152/96 (Consolidated Communications) Media Rights Agenda and others v Nigena Twelfth Annual Activity Report (1998 - 1999) paragraph 68 and Communication No 255/2002 Gareth Anver Prince v South Africa Eighteenth Annual Activity Report (July 2004 - December 2004) paragraph 43, the Commission adopted a similar standard.

61. In *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe*⁹¹, the African Commission considered that even when a State is concerned with ensuring respect for the rule of law, it should nevertheless adopt measures that are commensurate to this objective. The Commission in fact took into consideration the fact that "the principle of proportionality seeks to determine whether, by State action, there has been a balance between protecting the rights and freedoms of the individual and the interests of society as a whole"⁹².

- **Limiting access to the internet or internet based services:**

62. Limitations to the exercise of the right to freedom of expression through online platforms such as Twitter must meet the standards of international and regional human rights law.

⁸⁸ African Court on Human and People's Rights, Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. United Republic of Tanzania, Consolidated Applications Nos. 009/2011 and 011/2011, June 14, 2013, para.106.1.

⁸⁹ African Court on Human and People's Rights, Tanganyika Law Society, Legal and Human Rights Centre and Reverend Christopher R. Mtikila v. United Republic of Tanzania, Consolidated Applications Nos. 009/2011 and 011/2011, June 14, 2013, para.107.2.

⁹⁰ id

⁹¹ Comm no 284/2004, 6th Extraordinary Session (30 March-3 April 2009), 26th Annual Activity Report, IHRL 3258 (ACHPR 2009), April 2009, African Commission on Human and Peoples' Rights [ACHPR]

<https://www.refworld.org/pdfid/510929432.pdf>

⁹² Id, para 149

As the Human Rights Council established, "...the same rights that people have offline must also be protected online, in particular freedom of expression."⁹³

63. The UN Special Rapporteur on Freedom of Expression has stated that "... as a general rule, there should be as little restriction as possible to the flow of information on the Internet, except under a few, very exceptional and limited circumstances prescribed by international law for the protection of other human rights."⁹⁴ In addition, "[d]emands, requests and other measures to take down digital content or access customer information must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means of achieving one or more aims under Article 19 (3) of the International Covenant on Civil and Political Rights"⁹⁵.
64. The Human Rights Council has condemned measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and called upon all States to refrain from and cease such measures.⁹⁶ The Council resolution stressed that "...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".⁹⁷
65. In a joint declaration in 2015, United Nations and regional experts from the Organization for Security and Cooperation in Europe, the Organization of American States and the African Commission on Human and Peoples' Rights in the field of freedom of expression condemned "[f]iltering of content on the Internet, using communications 'kill switches' (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law."⁹⁸ The declaration reiterates that "[a]dministrative measures restricting freedom of expression should be imposed only where they can be justified pursuant to the three-part test for such restrictions"⁹⁹
66. The UN Special Rapporteur on Freedom of Expression has noted that the "...arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right"¹⁰⁰, and not only causes "a chilling effect but also leads to other

⁹³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Report on contemporary challenges to freedom of expression. 6 September 2016. (para 5) available at <https://www.undocs.org/A/71/373>

⁹⁴ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly on internet access. 10 August 2011 para 12 <https://undocs.org/A/66/290>

⁹⁵ id

⁹⁶ UN Human Rights Council Resolution 32/13 on The promotion, protection and enjoyment of human rights on the Internet. para.10 <https://undocs.org/A/HRC/RES/32/13>

⁹⁷ 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>.

⁹⁸ Joint Declaration, supra note 2, para 4c

⁹⁹ Joint Declaration, supra note 2, para 2c

¹⁰⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly key trends and challenges to the right of all individuals to seek, receive and impart information and

human rights violations, such as arbitrary detention and torture and other forms of cruel, inhuman or degrading treatment or punishment.”¹⁰¹

67. The African Commission Special Rapporteur on Freedom of Expression and Right to Information has noted that “any attempt by States to cut or restrict access to the internet, **block social media** platforms or other communications services...restricts the public’s access...”¹⁰² The Special Rapporteur affirmed in a statement that “internet and social media shutdowns violate the right to freedom of expression and access to information, contrary to Art. 9 of the ACHPR.”¹⁰³
68. The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights described state responsibility regarding the respect for the right to freedom of expression online as having three components. First, the “positive measures to ensure inclusion or closing the digital divide; [second] efforts to develop plans to ensure that infrastructure and services tend to progressively pursue universal access; as well as [third] measures to prohibit blocking or limiting access to the Internet or any part of it...”¹⁰⁴
69. In *Ahmet Yildirim v. Turkey*, the European Court of Human Rights found that the right to freedom of expression is two-fold, encompassing not only the right to transmit but also to receive information. Finding that the decision to block access to Google sites violated Article 10 of the European Convention on Human Rights. It explicitly reinforces an individual’s right to access internet content, confirming the internet as a “principle means” of exercising the right to freedom of expression and information. **Ultimately the Court found that States are not authorized to block access to an entire Internet site on account of just some of its contents.**¹⁰⁵ [emphasis added].
70. In *Cengiz and Others v. Turkey*¹⁰⁶, the European Court of Human Rights reaffirmed that the wholesale blocking of access to YouTube, a website enabling users to send, view and share videos did not meet the legality requirement under the European Convention of Human Rights. The Court also noted that YouTube was a platform that enabled the exchange of information including videos and educative content and there was no legal ground to effect a blanket ban on the platform.

ideas of all kinds through the Internet. 16 May 2011. Para 28

https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

¹⁰¹ id

¹⁰² Special Rapporteur on Freedom of Expression and Access to Information in Africa, Press Release on the Importance of Access to the Internet in Responding to the COVID-19 Pandemic. 8 April 2020. Para 3. Available at:

<https://www.achpr.org/pressrelease/detail?id=487>

¹⁰³ id

¹⁰⁴Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Standards for a Free, Open and Inclusive Internet. March 15, 2017. Para 227

http://www.oas.org/en/iachr/expression/docs/publications/internet_2016_eng.pdf

¹⁰⁵ ECtHR judgment, *Ahmet Yildirim v. Turkey*, application no. 3111/10. 18 December 2021. Para 68, accessible at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/06/CASE-OF-AHMET-YILDIRIM-V.-TURKEY.pdf>

¹⁰⁶ *Cengiz v. Turkey (Applications nos. 48226/10 and 14027/11)* 1 March 2016 Available at:

<http://hudoc.echr.coe.int/eng?i=001-159188>

71. It is against this international legal framework of obligations of States concerning the right to freedom of expression that the Amicus Curiae wishes to discuss the indefinite ban and restriction of access to Twitter by the Respondent.

D. Analysis of the indefinite ban and restriction of access to Twitter by the Federal Republic of Nigeria under International Human Rights Law

72. International and regional human rights instruments, binding on the Respondent, recognize online expression through social media such as Twitter as a component of the right to freedom of expression and establish the obligation for States, including the Respondent, to respect and protect that freedom.

73. The action of the Respondent banning Twitter and thereby disproportionately restricting access to the platform for millions of its citizens is a violation of the right to freedom of expression guaranteed by domestic, regional and international law applicable to the Respondent.

74. The African Declaration on Freedom of Expression asserts that States shall not “engage in or condone any disruption of access to the internet and other digital technologies for segments of the public or an entire population”.¹⁰⁷

75. General Comment 34 stresses that “it is specifically inconsistent with international law 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.”¹⁰⁸

76. In Resolution 32/13, the Human Rights Council condemned “measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and called upon all States to refrain from and cease such measures”.¹⁰⁹

77. The decision of the agents of the respondent to block access to twitter, direct media companies to desist from using twitter and the threat to prosecute right holders for circumventing the twitter ban are not in accordance with the law and standards presented above.

a. The scope of the restriction to the right to freedom of expression by the Twitter ban is too broad and contravenes the principles of legality, necessity and proportionality

78. The scope of the Respondent’s restriction of the right to freedom of expression by banning Twitter and restricting the access of millions of the Respondent’s citizens and other

¹⁰⁷ Declaration on Freedom of Expression, supra note 5, principle 38(2)

¹⁰⁸ Gen. Comment No. 34, para. 43.

¹⁰⁹ <https://undocs.org/A/HRC/RES/32/13>

individuals to the platform primarily used to seek, receive and exchange information is too broad and untargeted to meet the standards set by international human rights law.

79. With regard to 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,” restrictions are only permissible to the extent that they are compatible with Article 19(3).¹¹⁰ As Article 19 explains, limitations on electronic communications disseminated over the internet “must be justified according to the same criteria as non-electronic or ‘offline’ communications.”¹¹¹

Step 1: There is no legal ground for the Twitter ban and the resulting restriction of the right to freedom of expression on the platform.

80. The Respondent’s directive and announcement of the Twitter ban made no reference to any law providing the authority to restrict access to the platform and thereby restrict the exercise of the right to freedom of expression through the platform. Infact following the ban, agents of the Respondent have approached the Federal legislature to enact laws granting the certain federal agencies the authority to regulate social media in the country.
81. The jurisprudence of this Honourable Court on this issue¹¹² is in tandem with international law standards and the jurisprudence of other regional and international mechanisms. The European Court of Human Rights, in its first case on internet blocking reiterated that the requirement that restrictions be prescribed by law implies that the “impugned measure should have some basis in domestic law”¹¹³. It also refers to the quality of the law in question, requiring that it should be “accessible to the person concerned, who must moreover be able to foresee its consequences, and that it should be compatible with the rule of law”¹¹⁴.
82. The 2019 Joint Declaration of the special procedures on the right to Freedom of Expression of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS) and the African Commission on Human and Peoples’ Rights (ACHPR) equally condemned the “arbitrary disruptions and shutdowns to restrict access to telecommunications networks and the Internet”¹¹⁵
83. The Report on Content Regulation by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression supports the notion of legality. To pass the legality test, the laws must be “adopted by regular legal processes and limit

¹¹⁰ Gen. Comment No. 34, para. 43.

¹¹¹ Article 19, available at <https://www.article19.org/wp-content/uploads/2018/05/Tanzania-Online-Content-Regulations-2018-Final.pdf>.

¹¹² *Federation of African Journalists & 4 ors v. The Republic of the Gambia (2018)* and *Amnesty International Togo vs. Togolese Republic (2020)*.

¹¹³ ECtHR judgment, *Ahmet Yildirim v. Turkey*, application no. 3111/10, 18 December 2012, <http://hudoc.echr.coe.int/eng?i=001-115705>, para 57

¹¹⁴ id

¹¹⁵ Joint Declaration, supra note 1

government discretion in a manner that distinguishes between lawful and unlawful expression with sufficient precision”¹¹⁶.

84. A United Nations Special Rapporteur report on freedom of expression, states and the private sector in the digital age addresses the state responsibility in relation to access to the internet thus:

“[S]tates bear a primary responsibility to protect and respect the right to exercise freedom of opinion and expression. In the information and communication technology context, this means that States must not require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression, whether through laws, policies, or extralegal means”¹¹⁷

85. In the absence of legislation authorizing the ban, the Respondent could have obtained a court order before the implementation of any restriction of access to the internet. It has been accepted internationally that the law or directive restricting access to internet content must be based on a law “precise enough and that offers sufficient opportunities for judicial review.”¹¹⁸ General Comment 34 states that “[R]estrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”¹¹⁹

Step 2: The target of the restriction of access to Twitter is overbroad

86. The Respondent’s action restricted the access to Twitter for millions of Nigerians and others visiting or living in Nigeria. Such blanket restriction of the right to freedom of expression violated the rights of Nigerians to seek, receive and disseminate information through any media of their choice.

87. International law on freedom of expression establishes that the exercise of this right shall be without interference subject to limited limitation discussed above. In *Ahmet Yildirim v. Turkey*, the European Court of Human Rights found that “the restriction of access to a part of the internet just like a wholesale restriction of access to the internet was a violation of the right to freedom of expression and does not diminish its significance since the Internet has now become one of the principal means by which individuals exercise their right to

¹¹⁶ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on Online Content Regulation, 6 April 2018. Available at: <https://www.undocs.org/A/HRC/38/35>

¹¹⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the General Assembly on the role of the private sector in the digital age. 11 May 2016. para 85 <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/PrivateSectorInTheDigitalAge.aspx>

¹¹⁸ ECtHR judgment, *Ahmet Yildirim v. Turkey*, application no. 3111/10, 18 December 2012. The Strasbourg Court found that Turkey was in violation of Article 10 of the European Convention on Human Rights for its restriction on content accessible via the internet.

¹¹⁹ Gen. Comment No. 34, para. 22

freedom of expression and information...”¹²⁰ The Court also found that States are not authorized to block access to an entire Internet site on account of just some of its contents.¹²¹

88. As with the blocking of the Google sites in the Ahmet case, the blanket ban of Twitter by the Respondent restricting the use of the platform for receiving and sharing information violates human rights law.

89. In *Cengiz and Others v. Turkey*¹²², the European Court of Human Rights reiterated its decision in the Ahmet case reaffirmed that the wholesale blocking of access to YouTube, a website enabling users to send, view and share videos did not meet the legality requirement under the European Convention of Human Rights. The Court also noted that YouTube was a platform that enabled the exchange of information including videos and educative content and there was no legal ground to effect a blanket ban on the platform.

90. Denying millions of Nigerians access to Twitter without any legal basis and in a manner that deprives them of a veritable means of expression, communication and all other purposes for which the platform could be used breaches the rights to Freedom of expression.

Step 3: The restriction of access to Twitter was not necessary for or proportionate to the interest sought to be protected by the Respondent:

91. The Respondent’s stated reason for the Twitter ban is the “use of the platform for activities capable of undermining Nigeria’s corporate existence”¹²³ [emphasis added]. This purpose does not meet the standard of Article 19(3) ICCPR.

92. The only grounds upon which the right to freedom of expression could be restricted are the protection of the rights or reputation of others, the protection of national security or of public order, or of public health or morals. These grounds were not raised by the Respondent as the basis for the Twitter ban.

93. The scope of the ban and its indefinite nature of the measure are disproportionate to the interest that the respondent seeks to protect. On proportionality and necessity, the Human Rights Committee has opined that the restrictive measure of a State Party must be “the least intrusive instrument among those which might achieve their protective function and are proportional to the interest to be protected.”¹²⁴ It is therefore not justifiable that millions

¹²⁰ ECtHR judgment, Ahmet Yildirim v. Turkey, application no. 3111/10. 18 December 2021. Para 68, accessible at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/06/CASE-OF-AHMET-YILDIRIM-v.-TURKEY.pdf>

¹²¹ id

¹²² Cengiz v. Turkey (*Applications nos. 48226/10 and 14027/11*) 1 March 2016 Available at: <http://hudoc.echr.coe.int/eng?i=001-159188>

¹²³ BBC News, Nigeria’s Twitter ban: Government orders prosecution of violators, June 5 2021, Available at <https://www.bbc.com/news/world-africa-57368535>

¹²⁴ See Human Rights Committee, general comment No. 27 (1999), para. 14.

of Nigerian citizens would be denied access to a medium of communication and expression in furtherance of a purpose

94. The European Court of Human Rights has concluded that “necessary” in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms means that the restriction must be something more than “useful”, “reasonable”, or “desirable”...Given the fundamental rights at issue, limitations should be subject to independent and impartial judicial authority, in particular to preserve the due process rights of individuals.”¹²⁵
95. The Report on Content Regulation by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression establishes that “ [S]tates must demonstrate that the restriction imposes the least burden on the exercise of the right and actually protects, or is likely to protect, the legitimate State interest at issue. States may not merely assert necessity but must demonstrate it, in the adoption of restrictive legislation and the restriction of specific expression.”¹²⁶
96. Following the Twitter ban, the Respondents' agents directed media organizations to deactivate their twitter accounts and threatened to prosecute Nigerians who circumvent the Twitter ban including by the use of Virtual Private Network (VPN).
97. These measures are contrary to the protections provided by international human rights law for dissemination of all kinds of information through all forms of media and frontiers. As presented above, regional courts around the world and standards of the African Commission support the right to use technology for anonymity and encryption.
98. The UN Special Rapporteur's report on use of encryption and anonymity in digital communications states that “[E]ncryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age”. The report adds that given the necessity of encryption and anonymity to the enjoyment of the right to freedom of expression, “restrictions on encryption and anonymity must be strictly limited according to principles of legality, necessity, proportionality and legitimacy in objective”¹²⁷

E. Conclusion

99. With reference to the aforementioned international and regional instruments, jurisprudence and standards, the indefinite ban and restriction of access to Twitter by the Respondent is a clear violation of the right to freedom of expression because it places

¹²⁵ European Court of Human Rights, Application No. 6538/74, *The Sunday Times v. The United Kingdom* (26 April 1979), para. 59.

¹²⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/096/72/PDF/G1809672.pdf?OpenElement>

¹²⁷ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on use of encryption and anonymity in digital communications. 22 May 2015 para. 58. Available at: <https://www.undocs.org/A/HRC/29/32>

illegal, disproportionate and unnecessary restrictions on the right of Nigerians to share and receive information, engage with, and participate with their government.

100. Further, the actions of the Respondent directing media and TV organizations to deactivate their Twitter account and despite using Twitter is at variance with numerous human rights standards and is thus at odds with a democratic society upholding fundamental freedoms.
101. The Amicus Curiae submits that the foregoing international and regional standards provide clear guidance for the Honorable Court in its consideration of the merits of the case before it.

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