



# PROTEGE QV

*With the support of*

**AFRICAN  
DECLARATION**  
On Internet  
Rights and Freedoms

*Contribution to the integration of the 5<sup>th</sup> key principle of African Declaration on Internet Rights and Freedoms into laws and regulations in Cameroon*



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## *LIST OF ABBREVIATIONS AND ACRONYMS*

- ACSIS** : African Civil Society for the Information Society ;
- AFDEC** : African Declaration on Internet Rights and Freedom (Coalition);
- APC** : Association for Progressive Communications ;
- ART** : Cameroon Telecommunications Regulatory Board ;
- CAMTEL** : Cameroon Telecommunications ;
- CHRC** : Cameroon’s Human Rights Commission ;
- CSO** : Civil Society Organization ;
- HRC** : Human Rights Council of the United-Nations
- ICCPR** : International Covenant on Civil and Political Rights ;
- ICESCR** : International Covenant on Economic, Social and Cultural Rights;
- ICT** : Information and Communication Technologies.
- IP** : Internet Protocol ;
- MINAT** : Ministry of Territorial Administration ;
- MINPOSTEL** : Ministry of Posts and Telecommunications ;
- NAICT** : **National** Agency for Information and Communication Technologies;
- UN** : United Nations ;
- NGO** : Non-Governmental Organization;
- PROTEGE-QV** : Promotion of Technologies that Guarantee the Environment and a Better Quality of Life

The advent of digital technology marked the beginning of the era of dematerialization. Cyberspace must now be added to the physical environment (terrestrial, maritime and spatial) and taken into account. Thus, fields such as security, the environment or trade are nowadays approached according to the three traditional environments to which the digital environment must be added. As such, human rights are also presented as elements to be taken into account in cyberspace. This is the case for the right of assembly and freedom of association, among others.

*“ Freedom of assembly is « the fundamental right recognized to each individual to assemble freely with others » ,”*

Freedom of association and assembly are part of the fundamental rights recognized as belonging to the human person. They can be found in the majority of international human rights instruments such as the Universal Declaration of Human Rights adopted in 1948 (Art. 20 para 1) ; the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966 (Art. 21- 22); the International Covenant on economic social and Cultural Rights (ICESCR) adopted in 1966 (Art.8 para 1); the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of the United Nations of 1999 (Art. 5) ; the convention on the Rights of Persons with Disabilities of 2006 (Art. 29) ; the African Charter on Human and Peoples’ Rights of 1979 (Art.10) ; as well as in the preamble of Cameroon’s constitution<sup>1</sup>. As other fundamental rights, they are innate in the emancipation of the mankind.

The freedom of assembly is « the fundamental right recognized to each individual to assemble freely with others » (Art 11 of the African Charter on Human and Peoples’ Rights. Freedom of association, within the meaning of section 1 (2) and (3) of Law No. 90/053 of 19 December 1990 on freedom of

*“ Freedom of association in Cameroon, is the right recognized to any natural or legal person throughout the national territory to set up a group, to join it or not ,”*

<sup>1</sup> The freedom of communication, of the press, of expression, of assembly, of association and of trade unionism shall be guaranteed under the conditions fixed by law.

association in Cameroon, is the right recognized to any natural or legal person throughout the national territory to set up a group, to join it or not. These two latitudes must be considered according to the introductory statement, both in the physical and immaterial spheres.

As such, assembly and association rights should be protected in the digital environment. Online, freedom of assembly and association guarantees the right to meet through the Internet and exchange views, share opinions, but also to protest collectively against anything that may seem undesirable<sup>2</sup>. It is a tenet recognized by many texts such as the African Declaration on Internet Rights and Freedoms (ADIRF) in its 5th key principle<sup>3</sup>. Yet, with a sharp sense of observation it is improper to noisily celebrate the existence in Cameroon of a legal framework of freedom of assembly and association on the internet.. That is the aim of this paper.

## **STRUCTURE OF THE RESEARCH**

To grasp the full urgency of the topic, the current document will be divided into three (3) parts. In the first section, we shall proceed to a thorough analysis of texts contents and the competencies of some institutions in charge of freedom of assembly and association in line with the Internet in Cameroon. Section II will be devoted to a benchmark (survey) study conducted to learn more about foreign experiences on the same topic. Finally, section III will deal with formulation of some propositions of contents in order to set up laws and regulations integrating the Internet in the field of assembly and association rights in Cameroon.

## **METHODOLOGY**

The disposition of the analysis is the following : first the compliance with the Internet of relevant documents (laws, decrees...), on the freedom of assembly/association will be discussed. Thereafter a broad consultation of key stakeholders during a workshop that allowed us to come out with contents consistent with the Internet's integration in laws and regulations regarding the full enjoyment of these rights online will also be analysed. To wrap up the research, recommendations will be put forward as to how key players can take steps compatible with a legal framework governing the exercise of association and assembly rights in the digital age.

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<sup>2</sup> Wolfgang BENEDEK, Matthias KETTEMAN, *Liberté d'expression et internet*. Strasbourg, Editions du Conseil d'Europe, 2014. p.38

<sup>3</sup> <https://www.africaninternetrights.org>

## SECTION I

### CONTENT ANALYSIS OF LEGAL TEXTS AND COMPETENCIES OF SOME INSTITUTIONS IN CHARGE OF ASSEMBLY AND ASSOCIATION RIGHTS CONSISTENT WITH THE INTERNET IN CAMEROON

#### I- *EXEGESIS OF LEGAL TEXTS ON FREEDOM OF ASSEMBLY AND ASSOCIATION IN CAMEROON*

In Cameroon, apart from the constitution, assembly and association rights are given full recognition by many texts, namely:

a. Law N°90/053 of 19 December 1990 relating to Freedom of association and the law N°99/011 of 20 July 1999 supplementing and amending certain provisions of law N°90/053 OF 19 December 1990

b. Law N°90/055 of 19 December 1990 to lay down regulations governing public meetings and processions

c. Law N°99 /014 of 22 December 1999 governing Non-Governmental Organizations in Cameroon

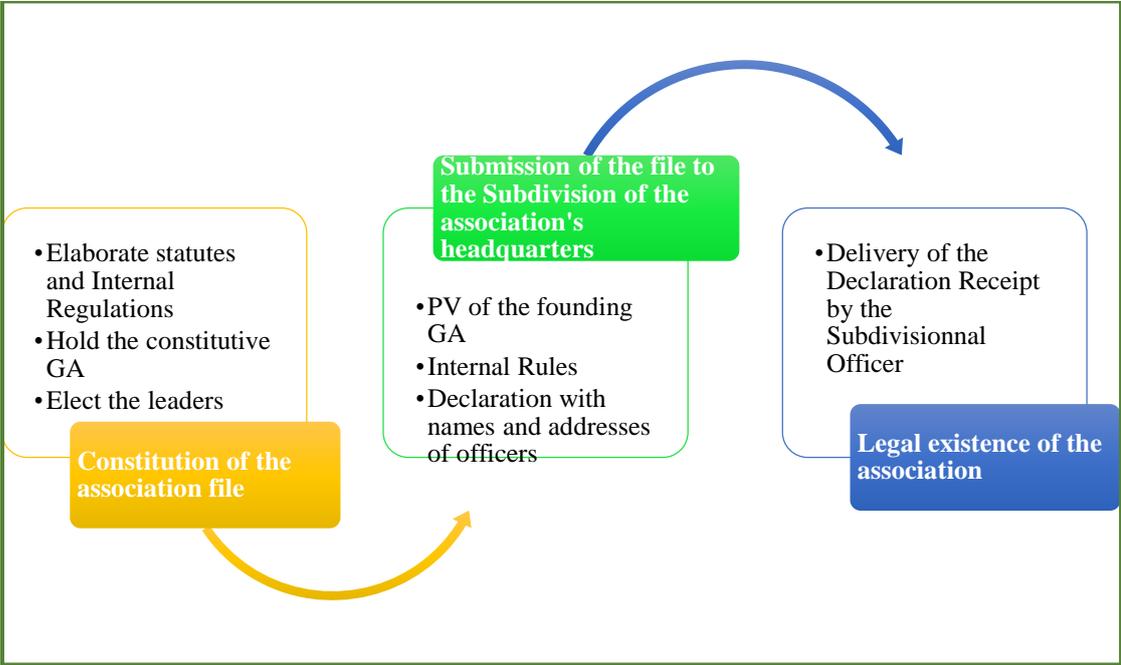
d. Law N°68/LF/19 of 18 November 1968 relating to associations and professional unions not governed by the labour code

#### ***A- LAW N°90/053 OF 19 DECEMBER 1990 RELATING TO FREEDOM OF ASSOCIATION AND LAW N°99/011 OF 20 JULY 1999 AMENDING AND SUPPLEMENTING CERTAIN PROVISIONS OF LAW N°90/053 OF 19 DECEMBER 1990***

Law N°90/053 of 19 December 1990 supplemented by the one N°99/011 of 20 July 1999 provides the framework for the creation, functioning of associations, as well as their system. For this purpose, it provides two systems ; the declaration system and the authorization system. This law does not precisely allude to associations via the Internet, but contains favourable and drawback clauses for the latter.

In effect, concerning associations falling under the declaration system, those functioning via the Internet may acquired the legal capacity by presenting the association's statutes (effectively, much is requested ; minutes of the constituent general meeting and rules of procedure, Art.6 of law N°90/053). The components parts of the declaration, notably the title,

purpose and headquarters of the association, as well as names, occupations and addresses of those who, in whatever capacity, shall be responsible for running its business, also appear as drawback clauses (Art.7 para 2).



*Figure 1 : Association declaration process*

In a pernicious way, one should equally bear in mind that another element favourable for associations via the Internet is the difficulty to materialise the suspension of activities of a given association on the ground of public order disturbance (Art 13 para 1). Besides, we may also add the mention : « *foreign associations, whatever their form...* » (Art 19) which is an interesting opening (implicitly through the Internet too) as well as the possibility to be recognised as serving the public interest (Art 21 and 32 para 1).

However, certain provisions of this law appear as hurdles for the creation of association through the Internet. Article 7 para 1 states that the declaration shall be made by the founders of the association at the Divisional Office of the area where the association has its headquarters, thus imposing to an association operating in the digital space to have a physical representation.

Among the barriers falls the inability recognised to foreign associations to carry activities within the country without prior authorization from the Minister in charge of Territorial Administration upon the recommendation of the Minister in charge of External Relations (Art 16 para 1). In fact, the issue raised here is to find out the appropriate authority to deliver the authorization for a grouping operating essentially in a digital environment. In the same vein, elements to be provided for the application for authorization (spell out activities to be

undertaken, its location in Cameroon, names, occupations and addresses of those who, in whatever capacity are responsible for running its business (Art 16 para 2) seem scarcely compatible with a virtual association, immaterial in its essence. Those specific procedures for foreign associations seem tedious for online associations. Furthermore, the provision stipulating that authorization may be issued on a temporary basis and may be withdrawn at any time (Art 17 para 1 and 3) are also likely to constitute an impediment for the emancipation of online associations.

#### ***B- LAW N°90/055 OF 19 DECEMBER 1990 LAYING DOWN REGULATIONS GOVERNING PUBLIC MEETINGS AND PROCESSIONS***

This law lays down conditions of organisation, authorization and sanction of a public meeting and procession. Digital revolution being away from consideration at the time this law was taken, it goes without saying that the latter did not refer to meetings and demonstrations going on in a digital environment. Yet nowadays, meetings are freely organized via the Internet without any need for a prior declaration. Indeed, this law does not explicitly prohibit online meetings and processions in accordance with article 3 para 1 « *persons shall be free to hold public meetings, no matter their purpose* » .

On the contrary, it contains many other provisions that may hinder the full enjoyment of assembly and association rights online.

The law N°90/055 of 19 December 1990 in its section 4 para 1 provides « *the declaration shall be made to the District head or Subdivisional Officer with jurisdiction where the meeting is planned* ». Besides, the declaration shall state the venue of the meeting (Art 4 para 2) ; thus linking a meeting to a precise location. This seems antinomic with the Internet which symbolises dematerialization and the disparition of terrestrial hurdles.

In addition, it is relevant to mention that according to this law, to take part in a meeting one must make sure the latter was subject to a prior declaration (Art 9 para 1 (a)). Yet, it is really difficult for each online meeting attendee to verify if it has been declared or whether it is public or not. Therefore there is a high risk to breach provisions since they are not clearly defined by the law.

This chapter of public meetings also raises major issues. Firstly, under which classification falls the cyber space ? Is this a public way or a public space? Secondly, let us reflect on the authority competent to issue declaration when it comes to processions and public meetings in the digital environment. Should gatherings and demonstrations taking place on the

Internet without the Sub Divisional Officer consent be considered as breaching the law ? The third major issue relates to the President of the High Court with jurisdiction competent to resolve the dispute in the case stated in article 8 para 3 « *When a procession has been prohibited, the organiser may, by a simple application, submit the matter to the President of the High Court with jurisdiction* » with the involvement of the digital space?

#### **C- LAW N°99/014 OF 22 DECEMBER 1999 GOVERNING NGO'S IN CAMEROON**

Article 4 of this text gives associations in general the opportunity to be accredited and recognised as NGOs. This possibility can by extension be recognised for associations on the Internet. However, Article 13 refers to the obligation to indicate the geographical location of the NGO's headquarters. This may appear to be a binding provision in view of the virtual aspect of the Internet

#### **D- LAW N°68/LF/19 OF 18 NOVEMBER 1968 DEALING WITH ASSOCIATIONS OR PROFESSIONAL UNIONISMS NOT GOVERNED BY THE LABOUR CODE**

Law No. 68/LF/19 outlines the creation of professional associations or trade unions not governed by the Labour Code. This text offers the opportunity to persons falling under the status of civil servants to group themselves into professional associations or trade unions; thus offering the possibility to create associations on the Internet for the same purpose,

Reading the provisions of all these texts makes it possible to realize that there is a legal vacuum concerning the concept of freedom of assembly and association on the Internet in Cameroon. There is no legal framework for these fundamental rights since meetings and associations are only envisaged in the context of a physical or material environment.

The possibility of their existence on the Internet is not foreseen at any time in the Cameroonian legal framework. This may lead to abuses or illegal groupings. However, to avoid hastily painting a gloomy picture of the framework of freedom of assembly and association on the Internet in Cameroon, it seems necessary to complete this analysis by deciphering the institutions in charge of freedom of assembly, association and telecommunications.

## II- ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF STRUCTURES IN CHARGE OF FREEDOM OF ASSEMBLY AND ASSOCIATION ISSUES IN CAMEROON

Several institutions work both in the field of civil liberties (A) and electronic communications (B).

### A- INSTITUTIONS IN CHARGE OF FREEDOM OF ASSEMBLY AND ASSOCIATION

These are mainly the Ministry of Territorial Administration (MINAT) with regard to the supervision of freedom of assembly and association, and the Cameroon Human Rights Commission (CDHC) with regard to issues of promotion and protection of human rights.

#### a- The Ministry of Territorial Administration (MINAT)

MINAT is the ministerial department in charge of the preparation and implementation of laws and regulations relating to civil liberties; monitoring the activities of associations and movements of a political nature, as well as non-profit associations, organizations and movements<sup>4</sup>. Through the Directorate of Political Affairs, it manages issues relating to policing, monitoring the activities of associations and movements of a political nature, and the activities of not-for-profit associations, organisations and movements.

What about associations created on the internet? If they are created without prior authorization, they may also have activities that are not monitored by this department and more specifically by the Associations Department. Hence raising the question of whether the competence of this ministerial department extends to the digital sphere?

#### b- The Cameroon's Human Rights Commission (CHRC)



As an independent body, the CHRC is the institution that denounces all violations of fundamental rights and civil liberties throughout the national territory. It carries out activities of consultation, observation, evaluation, dialogue, conciliation and consultation on the promotion and protection of human rights<sup>5</sup>.

This makes it the main institution responsible for guaranteeing the rights and freedoms of assembly and association in Cameroon.

Without a precise spatial delimitation, this competence for the promotion and protection of human rights would therefore extend over any space (air, land, sea and cyberspace). This function of the CHRC is fulfilled by Sub-Committee No. 1 and Sub-Committee No. 2 (in charge

<sup>4</sup> Article 1 para 2(a) of the law n°2019/030 of 23 January 2019 organizing the Ministry of Territorial Administration

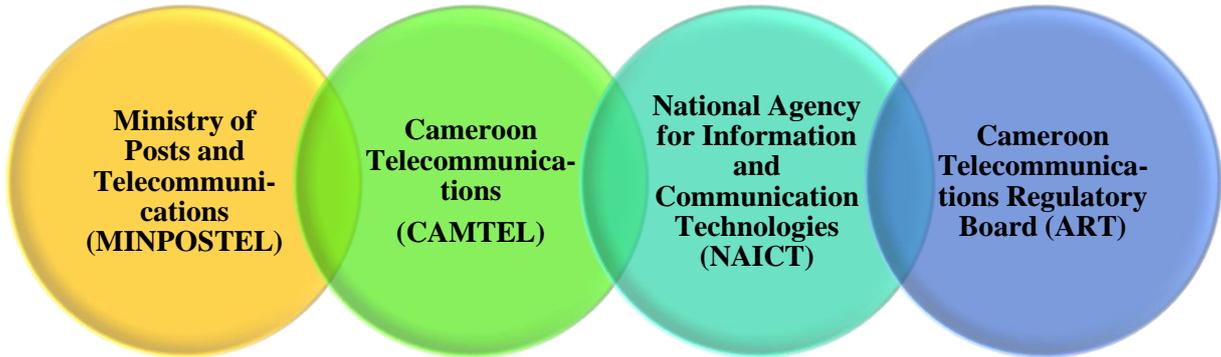
<sup>5</sup> Article 1 para.2 of the law n°2019/014 du 19 July 2019

of promoting human rights), dealing, inter alia, with the issues of freedom of association, assembly and demonstration and the right to participate in cultural life, respectively.

As a recourse body, the CHRC also deals with petitions and denunciations relating to allegations of human rights violations (Article 6 of Law No. 219/014 of 19 July 2019 establishing and organising the CHRC). This is an important avenue for citizens whose freedom of assembly and association is allegedly impeded on the Internet.

**B- INSTITUTIONS IN CHARGE OF TELECOMMUNICATIONS**

These institutions are involved in the field of ICT policy making, regulation and monitoring. They include the Ministry of Posts and Telecommunications (MINPOSTEL), Cameroon Telecommunications (CAMTEL), the National Agency for Information and Communication Technologies (ANTIC), and the Telecommunications Regulatory Board Agency (ART).



**a- The Ministry of Posts and Telecommunications**

Considering the decree n°2005/124 of 15 April 2005 on its organisation, it is, among other things, responsible for the elaboration and implementation of the Government's policy on posts, telecommunications and information and communication technologies (article 1 al.2).

MINPOSTEL also supervises technical agencies and structures such as ART, ANTIC, Cameroon Postal Services (CAMPOST) and CAMTEL.

**b- The Cameroon Telecommunications (CAMTEL)**



CAMTEL is the public company that works for the provision of telecommunications networks in Cameroon (Article 2 al.2 of Decree No. 98/198 of 8 September 1998 establishing the Cameroon Telecommunications Company). It is the company involved in the development and modernization of telecommunications in Cameroon. It

must guarantee an excellent quality of the national offer in this sector and provide equipment capable of enabling the population to have access to quality Internet traffic<sup>6</sup>. In this way, it is difficult to envisage the development of freedom of assembly and association on the Internet without the contribution of this structure.

#### **c- The National Agency for Information and Communication Technologies (NAICT)**

Established by Decree No. 2012 / 180 of 10 April 2012, NAICT is more like a technical body whose expertise is at the service of state institutions. Thus, with regard to the issue of monitoring the activities of associations, NAICT has the competence to monitor and investigate on the Internet. As a result, NAICT can establish cybernetic offences that can only be revealed through systematic, unannounced and comprehensive monitoring of the actors in the sector<sup>7</sup>.



#### **d- The Cameroon Telecommunications Regulatory Board (ART)**



Established by Law No. 98/014 of 14 July 1998 governing telecommunications in Cameroon and organized by Decree No. 2012/203 of 20 April 2012, the ART is the regulatory and supervisory body for telecommunications activities in Cameroon.

Moreover, the ART, by virtue of Article 4 (1) of its founding decree, has the task, among others, of "ensuring that access to networks open to the public is carried out under objective, transparent and non-discriminatory conditions". The Agency must also "sanction the failure of operators to meet their obligations...".

In view of all the above, it is important to remember that while associations and meetings in public places need authorization to exist, online the approach should be quite different. Freedom of assembly and the right of association on the Internet are exercised outside any legal and institutional framework in Cameroon.

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<sup>6</sup> <http://www.camtel.cm>

<sup>7</sup> Article 7 of Decree No. 2012 / 180 of 10 April 2012 organizing National Agency for Information and Communication Technologies (NAICT)

### III- CHALLENGES OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF FREEDOM OF ASSOCIATION AND THE RIGHTS OF ASSEMBLY ON THE INTERNET

The internet tool allows the removal of geographical barriers, the acceleration of procedures, and the facilitation of communication and information transmission. In short, it has led to a change in political, economic, social and cultural practices. This is the case for meetings and associations. Social networks and mobile phones have changed the way we conduct our associative life in the public and private spheres<sup>8</sup>. Despite this reconfiguration of habits, freedom of assembly and freedom of association on the internet do not seem to be sufficiently regulated in Cameroon. However, taking them into account would be beneficial for a variety of reasons.

*“ The lack of inclusion of these freedoms in Cameroonian texts can be a source of disorder or arbitrary interpretation both for the people and the State. „*

In economic terms, this would allow associations whose actions generate income to evolve within a formal framework that would thus provide a framework for their regime and their operation in cyberspace. It would also (in the case of freedom of assembly) save time in terms of organizing meetings, since it would dispense with the obligation to travel.

At the political level, the incorporation of freedom of association and freedom of assembly on the Internet would provide an appropriate nomenclature for demonstrations. This would set the framework for the expression of groups and the modalities for setting up online meetings. This measure would help to make the contours of online political participation more readable. This would avoid either illegitimate censorship or uncontrolled mobilisations that could lead to political unrest.

On the socio-cultural level, the effective framing of these freedoms would offer the opportunity for populations to inscribe their associations on a new paradigm, namely the virtual, but all of them being as legal as physical associations. In the same way, public meetings would have the same pretension while retaining their scope.

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<sup>8</sup> Alex COMNINOS, « Peaceful assembly and freedom of association and the Internet ». APC emerging topics, p.3

That is why the legal framework of freedom of assembly and association on the Internet in Cameroon should be made more intelligible. This framework is all the more important as it allows to keep the adequacy between the provisions of international law and those of national texts.

But, the lack of inclusion of these freedoms in Cameroonian texts can be a source of disorder or arbitrary interpretation both for the people and the State. On the one hand, the absence of regulations in this area would be a breeding ground for the formation of associations or meetings without the authorisation of the authorities. On the other hand, the non-incorporation of these freedoms into the legal framework subjects them to several threats that limit their emancipation, whereas the said obstacles would be in accordance with the laws and regulations in force.

The first of them is the surveillance of people on the internet. The fact that individuals or groups provide private data on accounts via social sites or networks makes them vulnerable. This would allow not only government institutions but also malicious individuals to monitor the content of their online activities. Indeed, the internet is not an end-to-end protected space.

Browsing on sites leaves traces that are stored with service providers and remain usable. This is a danger for the respect of privacy. Secondly, online censorship (filtering and blocking access to online content, as well as to particular services and protocols) and geographic censorship (a feature used by some platforms to retain content from certain sites based on geographic location) must be considered. Finally, the last process involves blocking access to the Internet, mobile phone networks or specific services and protocols to restrict people's ability to gather peacefully.

## SECTION II

### STUDY OF FOREIGN EXPERIENCES IN TAKING INTO ACCOUNT THE FREEDOM OF ASSEMBLY AND ASSOCIATION ON THE INTERNET

Faced with the insufficient or even non-existent consideration of the Internet in the legal framework of our country in terms of freedom of association and the right of assembly, we thought it wise to draw inspiration from what is happening in other countries in terms of taking into account these freedoms on the Internet with the ultimate aim of shaping the Cameroonian model.

In order to identify foreign realities in this area, a survey was conducted through the administration of a questionnaire.

#### *I- SURVEY'S METHODOLOGY AND OBJECTIVES*

This method of data collection was envisaged with the aim of gathering information on the nature of freedom of assembly and association on the Internet in several countries. The choice of sampling was dictated by the need for geographical representativeness and cultural diversity. Thus, a questionnaire was developed and distributed in two ways using the SurveyMonkey<sup>9</sup> tool;

1°/ Within certain networks, among which :

- AFDEC, which is a pan-African initiative for the promotion of human rights on the Internet; and to date has 44 organizations' members
- ACSIS which is the largest pan-African network of civil society organizations for ICTs; It has between 500-600 members
- APC which is an international network of 61 organisations and 35 individual members working in 73 countries on all continents (Africa, Asia-Pacific, Europe, Latin America, the Caribbean, the Middle East and North America).

2°/ To about fifteen people targeted by transmitting a questionnaire to be filled.

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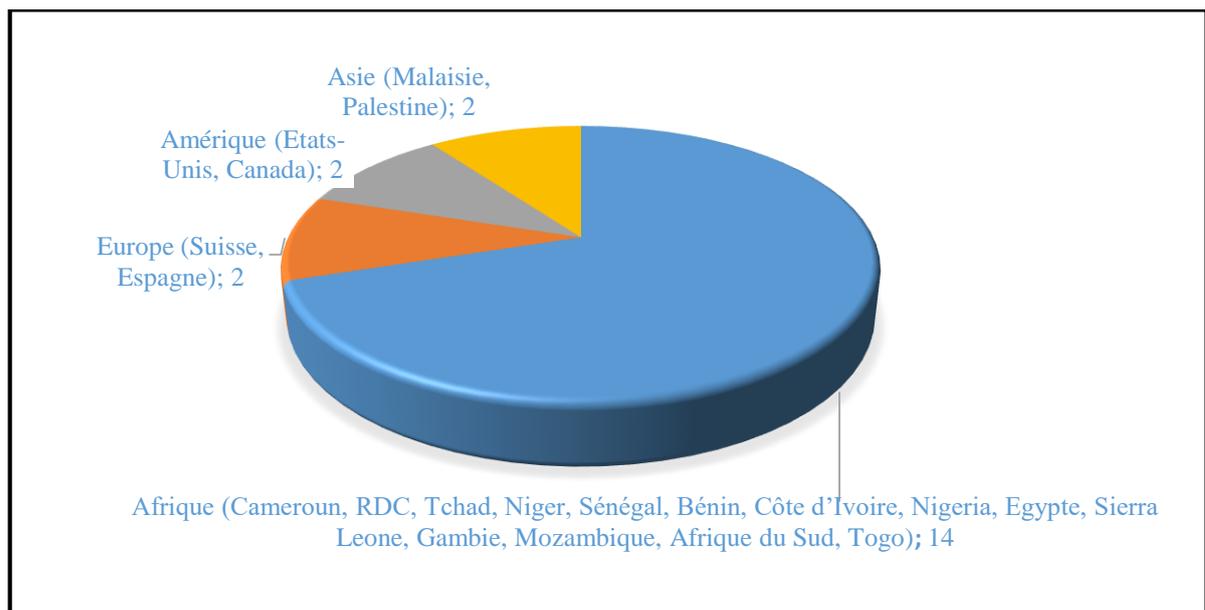
<sup>9</sup> SurveyMonkey is an online survey tool founded in 1999 by Ryan Finley. SurveyMonkey offers free, customizable surveys, as well as a series of statistical programs.

## II- SURVEY RESULTS

Through SurveyMonkey, responses were obtained from 15 people in French and 17 in English, for a total of 32 people, including 21 men and 11 women. As for the targeted people, out of the 15 sent, 05 responses were obtained.

Overall, responses were obtained from 20 different countries, including :

- 14 in Africa (Cameroon, Democratic Republic of Congo, Chad, Niger, Senegal, Benin, Ivory Coast, Nigeria, Egypt, Sierra Leone, Gambia, Mozambique, South Africa, Togo) ;
- 02 in Europe (Switzerland, Spain) ;
- 02 in America (United -States, Canada) ;
- 02 in Asia (Malaysia, Palestine).



**Figure 2 : Origin of survey's responses**

Out of the total of 37 people, 30 admitted having been members of an association on the internet and 23 took part in an internet meeting. Of the 5 people targeted, 04 said they had tried to set up an association on the internet without encountering any restrictions. For the responses obtained by SurveyMonkey, 13 of the 32 people admitted to having verified the legal existence of the association. However, only 5 had done so for legal authorization to hold a meeting.

With regard to the existence of texts (laws, decrees, etc.) specifying the steps to be taken to set up an association or organized grouping, and/or to hold a public meeting, most of the respondents state that they exist in their country. However, as regarding the specific case of associations and/or public meetings on the Internet, the majority of them either admit that they are not aware of the related provisions or reveal that they do not exist.

However, despite this, there are several documents at the international and regional levels that campaign for the protection of freedom of assembly and association on the Internet. At the international level, freedom of assembly and freedom of association on the Internet are the subject of numerous recommendations. This is the case of the 2012 Report of the United Nations Special Rapporteur Maina Kiai on the right of peaceful assembly and freedom of association (A/HRC/20/27). But also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Resolution 53/144) of 1999; and the Report of the United Nations Special Rapporteur Frank La Rue on the Promotion and Protection of the Right to Freedom of Opinion and Expression (A/HRC/17/27) of 2011.

These include the important Resolutions of the UN Human Rights Council, among which Resolution 12/16 of 2<sup>nd</sup> October 2009, *on freedom of opinion and expression*; Resolution 20/8 of 5<sup>th</sup> July 2012 *on the promotion, protection and exercise of human rights on the Internet* (A/HRC/RES/20/8)<sup>10</sup> and all those that follow on the same subject (Resolution 26/... of 2014 (A/HRC/26/L.24), Resolution 26/... of 2014 (A/HRC/26/L.25), Resolution 26/... of 2014 (A/HRC/26/L.26), Resolution 26/... of 2014 (A/HRC/26/L.27), Resolution 26/... of 2014 (A/HRC/26/L.28); Resolution 21/16 of 27<sup>th</sup> september 2012 *on the right to peaceful assembly and freedom of association*; Resolution 38/7 of 05 July 2018 (A/HRC/RES/38/7)<sup>11</sup>.

At the regional level, in Europe the Council of Europe has published a human rights guide for Internet users in which it is recommended that human rights should be considered to apply both online and in real life. Also, the Committee of Experts on Transborder Flow of the Internet of this institution has published a report on freedom of assembly and association on the Internet which does not fail to recall that new laws dealing with the use of the Internet and ICTs in the

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<sup>10</sup> With this resolution, the Human Rights Council believes that "the same rights that people have offline must also be protected online ..."

<sup>11</sup> The latter also incorporates the provisions of Resolutions 20/8 and 26 /... but goes further and is more detailed.

context of the exercise of these freedoms should not be vague or leave too much room for interpretation<sup>12</sup>.

Furthermore, the 1987 Resolution of the Parliamentary Assembly of this Council on the right of access to the Internet recognises that access to the Internet is also essential for the exercise of other human rights, such as the right to freedom of assembly and the right to privacy and family life , member states should recognise the fundamental right of access to the Internet in law and practice<sup>13</sup> .

In Africa, we note the African Declaration on Internet Rights and Freedoms adopted by the African Commission on Human and Peoples' Rights in Banjul on 04 November 2016 through resolution 362 on the right and freedom of information and expression on the Internet in Africa.

Similarly, reference should also be made to "The Guidelines on Freedom of Association and Assembly in Africa". Adopted in May 2017 at the 60th session of the African Commission held in Niamey, Niger. They provide States with valuable guidance on the legislative protection and effective implementation of the rights to freedom of association and assembly in Africa. Furthermore, it recommends that States should not enact laws imposing physical meetings (point 36 para d), thus leaving the door wide open for the introduction of communication technologies and hence the Internet into the laws on associations.

All these elements advocate for the integration of the freedoms of assembly and association on the Internet in international and regional bodies.

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<sup>12</sup> [https://www.coe.int/en/web/freedom-expression/home/-/asset\\_publisher/RAupmF2S6voG/content/report-on-freedom-of-assembly-and-association-on-the-internet](https://www.coe.int/en/web/freedom-expression/home/-/asset_publisher/RAupmF2S6voG/content/report-on-freedom-of-assembly-and-association-on-the-internet)

<sup>13</sup> Resolution 1987 resulting from the discussion by the Assembly of 9 April 2014 (14th meeting) of the Council of Europe

## **SECTION III**

### **CONTENTS PROPOSAL FOR LAWS, REGULATIONS AND INSTITUTIONS**

A careful reading of the various laws governing associations in Cameroon has enabled us to observe that the latter make little reference to the exercise of the rights they promote through the Internet. Taking the matter further, an online survey showed us - unless we are mistaken - that the various national legislations had not hitherto taken into account the online dimension of the enjoyment of these fundamental rights.

Nevertheless, some key considerations advocate for the incorporating of the Internet into the laws and regulations governing the exercise of both freedom of association and the right of assembly. These key considerations include the following:

- Freedom of association and the right of assembly are fundamental rights guaranteed by the main human rights treaties, in particular the Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights adopted on 16 December 1966 and ratified by Cameroon on 27 June 1984;
- The African Charter on Human and Peoples' Rights adopted on 27 June 1981 and ratified by Cameroon on 20 June 1989<sup>14</sup>;
- The Human Rights Guide for Internet Users through which the Council of Europe believes that human rights apply both online and in real life;
- In Cameroon, 35.64% of the national population<sup>15</sup>, i.e. more than 3 out of 10 Cameroonians, are regularly connected to the Internet, representing potentially more than 3.6 million people likely to take part in online meetings or form associations through the Internet.

To this list, which is far from being exhaustive, we should also mention, with specific reference to the Internet, the Resolutions of the UN Human Rights Council on "promotion, the protection and exercise of human rights on the Internet" and Resolutions 24/5 and 21/26 of the same Human Rights Council, both of which remind States of their obligation to "fully respect and protect the right of peaceful assembly and freedom of association of all individuals, both online and offline".

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<sup>14</sup> [https://www.achpr.org/fr\\_statepartiestotheafricancharter](https://www.achpr.org/fr_statepartiestotheafricancharter)

<sup>15</sup> [www.art.cm](http://www.art.cm) in "2017 Annual Observatory of the Electronic Communications Market"

All of these considerations support our view that the "online" aspect should be included in the laws on freedom of association and the right of assembly, accordingly we are making the following content proposal:

## **I- CONTENT PROPOSAL AT THE TEXTS LEVEL**

### **1°/ The Constitution of Cameroon**

Ideally, an addition in the preamble of the constitution of the "recognition and guarantee of the exercise of online rights, as well as offline rights" would be welcome and would subsequently facilitate the issuing of decrees and other orders, circulars and decisions by the authorities to take into account online human rights.

This hypothesis has the major advantage of legitimizing the online enjoyment of all the rights contained in our laws and regulations relating to public freedoms, as well as in the main international instruments relating to the protection of fundamental human rights duly signed and ratified by Cameroon. However, this case seems tedious, as amending or revising the constitution is a delicate and perilous exercise for the legislator in our countries, where the debates surrounding the constitution are a source of many tensions.

### **2°/ Law n°90/053 of December 19, 1990 supplemented by law n°99/011, establishing the framework of associations and defining their regime (declaration and authorization).**

This law should be amended by inserting specific provisions concerning associations created and operating through the Internet, as well as meetings held in virtual space. However, as noted above, making laws can be time consuming in the face of the Internet's rapid growth.

The most flexible solution would therefore be to retain in MINAT the prerogative of legalizing associations, including those created online. However, all Divisional Offices would be provided with "technical units" specifically in charge of online associations. This is a prerogative that MINAT could exercise with the technical support of MINPOSTEL, which has qualified staff for the management of electronic communications.

The "Unique Identifier" code of the computers of the promoters of online associations would then be added to their physical address in such a process, with the obligation for them to notify the competent authority of any change in these addresses, thus making it easier to locate them if necessary. In this case, the "police" of these online activities would be provided by the

ANTIC, which is also entrusted with the mission of controlling Internet addresses and regulating Internet content by Decree No. 2012/180 of 10 April 2012 on its organization and operation, Article 5 (i) and (n).

Law n°2010/12 of 21 December 2010 defining and punishing offences related to the use of information and communication technologies would serve as a framework for sanctioning any violation of the law when exercising freedom of association or the right of online assembly. In the event of a violation of this freedom, the appeal body for the citizen would be the district court of the place of residence or location of the address corresponding to the Unique Identifier of the device (computer, laptop or other) of the complainant.

An even more flexible approach would be to set up a mechanism for issuing a receipt for a declaration of association using a form available online.

### **3°/ Law No. 90/055 of 19 December 1990 governing the regime of public meetings and demonstrations in Cameroon.**

In the digital age, the ever-increasing number of Internet users means that online meetings and events must be regulated. To this end, we suggest that the prior declaration stipulated in Article 4 (1) of the above-mentioned law should always be made to the Sub-Divisional Officer with territorial jurisdiction. The territorial anchorage here will be assessed on the basis of the « Unique Identifier » addresses of the organisers.

Once again, this competence would be shared with MINPOSTEL, which, upon "referral" to MINAT, would have to ensure the "policing" of any public demonstration or meeting through the institutions under its supervision, namely the ANTIC and the ART; the Internet being considered here as a public space. As mentioned earlier, the decree creating the ANTIC confers on it the role of regulator of Internet content in Cameroon. The appeal bodies would be those mentioned in the case of associations and online meetings, namely the ordinary courts of law with territorial jurisdiction (according to the Unique Identifier addresses of the organizers).

The main disadvantage here could come from the fact that the organizers are not based in Cameroon, but request our cyber space for the holding of their event. In this case, would it be necessary to make a prior request to our authorities or to the authorities of their host country?

If by any chance a crime is committed in this case by a participant based in Cameroon, what would be the applicable law and the competent jurisdiction for its application?

## **II- CONTENT PROPOSAL AT THE LEVEL OF INSTITUTIONS**

The inclusion of the Internet in the laws and regulations relating to freedom of association and the right of assembly in Cameroon requires a certain "updating" of the missions and organization of the institutions of the territorial administration and the electronic communications sector. In this perspective, we will suggest some elements of content for each institution.

### **1°/ The Ministry of Territorial Administration (MINAT)**

MINAT is the ministerial department in charge of the preparation and implementation of laws and regulations relating to public liberties. This prerogative is maintained through the establishment of a "technical office" dedicated to associations and online meetings in this new context.

However, the technical nature of electronic communications requires that this institution both builds the capacity of some of its staff and share this competence with MINPOSTEL and the institutions under its supervision; ANTIC and ART. Indeed, an online association or an online meeting requires elements such as the very availability of the Internet connection, the fluidity of Internet traffic, the security of information systems and networks, and the confidentiality of exchanges.

### **2°/ The National Agency for Information and Communication Technologies (NAICT)**

Its founding decree confers on it the powers of both network security Article 4(b) and regulation Article 5(n) of Decree No. 2012/180 of 10 April 2012. As a result, the ANTIC appears to be a major player in the process of transposing freedom of association and the right of assembly "online"; powers or prerogatives that it shares with the ART, in accordance with Article 4(1) of Decree No. 2012/203 of 20 April 2012 on its organization and operation "the ART ensures ... the regulation, control and monitoring of the activities of operators of electronic communications services ...".

Once again, the appeal body in case of violation of these rights would be the common law court with territorial jurisdiction and Law No. 2010/012 of 21 December 2010 will define and punish any offence committed online in the exercise of these human rights, which are the freedom of association and assembly on the Internet.

## CONCLUSION

It was up to us to put forward avenues for reflection with a view to integrating the 5th key principle of the ADIRF (African Declaration on Internet Rights and Freedoms) into the laws and regulations in force in Cameroon.

To successfully carry out this work, we first explored laws related to civil liberties in Cameroon, in particular the law on freedom of association, the law governing public meetings and demonstrations, the law governing NGOs and the law governing professional associations and trade unions not governed by our labour code. Adopted at a time when the Internet was scarcely on the agenda, including that of the legislature, the purpose of this exercise was to identify provisions in these texts that would facilitate or not facilitate the incorporation of the Internet into them. In the same vein, a survey of some 20 countries showed that, like Cameroon, other countries had not yet taken the Internet into account in their laws and regulations on freedom of association and the right of assembly.

Thus, legislation concerning freedom of association and the right of assembly in the physical setting generally represents the standard through which online rights of assembly and association are analysed.

Yet, at the international level, the protection of freedom of association and the right of assembly is enshrined in many of the legal instruments extensively cited above. To these should be added elements referring more specifically to the protection of human rights on the Internet, namely, resolutions 20/8 of 5 July 2012 of the United Nations Human Rights Council on the promotion, protection and exercise of human rights on the Internet, as well as resolutions 21/16 of 11 October 2012 and 24/5 of 3 October 2013 of the United Nations Human Rights Council reminding States, in the digital age, of their obligation to respect both physical and online freedoms.

Faced with these exhortations, and with a view to providing a legal framework for these fundamental freedoms whose contours remain blurred and which can thus be subject to injustices and all sorts of abuses or offences, as they are increasingly exercised online in Cameroon, we have undertaken a major initiative. This consisted in the organization of a day of reflection with many other actors (government, civil society, media, international organization, academic and technical communities) with the aim of proposing contents to take

into account the Internet which is a powerful facilitator of these rights in our various texts relating to public freedoms.

However, in view of the importance of the issue of Internet use, which poses political, social and cultural challenges, the time allotted to this study, as well as its purpose, did not allow us to give an adequate account of all the issues related to the relationship between human rights and cyberspace.

In fact, despite the absence of a legal framework for the freedoms of assembly and association in countries, as has been noted, there is nevertheless a practice, a management of these rights when they are applied in the digital space.

How do public administrations manage these online freedoms without the existence of texts? What examples of good practices in this area could be implemented in other countries? These are all avenues for reflection that deserve further analysis, but we will conclude by making a few recommendations to all stakeholders.

## RECOMMENDATIONS

In view of the lack of supervision of freedom of association and assembly on the Internet in Cameroon, it is necessary to take measures to ensure the development of citizens, but also the legality and legitimacy of gatherings on the Internet. This is the meaning of the following recommendations:

### **1°/ To the legislator**

- Explicitly include a title on online associations in Law No. 90/053 in view of the particular contours of this form of grouping ;
- To redefine the expression "the whole national territory" in order to take into account the Internet;
- Specify the regime, the conditions of creation, the sanctions, etc... of online associations ;
- To expressly add a title on online meetings in the law n°90/055 with regard to the particular contours of this form of manifestation ;
- Consider the specific case of meetings on the Internet without attaching them to a territory;
- Redefine the notions of public space, public road and disruption of public order, especially in the context of cyberspace;
- Specify whether or not authorisation is required for internet events and, if so, the competent authority ;
- Do the same for online NGOs, professional associations or unions not governed by the Labour Code that are formed on the Internet ;
- Legislate on the use of social networks in Cameroon.

### **2°/ To the government**

- Create a technical office in charge of digital issues (associations, meetings and online events) in the Divisional Offices;
- To have (if the location of the headquarters is not available) the unique identification code of the devices (computer, laptop, tablet, telephone, etc.) of the persons in charge of the online associations in the Divisional Offices in order to geolocalize them from a computer tool;

- On the basis of the provisions of the laws on cybercrime and cybersecurity, draw up regulations to take into account the specific cases of online meeting organizations;
- Create a platform for exchanges between MINAT, MINPOSTEL, the CDHC and CSOs, in order to find the appropriate mechanism to legislate on the issue of the use of the internet for association and meeting purposes.

### **3°/ To the Cameroon's Human Rights Commission**

- Raise awareness of the existence of digital rights and freedoms on the Internet ;
- Ensure the promotion of instruments for the promotion of rights and freedoms on the Internet;
- Ensure that the protection of people's rights on the Internet is respected;
- Consult, evaluate and denounce, when this is proven, cases of violations of citizens' rights on the Internet.

### **4°/ To civil Society Organizations**

- Continue in its role as an online human rights whistleblower ;
- Further contribute to the building, respect and promotion of human rights online and offline through awareness campaigns and educational talks ;
- Organise public awareness campaigns to ensure that the international legal instruments on human rights duly signed and ratified by Cameroon are known to citizens;
- Federate synergies for an advocacy aimed at taking into account the Internet in the laws and regulations of the associative domain.

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*ANNEX : LAWS OF 1990 ON FREEDOM OF ASSOCIATION AND THE REGIME OF PUBLIC MEETINGS AND EVENTS*