

COMMUNITY COURT OF JUSTICE,  
ECOWAS  
COUR DE JUSTICE DE LA COMMUNATE,  
CEDEAO  
TRIBUNAL DE JUSTICA DA COMUNIDADE,  
CEDEAO



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THE COMMUNITY COURT OF JUSTICE OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

L'ASSOCIATION DES UTILISATEURS DES TECHNOLOGIES DE  
L'INFORMATION ET DE LA COMMUNICATION & MONSIEUR  
NDIAGA GUEYE  
(APPLICANTS)

v

REPUBLIC OF SENEGAL  
(RESPONDENT)

*Application No. ECW/CCJ/APP/37/23; Judg't No. ECW/CCJ/JUD/29/25*

***JUDGMENT***

LAGOS

14 MAY 2025

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

*Application No:* **ECW/CCJ/APP/37/23**; *Judg't No.* **ECW/CCJ/JUD/29/25**

BETWEEN

L'ASSOCIATION DES UTILISATEURS DES TECHNOLOGIES DE  
L'INFORMATION ET DE LA COMMUNICATION & MONSIEUR  
NDIAGA GUEYE

**-APPLICANTS**

AND

REPUBLIC OF SENEGAL

**-RESPONDENT**

**COMPOSITION OF THE COURT:**

Hon. Justice Sengu M. **KOROMA**

-Presiding Judge

Hon. Justice Dupe **ATOKI**

- Member

Hon. Justice Edward Amoako **ASANTE**

- Judge Rapporteur

ASSISTED BY:

Dr. Yaouza **OURO-SAMA**

- Chief Registrar

**REPRESENTATION OF PARTIES:**

Assane Dioma Indiaeye

- Counsel for APPLICANT

Amadu Bamba Qualy

-Agent of RESPONDENT

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## **I. JUDGMENT**

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

## **II. DESCRIPTION OF THE PARTIES**

2. First Applicant, l'Association des Utilisateurs des Technologies de l'Information et de la Communication (Association of Users of Information and Communications Technologies), known by its French acronym "ASUTIC", is a Senegalese organisation based in Dakar whose mission is to represent, promote and protect the rights and interests of users of information and communication technologies (ICT).
3. Second Applicant is an IT consultant based in Dakar who specialises in internet applications development and is the President of ASUTIC.
4. Respondent, the Republic of Senegal, is an ECOWAS Member State.

## **III. INTRODUCTION**

### ***Subject Matter of the Proceedings***

5. The Applicant alleges that, on separate occasions in June and July 2023, the Respondent, acting through its Minister of the Interior and Public Security and the Minister for Communication, Telecommunications, and the Digital Economy, shut down the Internet and blocked access to

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mobile data and social media platforms following demonstrations triggered by the trial and conviction of the then Senegalese opposition leader, Mr. Ousmane Sonko. The Applicants contend, and request the Court to find and adjudge, that these actions by the Respondent violated various fundamental human rights, including the freedom of expression, the right to information, and the right to work.

#### **IV. PROCEDURE BEFORE THE COURT**

6. Applicants initiated this proceeding by an Application dated 11 September 2023 which was filed at the Registry of the Court on 21 September 2023. Also filed by the Applicants was an application for expedited procedure. Both documents were served on the Respondent the next day, 22 September 2023.
7. On 24 October 2023, the Respondent filed a Statement of Defence to the Initiating Application and a Response to the Application for Expedited Procedure. The two documents were served on Applicants the following day on 25 October 2023.
8. On 17 November 2023, the Applicants filed a Reply to the Respondent's Statement of Defence and a Counter-Response to the Respondent's Response to the Application for Expedited Procedure.
9. On 24 January 2024, Respondent filed a Rejoinder to the Applicant's Reply and a rejoinder to the Applicant's counter-response on the Application for Expedited Procedure.

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10. At a session of the Court on 26 September 2024 during which all parties were represented, the Court heard the Applicants and Respondent on the Initiating Application and adjourned for deliberation and judgment.

## **V. APPLICANT'S CASE**

### **a) Summary of Facts**

11. Applicants state that on 1 June 2023, access to the Internet, mobile data services and social media platforms were shut down due to demonstrations that followed the trial and conviction of then Senegalese opposition leader, Mr. Ousmane Sonko. It was impossible to access the internet or social media without the use of an anonymity network such as 'Tor' or a 'Virtual Private Network' (VPN).

12. They state that during a press conference on the night of the 1<sup>st</sup> to 2<sup>nd</sup> June 2023, the Minister of the Interior and Public Security officially confirmed the Internet and social media shutdown. He justified it on the ground that 'hateful and subversive messages' were being disseminated on social media and that the measure was necessary to prevent incitement of violence.

13. Applicants further state that on 4th June 2023, the Minister for Communication, Telecommunications and the Digital Economy (hereafter the "Minister of Communications") announced that he had directed telecommunication operators to temporarily suspend mobile telephony and data services due to the dissemination of hateful and

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subversive messages in certain parts of the country following the disruption of public order in those areas.

14. Applicants state that as a result of this directive, beginning on the 4<sup>th</sup> of June 2023, telecom operators, particularly Orange Senegal and Free Senegal, started sending messages to their customers informing them that the government had decided to suspend mobile internet services.

15. According to Applicants, on 6th June 2023, the Minister of Communications issued a communiqué in which he announced the restoration of mobile internet services without any time restrictions and stated that telecom operators had been instructed to implement the directive. However, in yet another communiqué dated 31 July 2023, the Minister of Communications again announced the shutdown of Internet services and social media platforms, particularly TikTok, because of the demonstrations that followed the arrest of Mr Ousmane Sonko.

16. Applicants contend that these measures implemented by the Respondent violate Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Articles 9, 11 and 15 of the African Charter on Human and Peoples' Rights (African Charter).

#### **b) Pleas in Law**

17. As to pleas in law, Applicants submit:

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- (i) That the Court has jurisdiction consistent with Article 9(4) of the Protocol of the Court.
- (ii) That the case is admissible under Article 10(d) of the Protocol of the Court.
- (iii) That the Respondent has violated the rights to freedom of expression and information contrary to Articles 19 of the ICCPR and Article 9 of the African Charter.
- (iv) That the Respondent has violated the freedom of assembly contrary to Article 21 of the ICCPR.
- (v) That Respondent has violated the right to work contrary to Article 6 of the ICESCR and Article 15 of the African Charter.
- (vi) The Respondent's measures of shutting down Internet services and social media violates Article 10(2) of the ECOWAS Supplementary Act on the Harmonisation of Policies and Regulatory Framework on the Information and Telecommunications Sector (A/SA.1/01/07) and Article 3 of UEMOA Directive No.10-2006 on the Harmonisation of the Policies for the Supervision and Regulation of the Telecommunications Sector.

**c) Reliefs sought**

18. Applicants request the Court for the following reliefs:

- (i) To declare that the Court has jurisdiction consistent with Article 9(4) of the Protocol of the Court.

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- (ii) To declare that the case is admissible under Article 10(d) of the Protocol of the Court.
- (iii) To declare that the Respondent has violated the rights to freedom of expression and information contrary to Articles 19 of the ICCPR and Article 9 of the African Charter.
- (iv) To declare that Respondent has violated the freedom of assembly contrary to Article 21 of the ICCPR.
- (v) To declare that Respondent has violated the right to work contrary to Article 6 of the ICESCR and Article 15 of the African Charter.
- (vi) To declare that the Respondent's measures of shutting down Internet services and social media violate Article 10(2) of the ECOWAS Supplementary Act on the Harmonisation of Policies and Regulatory Framework on the Information and Telecommunications Sector (A/SA.1/01/07) and Article 3 of UEMOA Directive No.10-2006 on the Harmonisation of the Policies for the Supervision and Regulation of the Telecommunications Sector.
- (vii) To order the suspension, prohibition, sanction, or any other punishment imposed on social media platforms and/or any other social media service providers by the State of Senegal or its agents.
- (viii) To order the [Republic] of Senegal or its agents to revoke, withdraw, and/or immediately lift the censorship of social media and the mobile internet shutdown of any other social media service provider in Senegal, in accordance with its obligations under international human rights law,

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particularly Article 1 of the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, and the Revised ECOWAS Treaty of 1993.

- (ix) To issue a permanent injunction against the [Republic] of Senegal, preventing it from illegally imposing sanctions and punishments in the future or from taking any action to ban, shut down, or interfere with the internet and/or any other social media service providers, media houses, radio and television stations, the applicants, and other Senegalese digital users.
- (x) To order the Republic of Senegal to compensate for all forms of damages suffered:
  - ASUTIC: the sum of one billion CFA francs (1,000,000,000 FCFA).
  - Ndiaga GUEYE: the sum of five hundred million CFA francs (500,000,000 FCFA).
- (xi) To order any other decision that the Honourable Court deems appropriate under the circumstances of the case.
- (xii) To further order the Republic of Senegal to bear all costs.

## **VI. RESPONDENT'S CASE**

### **a) Summary of Facts**

19. According to the Respondent, on 1 June 2023, Mr Ousmane Sonko, then Senegalese opposition leader, was sentenced in absentia to two years imprisonment for rape and death threats against a woman named Adjil Raby Sarr. After the verdict, exceptionally violent demonstrations

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occurred throughout Senegal, particularly in Dakar and its suburbs, as well as in the Ziguinchor region.

20. Respondent says that due to the situation, the Senegalese public authorities took a series of measures aimed at re-establishing law and order in the country. Accordingly, on the night of 1 to 2 June 2023, the Minister of the Interior and Public Security, during a press conference, announced the implementation of restrictions on access to various social networks.

21. Further, in a communiqué dated 4 June 2023, the Minister of Communications announced directives to telecom operators to temporarily suspend mobile Internet services for certain periods. According to the Respondent, this measure was in response to the dissemination of hateful and subversive messages following the serious public disturbances in certain parts of the country.

22. Respondent says that on 6 June 2023, mobile internet services were restored. However, on 31 July 2023, following the arrest of Mr Ousmane Sonko and the demonstrations that ensued, further restrictions were imposed on access to mobile internet services and social media platforms including TikTok.

23. Respondent contends that, contrary to the Applicants' assertions, it implemented these measures in full compliance with its international human rights obligations and domestic legislation, with the aim of ensuring security and public order.

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**b) Pleas in Law**

24. As to pleas in law, Respondent submits the following:

- (i) That the application is inadmissible as it relates to ASUTIC because it lacks the requisite standing to sue.
- (ii) That the Respondent did not violate the freedom of expression, the right to information or freedom of assembly by imposing restrictions on internet access and social media.
- (iii) That restrictions on access to the internet can only give rise to violation of freedom of expression, not the right to work, and that in any event ASUTIC being a legal person, has no right to work.
- (iv) That the Applicants' claims on alleged human rights violations relating to Article 10(2) of the ECOWAS Supplementary Act on the Harmonisation of Policies and Regulatory Framework on the Information and Telecommunications Sector (A/SA.1/01/07) and Article 3 of UEMOA Directive No.10-2006 on the Harmonisation of the Policies for the Supervision and Regulation of the Telecommunications Sector are unfounded.
- (v) That the claims for compensation by ASUTIC have no legal merit and that Mr Ndiaga Gueye has not established any legal injuries or losses to merit compensation.

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**c) Reliefs Sought**

25. Respondent prays the Court for the following reliefs:

- (i) That the Application filed by ASUTIC should be declared inadmissible for lack of standing.
- (ii) That the Court dismiss the application filed by ASUTIC and Mr. Ndiaga Gueye as ill-founded.
- (iii) That the Court order the Applicants to pay the costs of the proceedings.

**VII. PROCEEDINGS BEFORE THE COURT**

26. The Applicant requested expedited hearing of the Application pursuant to Article 59(2) of the Rules of the Court. The Court recalls that the principal ground for the Applicants' request for expedited procedure was for the Application to be heard before the February 2024 presidential elections of Senegal. The Court notes, however, that the circumstances have since changed following the successful holding of the presidential elections and the swearing in of a new administration. Accordingly, there is currently no urgency that would justify considering the Application under the expedited procedure. The request for expedited procedure has therefore become moot or devoid of purpose and is hereby struck out.

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## VIII. JURISDICTION OF THE COURT

27. Article 9(4) of the Protocol of the Court vests the Court with ‘jurisdiction to determine cases of violation of human rights that occur in any Member State.’ In determining whether the subject matter of an application falls within the scope of this jurisdiction, the Court must consider whether “the issue submitted before it deals with a right which has been enshrined for the benefit of the human person, whether it arises from the international and Community obligations of the State complained of, as human rights to be promoted, observed, protected and enjoyed, and whether it is the violation of that right which is being alleged.” (*Hissein Habre v Senegal (Interim Ruling)* [2010] CCJELR 43, para 59).

28. Similarly, in *Digital Rights Lawyers Initiative v Federal Republic of Nigeria* [ECW/CCJ/JUD/02/23], the Court held that an Application brought under Article 9(4) of the Court’s Protocol must be founded upon “human rights instruments under which the Respondent has undertaken human rights obligations.” (para 25). Relying on *Action Pour la Protection des Droits de l’Homme (APDH) v Cote d’Ivoire* [2016] 1 AfCLR 668 (para 57) the Court explained in the *Digital Rights Lawyers Initiative* case that a human rights instrument is one that (a) expressly enunciates the subjective rights of individuals or groups of individuals, and/or (b) imposes binding obligations on the state parties for the enjoyment of the said rights. (*Digital Rights Lawyers Initiative*, paras 25-30).

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29. In this case, the Applicant alleges violations of the right to freedom of expression and information, contrary to Article 19 of the ICCPR and Article 9 of the African Charter; the right to freedom of assembly, contrary to Article 21 of the ICCPR; and the right to work, contrary to Article 6 of the ICESCR and Article 15 of the African Charter. Because these claims are based on internationally recognised human rights instruments binding on the Respondent, the Court holds that it has material jurisdiction under Article 9(4) of the Protocol of the Court.

30. However, the Court holds that it lacks material jurisdiction to determine the Applicant's claims relating to the Respondent's alleged violation of Article 10(2) of the ECOWAS Supplementary Act on the Harmonisation of Policies and Regulatory Framework on the Information and Telecommunications Sector (A/SA.1/01/07) and Article 3 of UEMOA Directive No.10-2006 on the Harmonisation of the Policies for the Supervision and Regulation of the Telecommunications Sector. Having examined the two instruments, the Court finds that they do not qualify as human rights instruments within the meaning of the test in the *Digital Rights Lawyers Initiative* case. Therefore, the Applicants' claims and reliefs founded upon the said instruments are hereby dismissed for lack of jurisdiction.

## **IX. ADMISSIBILITY OF THE CASE**

31. Article 10(d) of the Court's Protocol requires three main admissibility conditions for human rights cases. These are (a) the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the



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non-pendency of the matter before another international court or tribunal. See *Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167 (para 18).

32. In accordance with Article 10(d) of the Court's Protocol and its jurisprudence, the Court notes that the application is not anonymous and there is no evidence that the Applicants have submitted the same claim to another international court.

33. On the requirement of standing or victim status, the Court recalls that it requires Applicants to show, *prima facie*, that a conduct of the Respondent has adversely affected their rights and therefore they have a personal interest in the matter. In this case, the Application stands in the name of Mr Ndiaga Gueye, an individual, and ASUCTIC, a legal or juristic person. Mr Gueye, the Second Applicant alleges that the internet and social media shut down prevented him from working, expressing his opinions and accessing information. The Court finds that the Second Applicant has standing because he has shown, *prima facie*, that the alleged conduct of the Respondent affected his rights.

34. Regarding ASUTIC, the Respondent contends that it lacks standing because it is not a non-governmental organisation under the relevant laws of Senegal and that it has not proven that it enjoys observer status before any ECOWAS Institution. In response, the Applicants contend that by the Court's decision in *Dexter Oil Ltd v Liberia* [ECW/CCJ/JUD/03/19], legal entities may sue for alleged violation of rights that are not inherently human rights such as the rights to fair trial,

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freedom of expression and property. They also state that ASUTIC is a recognised NGO with observer status with the African Commission on Human and Peoples' Rights.

35. With regards to the standing of the First Applicant, ASUTIC, the Court recalls its decision in the *Dexter Oil* case as affirmed in *Algom Resources Ltd v Sierra Leone* [ECW/CCJ/JUD/03/23] (paras 28-30) to the effect that legal entities may have access under Article 10(d) of the Court's Protocol to institute actions for the violation of their rights, such as the rights to fair trial, freedom of expression and property, that are not intrinsically and exclusively fundamental human rights. See also *Guinee Association des Blogueurs de Guinée (ABLOGUI) v Republic of Guinea* [ECW/CCJ/JUD/38/23] (para 29) where the Court indicated that legal entities can enjoy freedom of expression and its derivative rights and institute actions for their protection.

36. The First Applicant, ASUTIC, is a legal person incorporated under the Respondent's laws as evidenced by its certificate of registration annexed to the Application as Exhibit 14. Secondly, it alleges that the internet and social media shutdown affected its ability, among others, to express its opinions and access information. Because an alleged violation of freedom of expression entitles a legal entity to standing under the *Dexter Oil* case, the First Applicant's claim relating to violation of the freedom of expression and access to information is admissible. Regarding the other claims of the First Applicant on freedom of assembly, and the right to work, the Court notes that those are not rights that come within the scope of the *Dexter Oil* case relative

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to suits by legal or juristic persons. Accordingly, the Court holds that those claims are inadmissible as it relates to the First Applicant.

37. In conclusion, the Court holds that, in relation to the First Applicant, only the claim concerning the alleged violation of the right to freedom of expression and access to information is admissible. In relation to the Second Applicant, the admissible claims are the alleged violations of the rights to freedom of expression and access to information, freedom of assembly, and the right to work.

#### **X. MERITS**

38. Having regard to the pleadings in the Application including the reliefs sought as well as the Court's decision on jurisdiction and admissibility, the remaining substantive claims whose merits the Court must determine are the following: (i) alleged violation of the First and Second Applicants' rights to freedom of expression and access to information; (ii) alleged violation of the Second Applicant's right to freedom of assembly; and (iii) alleged violation of the Second Applicant's right to work.

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**i) Alleged violation of the First and Second Applicants' rights to freedom of expression and access to information**

*(a) Submissions of the Applicants*

39. Relying on Article 19 of the ICCPR, Article 9 of the African Charter, and the previous decision of this Court in *Amnesty International Togo & Others v Togolese Republic*, [ECW/CCJ/JUD/09/20] the Applicants submit that Respondent violated their right to freedom of expression and the right to access information when it Ministers of the Interior and Communications shut down Internet services and social media platforms. They were unable to communicate either socially or professionally or share their opinions and viewpoints.

40. According to Applicants, these measures implemented in June 2023 and again on 31 July 2023 had no legal justification, as Senegal has no law that permits restriction of the Internet and social media. That, because the Internet and social media platforms have become the mediums through which freedom of expression is exercised, the Respondent's measures shutting down the Internet and social media platforms violated Article 19 of the ICCPR and Article 9 of the African Charter.

41. Applicants further submit that contrary to the Respondent's assertions, the measures implemented were not proportionate since the internet and social media shutdowns were targeted at millions of people rather than a few persons who may have been posting offensive messages. That,

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in any event, the Respondent has also failed to provide any proof of the alleged hateful and subversive messages which warranted the extraordinary measures that were implemented.

*(b) Submissions of the Respondent*

42. In response, the Respondent argues that the freedom of expression and the right to receive information are not absolute. They are subject to restrictions including those prescribed by domestic law that are necessary to safeguard the rights and reputation of others or to protect national security, public order, and public health or morals. Also relying on the case of *Amnesty International Togo & Others v Togolese Republic*, [ECW/CCJ/JUD/09/20], the Respondent submits that the measures implemented to restrict access to Internet services and social media were consistent with Article 19 of the ICCPR and Article 9 of the African Charter as they were implemented in accordance with its laws including Article 10 of the 2001 Constitution of Senegal and Article 25 of the Electronic Communications Code 2018.

43. According to the Respondent, in the wake of the conviction and arrest of Mr Sonko, the country degenerated into unauthorised demonstrations, as well as looting and destruction of private and public property fuelled by social media. There was also massive dissemination of hateful and subversive messages. Given the serious implications for national security, the Ministers of the Interior and Communications, had no other recourse, than to implement measures to temporarily restrict electronic communications over the Internet and social media in order to restore law and order and protect the national defence and

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public security. The measures implemented were therefore necessary and proportionate to the prevailing situation.

(c) Analysis of the Court

44. Article 9 of the African Charter guarantees the right to freedom of expression and the right to information in the following terms:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

45. Similarly, Article 19 of the ICCPR on which the Applicants rely in this case guarantees “the right to freedom of expression” which includes the freedom of every person “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.”

46. In *Amnesty International Togo and Others v Togolese Republic* [ECW/CCJ/JUD/09/20], this Court held that access to the internet is to be regarded as a derivative component of the right to freedom of expression given its indispensability to the enjoyment of the freedom to communicate and express oneself in our modern, technology driven world. The Court reaffirmed this view in *Socioeconomic Rights and Accountability Project (SERAP) and Others v Federal Republic of Nigeria* [ECW/CCJ/JUD/40/22], where it held that access to the internet as well as services provided over the internet such as social media platforms are all derivative components of the rights to freedom of expression and the right to receive information.

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Accordingly, unlawful or arbitrary restrictions of internet access or social media platforms would constitute violations of the rights to freedom of expression and information.

47. Given that both sides to the present case do not dispute that access to the internet and internet-enabled services like social media platforms have human rights implications, particularly for freedom of expression and the right to information, the only determination the Court must make under this issue is whether the measures implemented by the Respondent were lawful limitations on the freedom of expression and the right to receive information.

48. The Court recalls that, generally, for any measure that limits a fundamental human right, including the rights to freedom of expression and access to information, to be lawful under international human rights law, it must: (i) be prescribed by a written law; (ii) serve a legitimate purpose; and (iii) be necessary and proportionate in a democratic society. (See *Konaté v Burkina Faso (merits)* (2014) 1 AfCLR 314, paras 125—154). Accordingly, Principle 9 of the African Commission’s *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019* also states: “States may only limit the exercise of the rights to freedom of expression and access to information, if the limitation: (a) is prescribed by law; (b) serves a legitimate aim; and (c) is a necessary and proportionate means to achieve the stated aim in a democratic society.”

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49. On prescription by law, the African Commission has noted that not only must the limitation of freedom of expression be prescribed or provided by law, but the state must also ensure that the law “(a) is clear, precise, accessible and foreseeable; (b) is overseen by an independent body in a manner that is not arbitrary or discriminatory; and (c) effectively safeguards against abuse including through the provision of a right of appeal to independent and impartial courts.” (Principle 9(2), *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019*).

50. On legitimate purpose, the African Court held in *Konaté v Burkina Faso (merits)* (2014) 1 AfCLR 314, that the legitimate purposes for which freedom of expression may be limited are protection of the rights and reputation of others, national security, public order, public health, or public morality (paras 134 & 135). See also Principle 9(3) of the *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019* which states that a limitation serves a legitimate purpose “where the objective of the limitation is: (a) to preserve respect for the rights or reputations of others; or (b) to protect national security, public order or public health.”

51. And finally for the limitation or restriction to be necessary and proportionate in a democratic society, it should be relevant to the legitimate purpose the state wishes to protect, be the least restrictive means of achieving that purpose, and the benefit of imposing the limitation should outweigh its harms. (See *Konaté v Burkina*

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*Faso(merits)* (2014) 1 AfCLR 314, para 145 and *Declaration on Principles of Freedom of Expression and Access to Information in Africa 2019*, Principle 9(4)).

52. In this case, the Court notes that the Respondent justifies the internet and social media shutdown on the basis of Article 10 of the 2001 Constitution of Senegal, Article 13 of the Orientation Law on Information Society 2008, Article 27 of the Electronic Communications Code 2018, and Decree 2022-1814 of 26 September 2022 on the responsibilities of the Minister of Communication, Telecommunications, and the Digital Economy.

53. The Court notes that Article 10 of the 2001 Constitution guarantees freedom of expression, including oral, written, and artistic expression, as well as the freedom to hold peaceful marches or processions, provided that the exercise of these rights does not infringe upon the rights or reputations of others or disturb public order. Article 13 of the Orientation Law on Information Society 2008 similarly provides that individuals enjoy the rights to freedom of expression and information, but those rights must be exercised reasonably and must not infringe on the freedoms of others, public order, or morality.

54. The Court observes, that while the above provisions of the Respondent's laws set out general grounds or purposes for which the freedom of expression and the right to information may be restricted, they do not prescribe or authorize any specific restrictive measures, let

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alone an internet and social media shutdown, which is the issue in this case.

55. The same can be said for the other laws cited including Article 27 of the Electronic Communications Code 2018, and Decree 2022-1814 of 26 September 2022 on the responsibilities of the Minister of Communications.

56. Article 27 of the Electronic Communications Code of 2018 empowers internet service providers (ISPs) to take reasonable measures to manage internet traffic, provided that such measures do not involve monitoring specific user content. It also requires ISPs to comply with applicable laws and regulations, including decisions issued by courts or governmental authorities. Finally, it provides that the Regulator may authorize or impose any traffic management measures it deems necessary to preserve competition in the electronic communications sector and to ensure the fair treatment of similar services.

57. However, contrary to the Respondent's assertion, the Court does not consider this provision to be an explicit authorization for the internet and social media shutdown implemented by the Respondent. While Article 27 of the Code does require ISPs to comply with applicable laws and regulations, including measures issued by courts or governmental authorities, it is clear from its terms that such decisions or measures must be aimed at improving consumer experience, preserving

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competition in the electronic communications sector, and ensuring the fair treatment of similar services.

58. Similarly, while the Minister of Communications' powers under Decree 2022-1814 of 26 September 2022 include the authority to coordinate with regulatory bodies to monitor and regulate social networks, the Decree contains no clear or explicit provision authorizing the complete shutdown of the internet or social media platforms. It does not also specify the conditions under which such a measure, if permitted, may be taken, or the judicial or other remedies available to individuals affected by it.

59. In sum, the Court notes that none of the laws cited by the Respondent as justification for the internet and social media shutdowns implemented in June and July 2023 provide clear and specific authorization for such a measure. The Court must underscore that while internet "shutdowns ordered covertly or without an obvious legal basis violate the requirement of article 19(3) of the [ICCPR] that restrictions be *provided by law*", internet shutdowns "ordered pursuant to vaguely formulated laws and regulations also fail to satisfy the legality requirement." (UN Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, June 2017 [A/HRC/35/22], paras 9-10). Accordingly, the Court holds that, in the absence of a clear and specific legal basis for the measures ordered by its Ministers of the Interior and Communications, the internet and social media shutdowns

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implemented in June and July 2023 were inconsistent with Article 9 of the African Charter and Article 19 of the ICCPR.

60. Regarding the requirement of a legitimate purpose, the Court notes that, in general, national security and public order concerns as advanced by the Respondent are legitimate grounds for implementing measures to restrict freedom of expression and the right to information. In this case, the Respondent asserted that the primary basis for its national security and public order concerns was the dissemination of hateful and subversive messages on social media platforms. However, the Court observes that, throughout the proceedings, the Respondent has not provided specific details about the nature of these messages, their authors, the intended audiences, or their scale and reach. Nor has it presented any evidence or samples of these messages. In these circumstances, the Court finds that, beyond the bare assertion of national security or public order concerns, the Respondent has not demonstrated the existence of such concerns that would justify the internet and social media shutdown measures it implemented.

61. Finally, assuming without admitting that the measures implemented were clearly and precisely prescribed by law and served a legitimate purpose, the Court notes that they would still fail to meet the necessity and proportionality test. In reaching this conclusion, the Court refers again to the Human Rights Committee's General Comment No. 34 on the ICCPR, where it states in paragraph 43 as follows:

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 [article 19(3) of the ICCPR]. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3.

62. The Court also pays particular attention to Principle 38(2) of the African Commission's *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019* which provides 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."

63. In light of the above, the Court considers that, even if there had been the dissemination of such hateful and subversive messages on social media and other internet-enabled platforms, the appropriate and proportionate response in a democratic society would have been for the Respondent, in collaboration with the platforms and ISPs, to identify the specific harmful content for removal and take any other necessary action against the authors of such content in accordance with its laws. The generic shutdown of the internet and social media platforms, which prevented innocent individuals from lawfully exercising their freedom of expression and right to information, could not be a necessary or a proportionate response.

64. Consequently, the Court finds that the internet and social media shutdowns imposed by the Respondent in the wake of the protests following the conviction and arrest of Mr. Ousmane Sonko violated Article 9 of the African Charter and Article 19 of the ICCPR.



**ii) Alleged violation of the Second Applicant's  
freedom of assembly**

65. The Court notes that, in their submissions, the Applicants combined the alleged violation of the freedom of assembly with arguments relating to the freedom of expression and the right to information. However, aside from the mere citation of Article 21 of the ICCPR concerning the right to peaceful assembly, no legal arguments or factual evidence were presented to demonstrate how the Respondent's actions violated this right in relation to the Second Applicant.

66. In *Gregory J. Todd v Federal Republic of Nigeria* [ECW/CCJ/JUD/41/23] (para 72) the Court held “that an applicant who alleges violations of human rights bears the burden of establishing their case by pleading and explaining the relevant international legal obligations of the Respondent claimed to have been violated and presenting sufficient evidence to prove the violation.” The Court found in that case that “besides the mere recital of certain provisions of the African Charter” relating to certain rights and “a plea for a declaration of their violation, the Applicant made no specific submissions on [those] claims” nor did he provide any details on how the Respondent’s conduct violated the said rights. (*Gregory Todd*, para 73). For those reasons, the Court held that the Applicant had not established his claims and therefore dismissed them.





67. Similarly, in this case, the Court finds that the Second Applicant has not demonstrated, through legal arguments or factual evidence, how the Respondent's conduct specifically violated his right to freedom of assembly. For these reasons, the Court holds that his claims regarding the alleged violation of his freedom of assembly are without merit and are therefore dismissed.

**iii) Alleged violation of the Second Applicant's right to work**

*(a) Submissions of the Applicant*

68. The Second Applicant submits, that as a web applications developer, the shutdown of mobile internet and social media networks deprived him of his primary work tools and prevented him from working. He was unable to meet with his online customers, carry out maintenance on his website, or develop and publish new content. This negatively impacted his professional activities, reputation, and by extension, his financial situation.

69. The Second Applicant therefore submits that the internet and social media shutdown violated his right to work contrary to Article 15 of the African Charter and Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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*(b) Submissions of the Respondent*

70. On this issue, the Respondent cites Article 6 of the ICESCR and argues that restrictions on access to the internet and social media platforms do not amount to a violation of the right to work as defined by that provision, since such restrictions cannot be said to prevent the enjoyment of any of the benefits it guarantees. The Respondent further contends that, in any event, this Court's jurisprudence in *Amnesty International v. Togolese Republic* [ECW/CCJ/JUD/09/20] and *SERAP v. Nigeria* [ECW/CCJ/JUD/40/22] only establishes a link between internet shutdowns and violations of the rights to information and freedom of expression. No such link has been established by the Court with respect to the right to work. Therefore, the Respondent urges the Court to dismiss the Applicant's claim that his right to work has been violated.

*(c) Analysis of the Court*

71. On this issue, the Court recalls that the obligation imposed on State Parties by Article 15 of the African Charter includes taking appropriate measures to ensure that individuals are able to earn a living through work that they freely choose and accept. This obligation also extends to enacting regulations that guarantee equal pay for equal work, establishing standards for healthy or satisfactory working conditions, and promoting an enabling environment for business creation, self-employment, or entrepreneurship. (See African Commission, *Principles and Guidelines on the Implementation of Economic, Social*

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*and Cultural Rights in the African Charter on Human and Peoples' Rights 2010*, para 59; and *Algom Resources Ltd v Sierra Leone* [ECW/CCJ/JUD/03/23], paras 111-112).

72. The obligations under Article 15 of the African Charter are therefore primarily positive obligations. Nevertheless, this Court has held that the right to work also has “a negative obligation component which requires states to refrain from measures that may impair individuals’ right to work or make a living.” (*Algom Resources Ltd v Sierra Leone* [ECW/CCJ/JUD/03/23], para 112).

73. The Court underscored the importance of the negative component of the right to work for entrepreneurs and self-employed individuals when it noted that because “the state cannot be judicially compelled to provide employment to an individual on demand, it should follow that the state should equally not be allowed through arbitrary regulatory or administrative measures to deny individuals who are engaged in legitimate and honest means of earning a livelihood the opportunity to do so”. (*Algom Resources* case, para 112).

74. In our modern, technology-driven world, the Internet and social media are not merely tools for communication, information exchange, or entertainment. They power critical aspects of work in virtually every modern institution or organisation. For professionals in the ICT field, such as software engineers, web developers, and systems administrators, Internet access is almost indispensable. The same applies to content creators, online journalists, and others working in the

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digital or social media space, such as podcasters. It is therefore incorrect for the Respondent to insist that a link can only exist between internet shutdowns and violations of the right to freedom of expression. In any event, nothing in the Court's jurisprudence in *Amnesty International v. Togolese Republic* [ECW/CCJ/JUD/09/20] or *SERAP v. Nigeria* [ECW/CCJ/JUD/40/22] precludes the possibility of a link between internet shutdowns and violations of rights other than freedom of expression and the right to information. The Court therefore holds that any fundamental human right whose exercise or enjoyment depends on, or is facilitated by, Internet access may be violated by a State through an unlawful or arbitrary Internet shutdown.

75. In this case, the Second Applicant states that he is an IT consultant specializing in web application development. He annexed to the Application educational certificates evidencing his expertise in that field. He asserted that the internet and social media shutdowns adversely affected his work, finances, and professional reputation. Specifically, he alleged that he was unable to meet or interact with his online clients, nor could those clients reach him for his services. He also attached to his application evidence of two domain names he had purchased to create websites—one for a Senegalese company and the other for a presidential aspirant in Senegal's 2024 presidential elections. The Second Applicant claims that the shutdowns negatively impacted his ability to deliver services to these clients.

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76. The Respondent does not dispute the Second Applicant's profession as an IT consultant, nor the specific details of how the internet shutdown affected his work. The Respondent's only defence, which the Court finds to be without merit, is that there is no established link between internet shutdowns and the right to work. The Court has already determined, in relation to the first issue, that the internet and social media shutdowns implemented by the Respondent in June and July 2023 were not prescribed by law, did not serve a legitimate purpose, and were neither necessary nor proportionate. In light of that finding, and considering the unchallenged assertions of the Second Applicant regarding the adverse impact of the shutdown on his professional activities, the Court concludes that the Respondent violated the Second Applicant's right to work, in contravention of Article 15 of the African Charter and Article 6 of the ICESCR.

## **XI. REPARATIONS**

77. Given the Court's conclusion that the Respondent has violated the First and Second Applicants' rights to freedom of expression and information under Article 9 of the African Charter and Article 19 of the ICCPR, as well as the Second Applicant's right to work under Article 15 of the African Charter, the Court must consider the appropriate reparations the Respondent must make.

78. Apart from seeking declarations of violations of their rights, the First and Second Applicants respectively requested compensation in the amounts of 1 billion CFA francs and 500 million CFA francs, as well

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as orders prohibiting the Respondent from implementing any future internet or social media shutdowns.

79.Regarding the compensation requested, the Court notes that the Applicants did not claim any special damages. Accordingly, the amounts requested must be understood as claims for general damages.

80.Regarding general damages, the Court recalls that it ultimately has the discretion, in equity, to determine a fair compensation, as there are generally no definitive criteria for such determinations. In the circumstances of this case, the Court considers it fair and just to award 250,000 CFA francs each to the First and Second Applicants for the violations of their rights to freedom of expression and access to information, and 250,000 CFA francs to the Second Applicant for the violation of his right to work.

81.The Court grants other reliefs sought by the Applicants only to the extent indicated in the operative clause of this judgment.

## **XII. COSTS**

82.Pursuant to Article 66(4) of the Rules of the Court, the Court decides that each party shall bear their own costs.

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### **XIII. OPERATIVE CLAUSE**

83. For the foregoing reasons, the Court sitting in public and after hearing the parties:

#### ***On jurisdiction***

- i. Declares that the Court has jurisdiction over the claims submitted in the Application, except those claims relating to Article 10(2) of the ECOWAS Supplementary Act on the Harmonisation of Policies and Regulatory Framework on the Information and Telecommunications Sector (A/SA.1/01/07) and Article 3 of UEMOA Directive No.10-2006 on the Harmonisation of the Policies for the Supervision and Regulation of the Telecommunications Sector.

#### ***On Admissibility***

- ii. Finds that the claims of the First and Second Applicant concerning the freedom of expression and right to information are admissible.
- iii. Finds that the First Applicant's claims relating to the freedom of assembly and the right to work are inadmissible and accordingly dismisses those claims as it relates to the First Applicant.
- iv. Finds that the Second Applicant's claims relating to the freedom of assembly and the right to work are admissible.

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### ***On the Merits***

- v. Declares that the Internet and social media shutdowns implemented by the Respondent in June and July 2023 violated the First and Second Applicants' rights to freedom of expression and access to information contrary to Article 9 of the African Charter and Article 19 of the ICCPR.
- vi. Declares that the Respondent did not violate the Second Applicant's rights to freedom of assembly under Article 21 of the ICCPR.
- vii. Declares that the Internet and social media shutdowns implemented by the Respondent in June and July 2023 violated the Second Applicant's right to work contrary to Article 15 of the African Charter and Article 6 of the ICESCR.

### ***On Reparations***

- viii. Orders that the Respondent shall pay 250,000 CFA francs each to the First and Second Applicants as general damages for the violations of their rights to freedom of expression and access to information as determined in this judgment.

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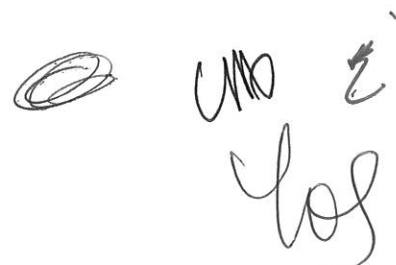


- ix. Orders that the Respondent shall pay 250,000 CFA francs to the Second Applicant as general damages for the violation of his right to work as determined in this judgment.
- x. Orders that, in accordance with its obligations under the African Charter, the ICCPR, and the ICESCR, the Respondent shall not implement, authorize, or condone the implementation of any measure that imposes unlawful or arbitrary restrictions on access to the Internet and Internet-enabled platforms and services within its territory.
- xi. Decides that all other reliefs sought by the parties which have not been herein granted in whole or in part are hereby dismissed.

***On Costs***

- xii. Decides that each party shall bear their own costs.

Done at Lagos this 14th day of May 2025 in English and translated into French and Portuguese.

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Hon. Justice Sengu M. **KOROMA**

Presiding Judge



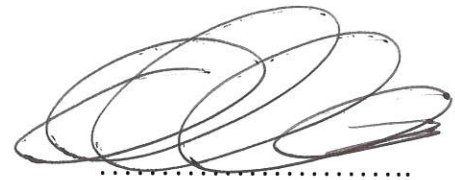
Hon. Justice Dupe **ATOKI**

Member of Panel



Hon. Justice Edward Amoako **ASANTE**

Judge Rapporteur



ASSISTED BY:

Dr. Yaouza **OURO-SAMA** (Chief Registrar)

