

ACTIVITY REPORT

OF

*THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND
ACCESS TO INFORMATION IN AFRICA*

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INTRODUCTION

1. This Report, presented to the African Commission on Human and Peoples' Rights (African Commission), details the activities undertaken by the Special Rapporteur on Freedom of Expression and Access to Information in Africa (Special Rapporteur), since the 44th Ordinary Session of the African Commission which was held in Abuja, Federal Republic of Nigeria from 10 to 24 November 2008.
2. The mandate of the Special Rapporteur on Freedom of Expression was established at the 36th Ordinary Session of the African Commission held in Dakar, Senegal from 23 November to 5 December 2004. Commissioner Pansy Tlakula was appointed as Special Rapporteur at the 38th Ordinary Session held in Banjul, The Gambia from 21 November to 5 December 2005 and reappointed at the 42nd Ordinary Session held in Banjul, The Gambia from 15 to 28 November 2007.
3. The Plan of Action of the Special Rapporteur incorporating her terms of reference and working methods is contained in her Activity Report presented to the African Commission at its 40th Ordinary Session held in Banjul, The Gambia from 15 to 19 November 2007.
4. This report consists of three parts. Part I details the activities undertaken by the Special Rapporteur in the period under the review, Part II presents the planned activities of the Special Rapporteur, Part III gives an overview of the status of Freedom of Expression and Access to Information on the continent and Part IV provides the recommendations and conclusions of the Report.

I. ACTIVITIES UNDERTAKEN IN THE PERIOD UNDER REVIEW

5. On 2 February 2009, the Special Rapporteur delivered the keynote address at the opening of the LLM (Human Rights and Democratisation in Africa) 2009 of the Centre for Human Rights at the Faculty of Law, University of Pretoria. In her address, she observed that despite the numerous regional human rights initiatives which have increased the comparative enjoyment of human rights on the continent, the African human rights landscape remained bleak as a result of numerous unresolved conflicts, poverty, underdevelopment and the HIV/AIDS pandemic.
6. She highlighted the importance of Access to Information in promoting transparency, accountability and good governance, adding that the absence of Access to Information laws on the continent has prompted her decision to prioritise their adoption by States Parties, as one of her areas of focus. In this regard, she thanked the Centre for Human Rights for providing her mandate with research assistance on status of the adoption of Access to Information laws on the continent which formed part of her last report presented to the African Commission.
7. In her report to the 44th Ordinary Session of the African Commission, the Special Rapporteur indicated as one of her planned activities, research with partners on the progress towards the adoption of Access to Information Legislation in Africa. Accordingly, a research is presently being conducted in collaboration with the Centre for Human Rights, University of Pretoria, on the extent to which existing Access to Information legislation in States Parties and those in

the process of being adopted comply with regional and international human rights standards. The research will also provide guidelines for States Parties on the formulation of Access to Information legislation.

II. PLANNED ACTIVITY

8. In commemoration of World Press Freedom Day which is celebrated worldwide on 3 May every year, the Special Rapporteur intends to introduce the African Commission on Human and Peoples' Rights Human Journalist/Media Practitioner of the Year Award, to recognise journalists and media practitioners who have made outstanding contribution to the advancement of Freedom of Expression and Access to Information on the continent.

III. STATUS OF FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

1. Appeals

The Gambia

9. At the 44th Ordinary Session of the African Commission, the Special Rapporteur reported on the letters of Appeal she had sent to the Government of the Gambia, calling for the release of Chief Ebrimma Manneh, a Gambian Journalist and former reporter of the independent Gambian newspaper *Daily Observer*, who was reportedly taken into custody on 16 July 2006 by members of the National Intelligence Agency (NIA).
10. During the 44th Ordinary Session, the African Commission passed a Resolution on the human rights situation in The Gambia which *inter alia* called on the Government of the Gambia to '*bring to an immediate end, the harassment and intimidation of independent media institutions and respect the rights of journalists*' and '*to immediately and fully comply with the 5th June judgement of the ECOWAS Community Court of Justice in respect of the release of Chief Ebrimma Manneh from unlawful detention and pay the damages awarded by the court*'.¹
11. While the African Commission has received no response from the Government of the Gambia in respect of this Resolution, the Special Rapporteur welcomes the fact that she has received a response with regard to her letters on Chief Ebrimma Manneh. In a letter dated 31 October 2008, but received by the Special Rapporteur after the 44th Ordinary Session, the Government of The Gambia stated that '*Chief Ebrima Manneh has never been arrested*' by the Government and '*therefore to allege that the Gambian Authorities are holding him incommunicado and even to the extent of going to a Court to have him released is quite incredible*' and is considered an '*indication of contempt towards The Gambia and the Gambian Authorities*' adding that *it will no longer entertain anymore exchanges on the subject of Chief Ebrimma Manneh*.

¹ ACHPR /Res.134 (XXXXIII) 08.

12. In the light of the above, the Special Rapporteur has sought the authorisation of the Government of the Gambia to conduct a Promotional Mission to the Republic of The Gambia to engage with Government officials on the situation of Freedom of Expression in the Republic of The Gambia in general and in particular, the steps that have been taken to comply with the resolution of the African Commission passed during the Ordinary Session as it relates to Freedom of Expression.

Senegal

13. In her report to the 44th Ordinary Session of the African Commission, the Special Rapporteur informed the African Commission, of the letter she had written to the Republic of Senegal in response to reports of the deteriorating situation of Freedom of Expression in the country through the alleged harassment, arrest and detention of journalists for offences such as “insults and offences towards the Head of State” “publication of false news” and “public insult”. In her letter, she urged the Government of the Republic of Senegal to ensure the observance of Freedom of Expression as provided by the African Charter and the Declaration of Principles on Freedom of Expression in Africa which supplements it.

14. The Special Rapporteur therefore welcomes reports that in March 2009, the President of the Republic of Senegal announced plans by his government to amend existing legislation so as to decriminalise press offences. She urges the Government of the Republic of Senegal to translate the commitment to the observance of regional standards on Freedom of Expression, which this gesture signifies, by ensuring that the necessary processes for the promised legal reform are initiated without delay.

South Africa

15. The Special Rapporteur welcomes the statement by the recently elected President of South Africa, President Jacob Zuma on the occasion of his inauguration on 9 May 2009, affirming the commitment of his Government to defend Freedom of Expression in South Africa.

2. Alleged Violations of Freedom of Expression and Access to Information

16. During the intersession period, the Special Rapporteur received numerous reports, alleging the violation of Freedom of Expression and Access to Information on the continent. In this regard, she wishes to reiterate to States Parties that the African Charter, unlike other international human rights instruments, does not permit derogation from any of its provisions. Accordingly, States Parties have an obligation to uphold at all times, the provisions of Article 9 of the *African Charter* and the *Declaration of Principles of Freedom of Expression in Africa* which supplements it, irrespective of circumstances such as armed conflict, civil unrest or any other form of emergency that may exist in States Parties.

17. In line with her mandate to ‘*keep a proper record of violations of the right to freedom of expression and denial of access to information and publish this in her reports submitted to the African Commission*’,² the Special Rapporteur brings to the attention of the 45th Ordinary Session of the African Commission the following reports she has received in respect of the continued application of criminal defamation laws against journalists, the closure of

² ACHPR / Res.122 (XXXXII).

independent television and radio stations and of the murder, kidnapping, harassment and threats made against journalists, in the under listed States Parties.

Democratic Republic of Congo, Niger, Cote d'Ivoire, Zimbabwe, Cameroon, Sierra Leone, Tunisia and Liberia .

18. The Special Rapporteur is in the process of bringing the details of these allegations to the attention of the States Parties concerned and is looking forward to receiving responses from these States Parties.

Eritrea

19. The Special Rapporteur remains concerned about reports of the continued deterioration of Freedom of Expression in Eritrea. In particular she is concerned about the continued incommunicado detention of the 18 journalists arrested during the 18 September 2001 crackdown on the press by the Eritrean Government, despite the 'decision' of the African Commission in Article 19/ Eritrea, in this regard.³ She is gravely concerned about reports that four of these journalists have since died in prison, owing to the intolerable conditions of their detention.

20. She therefore urges the Government of Eritrea to release these journalists from detention without any further delay, and to respect, protect and fulfil its obligations under Article 9 of the African Charter and the *Declaration of Principles on Freedom of Expression in Africa*.

CONCLUSION AND RECOMMENDATIONS

21. The Special Rapporteur thanks States Parties who have taken steps towards fulfilment of their obligations to respect, promote and protect Freedom of Expression in their respective countries, and in so doing steered their nations towards the path of greater public transparency and accountability necessary for good governance and strengthening of democratic ideals on the continent. She is equally grateful to individuals and Non Governmental Organisations (NGOs) alike for cooperating with her mandate and tirelessly providing her with much welcome information on violations, progresses and other developments on Freedom of Expression and urges them to continue to so. She also recognises the invaluable contributions made by NGOs through the dedication of their resources and expertise to the promotion and protection of Freedom of Expression and Access to Information in Africa.

22. The Special Rapporteur stands in solidarity with all journalists, media practitioners and individuals on the continent who have been arrested, convicted and imprisoned as well as those who remain in unlawfully detention by reason of their commitment and determination to effect positive improvements to Freedom of Expression and Access to Information in their respective countries and in Africa as a whole and honours the memory of those who have lost their lives in the defence of Freedom of Expression and Access to Information in Africa.

³ Communication 275/03.

23. The Special Rapporteur restates her concern about the continued retention of criminal defamation laws in the statute books of some States Parties and reiterates her call for these States Parties to repeal or amend laws relating to criminal defamation and to ensure that any laws on defamation conform to the following standards of Principle XII of the *Declaration of Principles on Freedom of Expression in Africa* which provides:

1. No one should be found liable for true statements, opinions, or statements regarding public figures which it is reasonable to make in the circumstance;
2. Public figures shall be required to tolerate a greater degree of criticism; and
3. Sanctions should not be so severe as to inhibit the right to freedom of expression, including by others.

24. The Special Rapporteur notes the continued application of national legislations restricting Freedom of Expression on national security grounds. In this regard she urges States Parties to ensure their existing legislations are in conformity with Principle XIII (2) of the *Declaration of Principles on Freedom of Expression in Africa* which states:

Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to legitimate interest and there is a close causal link between the risk of harm and the expression.

25. The Special Rapporteur also notes the increasing reports of the murder, kidnapping, intimidation and threats against journalists and media practitioners and wishes to bring to the attention of States Parties, the provisions of Principle XI (1) and (2) of the *Declaration of Principles on Freedom of Expression in Africa*, which provides:

- 1) Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
- 2) States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.

26. The Special Rapporteur calls on States Parties in which there are ongoing internal conflicts like Somalia, Sudan, the DRC, Northern Uganda and Central African Republic to refrain from targeting journalists for presenting to the public, reports considered to be unfavourable to the Government and to protect them in any way possible from attacks as required under international humanitarian law. In this regard she wishes to bring to attention of these States Parties, Principle XI (3) of the *Declaration of Principles on Freedom of Expression in Africa* which states that '*In times of conflict, States shall respect the status of media practitioners as non-combatants*'.

27. The Special Rapporteur notes that since her last Report to the African Commission, there has been little progress towards the adoption of Access to Information laws on the continent. She urges States Parties who have taken steps towards the adoption of Access to Information laws, especially those who have been engaged in prolonged attempts to enact such laws such as the Republic of Ghana and the Republic of Nigeria, to do all that is

necessary to ensure that these efforts are concretised into laws which conform to applicable regional and international standards.

28. She calls on States Parties that have adopted Access to Information legislation to ensure that the necessary institutional machinery for their effective application are put in place and where necessary, amend their legislations to conform with relevant international human and regional standards and in particular, Principle IV of the *Declaration of Principles on Freedom of Expression in Africa* which provides:

1. 1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles:
 - everyone has the right to access information held by public bodies;
 - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
 - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
 - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
 - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
 - secrecy laws shall be amended as necessary to comply with freedom of information principles.
3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.”

29. The Special Rapporteur reiterates her call for States Parties to sign and ratify the *African Charter on Democracy, Elections and Governance* (the Charter). She notes that since the adoption of the said Charter on 30 January 2007, only 28 State Parties have signed and 2 i.e. Ethiopia and Mauritania have ratified the instrument. She therefore urges States Parties who have not signed and in particular those that have signed but not ratified the Charter, to do so, to ensure the coming into force of the instrument without further delay.

30. She further calls on States Parties scheduled to hold elections during the rest of the year like Namibia, Cote d’Ivoire, Tunisia, and Botswana, to ensure that journalists and media practitioners are allowed to freely disseminate information on the elections and are not subjected to any form of harassment, intimidation or violence in the course of the exercise of their duties.

31. She urges States Parties who have signed the Charter to take steps to implement provisions of Article 17 which obliges States to : Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections; Establish and strengthen national mechanisms that redress election related disputes in a timely manner; Ensure fair and equitable access by contesting parties and candidates to State controlled

media during elections and also to ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections, which should include a commitment by stakeholders to accept the results of the election or challenge them through exclusively legal channels.

32. The Special Rapporteur is concerned that the Kenya Communications (Amendment) Act 2009 (the Kenya Media Law), signed into law by the President of the Republic of Kenya in January 2009 does not comply with regional and international human rights standards. In particular, she is concerned that the Act: does not sufficiently guarantee the independence of members of the regulatory body ; confers wide scope of powers on the Ministers of Internal Security and Information and Telecommunications; is vague as to the requirements of broadcast content and substantially increases the severity of punishments.
33. In line with her mandate to *'analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression and Access to Information in Africa in particular, and advise Member States accordingly'* the Special Rapporteur urges the Government of the Republic of Kenya to take the necessary steps to bring the provisions of its newly amended Media Law in conformity with applicable regional and international human rights standards.