

ACTIVITY REPORT

OF

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

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Rights***

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Introduction

1. This report, presented to the African Commission on Human and Peoples' Rights, details the activities undertaken pursuant to the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa since the 43rd Ordinary Session of the African Commission on Human and Peoples' Rights which was held in Ezulwini, the Kingdom of Swaziland, from 7 to 22 May 2008.
2. The African Commission on Human and Peoples' Rights initially appointed the Special Rapporteur on Freedom of Expression in Africa at its 36th Ordinary Session in December 2004. Commissioner Pansy Tlakula was appointed as Special Rapporteur at the 38th Ordinary Session of the African Commission in December 2005 for a two-year period and re-appointed for another two-year term at the 42nd Ordinary Session of the African Commission in November 2007.
3. The Plan of Action of the Special Rapporteur, which comprises her terms of reference and working methods, can be found in her report to the 40th Ordinary Session of the African Commission, held in Banjul, The Gambia, from 15 to 29 November 2006.¹
4. This report is comprised of five sections. Sections I and II respectively, provide an overview of the activities carried out during the period under review and the planned activities for the forthcoming intersession period. Section III then gives an overview of Constitutional provisions as well as the status of the adoption of freedom of information legislation in Africa. In Section IV, reports of country specific situations which are of concern to the Special Rapporteur are highlighted. The last part of the report incorporates the Special Rapporteur's conclusions and recommendations.

I. Activities undertaken during the period under review

Discussions and Workshops

5. From 2 to 4 October 2008, the Special Rapporteur attended a Regional Workshop on Access to Information in Central and West Africa, in Yaoundé, Cameroon organised by the Open Society Justice Initiative and the Citizens Governance Initiative, where she delivered the keynote address on "*Freedom of Expression and Freedom of Information and the Advancement of Access to Information in Africa*". The workshop was attended by sixty participants and forty organisations.
6. On 14 October 2008, the Special Rapporteur participated in a panel discussion in Geneva, Switzerland, at a workshop that was organised by the Inter-Parliamentary Union (IPU) on "*Freedom of Expression and the Right to Information*". She delivered a paper on the "*State of the Right to Information in Africa*".

¹ ACHPR/40/OS/603

7. The Special Rapporteur's address provided a summary of her role as Special Rapporteur on Freedom of Expression and Access to Information in Africa which include: monitoring violations of the right to freedom of expression and access to information on the continent; recommending to the African Commission measures to address the violations of these rights and assisting Member States to review their national media laws and policies to comply with the principles laid down in the *Declaration of Principles on Freedom of Expression in Africa*.
8. In her address, she underscored the fundamental role of the right to Freedom of Expression and Information in building an open and democratic society founded on principles of accountability and transparency, and its importance in thwarting corruption and arbitrariness. She elaborated regional and international standards for the protection of the right to Freedom of Expression and Access to Information and other benchmarks developed by Non-Governmental Organisations and International Organizations for Freedom of Expression legislation.

Appeals

The Gambia

9. The Special Rapporteur is concerned that despite several regional and international appeals to the Government of The Gambia, about Chief Ebrima Manneh, including two letters of appeal written pursuant to her mandate, and the 5 June 2008 decision of the Court of Justice of the Economic Community of West African States (ECOWAS) ordering his release, he continues to be detained incommunicado.
10. In her report to the 42nd Ordinary Session of the African Commission in November 2007, the Special Rapporteur referred to information she had received, that Chief Manneh, a Gambian journalist and former reporter for *Daily Observer*, had been detained by the National Intelligence Agency (NIA) since 11 July 2006 on the basis of which she sent a letter of appeal on 9 October 2006 to the Government requesting information on these allegations. She noted reports that on two consecutive occasions, the Government of The Gambia had failed to appear before the ECOWAS Court of Justice, which if true, could represent an indication of lack of respect by the Member State of a regional institution.
11. On 15 October 2008, the Special Rapporteur again sent a letter of appeal to the Government of The Gambia, expressing her concern that Chief Ebrima Manneh continued to be held in incommunicado detention, despite the ruling of the ECOWAS Court of Justice. She noted that in spite of the repeated denials by the Government, there were several alleged sightings of Chief Manneh at the NIA Headquarters and other detention facilities. She appealed to the Government of The Gambia, to provide details of the steps it planned to take to immediately to implement the Order of the ECOWAS Court of Justice, ordering the release of Chief Ebrima Manneh and awarding him \$100,000 in compensation.

12. The Special Rapporteur regrets that at the time of writing this report, she had not received any response from the Government of The Gambia to both letters of appeal. In line with the Resolution establishing her mandate, she would be requesting an invitation from the Government of The Gambia to conduct a mission in order to shed light on the situation of Chief Manneh, in particular and the state of Freedom of Expression in general.

Niger

13. On 15 October 2008, the Special Rapporteur wrote a letter to the President of the Republic of Niger about the recent release of Mr. Moussa Kaka, a Niger journalist, whose detention she had mentioned as a source of concern in her report to the 42nd Ordinary Session of the African Commission in November 2007. Mr. Kaka was detained on 20 September 2007 on charges of “complicity in undermining the authority of the State”, an offence punishable by death, on the basis of recorded telephone conversations he allegedly had with the leader of the Mouvement des Nigériens pour la Justice (MNJ), a rebel movement operating in the Northern part of Niger.
14. The Special Rapporteur was informed that Mr. Kaka was released on 7 October 2008, when an Appeals Court in Niamey ordered his provisional release and amended the charges against him to “actions liable to harm the national defence”, which carries a maximum sentence of five years imprisonment and also ordered that the case be sent for trial before a Criminal Court.
15. In her letter, the Special Rapporteur welcomed the release of Mr. Kaka and urged the Government of Niger to take necessary steps to ensure that his forthcoming trial is free and fair and in accordance with Article 7 of the *African Charter* and the principles laid down in the *Declaration on the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*.

Senegal

16. The Special Rapporteur on 5 November 2008, sent a letter to the President of the Republic of Senegal about reports of the deteriorating situation of Freedom of Expression in Senegal. She expressed her concern on reports that offences such as “insult to the Head of State” “criminal defamation” and “publishing false news” in the Penal Code of the Republic of Senegal, are being utilised to harass, arrest and detain journalists. In this regard, she cited *inter alia* reports of the April 2007 conviction of Ndiogou Wack Seck, a reporter for independent Newspaper *Il Est Midi*, for defamation, based on an article in which he implicated the President’s lawyer, Ousmane Seye in the unauthorised release of former Prime Minister Idrissa Seck. Mr. Wack Seck was reportedly sentenced in absentia to six months imprisonment, fined US\$41,000, and banned from practicing journalism and operating his newspaper for six months.
17. She also referred to the reported 12 September 2008 conviction of El Malick Seck, editor of *24 Heures Chrono*, for a story in his newspaper implicating the President and his son in laundering money stolen from Cote d’Ivoire and reports that he was charged with

“activity liable to disrupt public order and cause serious political unrest,” “disseminating false news,” “public insult” and “illegal possession of government documents” and sentenced to three years in prison.

18. The Special Rapporteur brought to the attention of the Government of Senegal, other information she received of threats and statements by politicians and government officials against the independent media which on one occasion was in fact allegedly carried out. In this regard, she outlined the following reports:
19. On 18 April 2007, Moustapha Cisse Lo, Member of the ruling Senegalese Democratic Party (PDS) reportedly threatened to shoot Ibrahima Benjamin Diagne, a reporter for *Radio Disso*, when Mr. Lo’s nomination as a parliamentary candidate was allegedly criticized on air by an anonymous caller, during a talk show hosted by Mr Dagne. In response, it is alleged that Mr. Lo showed up at *Radio Disso* studios in the company of about twelve other individuals and demanded the identity of the caller, threatening to shoot Mr. Diagne when he refused to yield to his demand. Mr. Diagne allegedly became the subject of harassing phone calls from Mr. Lo and his associates when he announced his intention to institute proceedings against Mr. Lo.
20. The Special Rapporteur also relayed information she received that on 7 August 2007, Mr. Farbar Senghor, Minister of Transport, allegedly threatened to beat a journalist of the *Walf Grand-Place* newspaper who reportedly accused him of being untruthful about his educational qualifications. She was also informed that Mr. Farba Senghor again on 27 July 2008 allegedly threatened two private newspapers *L’As* and *24 heures* following their publication of stories about his private life stating that he “reserved the right to respond in a manner equal to the attacks”. Again on 1 August 2008, Mr. Senghor allegedly threatened another *Walf Grand-Place* journalist for asking a question about his personal life. Subsequently, on 17 August 2008, the offices of both newspapers were allegedly invaded by about 10 men armed with knives, tear gas and grenades. The armed men were allegedly in a car with a plate number reserved for the Government. They allegedly destroyed equipment and materials of the newspapers.
21. The Special Rapporteur also included in her letter, reports she had received on raids by law enforcement agents on independent media houses and of the judiciary ordering the closure of independent media houses. She brought the following information she had received to the attention of the Government of Senegal, that: On 31 May 2007 about 70 police officers and representatives of the Agency for Regulation and Communication (ARTS) allegedly shut down *Premiere FM* radio station and seized its equipment allegedly on grounds that it has been illegally allocated the frequency on which it operated; following the banned protest march in Dakar of 30 March 2008, it was reported that police officers of the DCI allegedly raided *Walf TV* during its broadcast of footage of the dispersal of the protest, ordered cessation of the broadcast and demanded the original footage; in addition to the three year sentence imposed on El Malick Seck, editor of *24 Heures Chrono* on 28 August 2008, reports indicate that the Court also ordered the closure of the newspaper for three months.

22. Recalling the obligations of the Republic of Senegal under the *African Charter* and in particular, Principles I, II and XII of the *Declarations of Principles on Freedom of Expression in Africa*, the Special Rapporteur requested that the Government of the Republic of Senegal comment on all her observations and inform her, of steps it has taken to create a culture of respect for the right to the Freedom of Expression, and those which it intends to instigate to make certain, that the enjoyment of Freedom of Expression continues to be a reality in its nation. She also indicated her intention to request an invitation from the Government, to conduct a mission to establish an accurate picture of the state of Freedom of Expression in the Republic of Senegal.

II. Planned Activities

23. The Special Rapporteur plans to organise three sub-regional human rights training workshops for journalists focusing on North, East and West Africa, with special attention to countries scheduled to hold elections in the coming year. An expected outcome of this series of workshops is the production of a booklet on “Freedom of Expression, Access to Information and Elections in Africa.”
24. In line with her mandate to: *analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression standards in general and the Declaration of Principles on Freedom of Expression in particular*, the Special Rapporteur, in collaboration with partners, plans to continue with research on the progress towards the adoption of Freedom of Information legislation in Africa. This research will analyse the extent to which existing Freedom of Information legislation in Member States and those in the process of being adopted, comply with regional and international human rights standards.
25. To commemorate World Press Freedom Day which is celebrated worldwide on 3 May every year, the Special Rapporteur intends to introduce the African Commission Human Rights Journalist/media practitioner of the year award, to recognise journalists/media practitioners who have made outstanding contributions to the advancement of Freedom of Expression and Access to Information on the continent. The inaugural recipient of this award will be announced at an award ceremony to take place during the 45th Ordinary Session of the African Commission in May 2009.

III. Status of Freedom of Information Legislation in Africa

26. Until recently, Freedom of Information was generally seen as a right within the exclusive preserve of journalist and media practitioners, as it was regarded as far removed from the day to day lives of ordinary individuals. However, with the development of the scope and content of freedom of information within international human rights law, and emphasis on the link of this right with the transparency and accountability of public bodies, the relevance of access to information to all individuals in society has become more apparent.

27. While Freedom of Information derives its origins from and is interrelated with Freedom of Expression, it occupies a special place in the human rights family, in that without the transparency and accountability of public institutions which constitute a fundamental part of its core elements, the right to express and disseminate opinions for the purpose of ensuring good governance and strengthening democracy cannot be enjoyed in its totality.
28. In recognition of the importance of Freedom of Information, Principle IV of the *Declaration of Principles of Freedom of Expression in Africa* states that:
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. In the years following the adoption of the *Declaration of Principles of Freedom of Expression in Africa*, there has been an increase in the number of African States taking steps to adopt legislation on Access to Information, especially in countries where the right is expressly recognized by the Constitution. In some instances, progress towards legislation have been made by countries in which the provisions on Freedom of Information is subsumed under the right to Freedom of Expression and even in a few cases where no mention is made of such right.
30. In Southern Africa, South Africa, Mozambique, Malawi, Madagascar are four countries which expressly protect the right to Freedom of Information in their Constitutions. Other countries such as Zambia, Lesotho, Zimbabwe, Namibia, Botswana, Mauritius, Angola, Swaziland, each protect the right only within the context of Freedom of Expression- the right to “seek, receive and impart information” Of these, Zambia, Mozambique, Malawi

have Bills on Freedom of Information which are at various stages in the legislative process, whilst South Africa, Angola and Zimbabwe have in fact adopted such legislation.

31. South Africa enacted the *Promotion of Access to Information Act* in 2000, the culmination of a six year process, starting with the appointment of a task group to prepare a draft Bill in 1994 and years of extensive public consultation.² A key feature of the Act is that it allows natural or juristic persons and public or private persons to request information from public as well as private bodies, where it can be proved that such information is required for the exercise or protection of any right.³ It sets out the procedure to be followed in accessing information from these bodies and mandates the appointment of information officers in all public and private bodies to assist in ensuring applications comply with the requirements of the law.⁴
32. A positive aspect of this Act is that the South African Human Rights Commission, an independent Constitutional body, is charged with overseeing its implementation and is required to report annually to Parliament in this regard.⁵ The Act also contains exemption provisions which are in consonance with international human rights standards and subject to the public interest test.⁶ One shortcoming is that the Act provides for appeals against the decisions of public and private bodies to be made to Courts,⁷ which are often inaccessible to individuals in terms of costs and inordinate delays. Other perceived weaknesses are that the mandatory publication of records by government departments does not sufficiently reduce the necessity of requesting information from public bodies and that the Act as a whole is expensive to implement.
33. *The Access to Information and Protection of Personal Privacy Act 2002*, of Zimbabwe, applies only to information held by public bodies and provides for appeal against decisions denying access to information to the Zimbabwe Media Commission. The Act has been criticised for its broad exemption provisions which excludes from disclosure, 'protected information' such as protection of advice relating to policy, protection of information relating to inter-governmental relations or negotiation, protection of information relating to financial or economic interests of a public body or the State.
34. In Eastern Africa and Central Africa, the Constitutions of Uganda, Tanzania, DRC and Eritrea, explicitly guarantee the Freedom of Information, while those of Kenya, Central African Republic, Chad and Ethiopia, guarantee the right within the broader context of Freedom of the Press and Expression. In Equatorial Guinea, Burundi, Cameroon, Djibouti, though enshrining the right to Freedom of Expression, no reference is made to the right to Information in their Constitutions. At present, Uganda, Ethiopia, Tanzania

² Freedom of Information in Southern Africa- *Media Law and Practice in Southern Africa* . No 16, October 2000, P 22.

³ Section

⁴ N.2 above, p.22.

⁵ Sections 83 – 85.

⁶ Sections 33 – 46.

⁷ Section 82.

and DRC have enacted legislations on Freedom of Information, while Kenya has a draft bill at an advanced stage.

35. *The Access to Information Act 2005* of Uganda, grants every citizen the right to access information and records in possession of the State or any public body except where it prejudices the sovereignty of the State or the privacy of another person.⁸ It also provides grounds for restricting Access to Information, disclosure and automatic availability of certain categories of information,⁹ appointment and duties of information officers, procedure for requesting information¹⁰ and for appeals to Courts against refusal of applications for information.¹¹ Cabinet records and records of Cabinet committees, and records of Court proceedings before the conclusion of the case are exempted from the application of the Act.¹² Perceived weaknesses of the Act are that it applies only to public bodies,¹³ limits the right to request information to only citizens,¹⁴ the categories of information exempted are vague and are not subject to the public interest test,¹⁵ and the Minister responsible for overseeing the implementation of the Act is to be appointed by the President,¹⁶ raising issues of independence. Most importantly, the coming into force of the Act is to be determined by the appointed Minister through yet another statutory instrument through which he/she is also empowered to determine the date on which specific provisions of the Act will come into force.¹⁷ The result of this provision is that the Act has not fully come into effect.
36. In July 2008, the Ethiopian House of Peoples' Representatives adopted the *Mass Media and Freedom of Information Proclamation 2008*. Though yet to be signed into law, the Proclamation has generated criticism for its provisions which reportedly gives information officers in government departments the discretion to deny access to information deemed sensitive, with no opportunities for judicial review and for the limited public consultation in the process leading up to its enactment.
37. West Africa has a comparatively poor legislative landscape on Freedom of Information as it is yet to successfully adopt any Freedom of Information legislation. The Constitutions of Ghana, Guinea Bissau, Cape Verde and Burkina Faso guarantee the right to Freedom of Information, and in Nigeria, Togo, Liberia and The Gambia, Freedom of Information is provided for in the context of Freedom of Expression. Benin, Senegal, Ivory Coast, Guinea and Niger make no reference to this right in their Constitutions, only providing for Freedom of Expression.

⁸ Section 5.

⁹ Section 8.

¹⁰ Sections 10 – 12.

¹¹ Sections 37 – 42.

¹² Section 2(2).

¹³ Section 2.

¹⁴ Section 5.

¹⁵ Sections 25 – 34.

¹⁶ Combined reading of sections 4, 47 and 48.

¹⁷ Section 1(2) and (3).

38. Nigeria and Ghana both have Bills on Freedom of Information that have been under consideration for over five years. The Nigerian *Freedom of Information Bill* was introduced to the National Assembly in 1999. It was passed into law by the lower House of Parliament in August 2004 and two years later, passed into law by the Senate, but not signed into law. However, the Bill has recently been reintroduced to the National Assembly by the current Nigerian Government. In Ghana, a Bill on Freedom of Information was drafted in 2003 and remains pending in Cabinet, yet to be forwarded to Parliament for consideration. In April 2008, Liberia introduced a draft Bill to Parliament and in Sierra Leone and Burkina Faso draft Bills on Freedom of Information have been prepared at the initiative of NGOs partnering with the Government to enact them into law.
39. The Northern African Constitutions of Algeria, Egypt, Libya and Tunisia are silent on Freedom of Information, protecting only the Freedom of Expression. Algeria is the only of these countries to have a draft Bill on Access to Information.¹⁸
40. While the Constitutions of most Member States guarantee the right to Freedom of Expression and/or Information, only few have adopted laws on Access to Information. Each of these laws have since been subject to varying degrees of criticism as to their effectiveness and compliance with international human rights standards. A few other States have been engaged in drawn-out and yet unsuccessful attempts at enacting Freedom of Information legislation. Majority of States however, are yet to begin the process, perhaps due to uneasiness about the costs and consequences of implementing such legislation for their respective governments.
41. This trend indicates that there is an urgent need for the formulation of a model law or guidelines on Access to Information on the continent, to assist countries to draft laws which comply with international and regional standards and at the same time, are simple, affordable and easy to implement. There is also need for continuous dialogue with States, reminding them that the adoption of an effective Freedom of Information legislation remains a yardstick for determining transparency and accountability and for promoting access to social and economic development in any society which lays claims to adherence to democratic ideals. To this end, the Special Rapporteur pledges to continue her cooperation with partners and States, towards ensuring that Access to Information becomes a reality on the continent.

IV. Country situations

42. The Special Rapporteur is concerned about the number of reports she has received, alleging violations of Freedom of Expression and Access to Information on the continent. In this regard, she would like to remind Member States that unlike other international human rights instruments, the African Charter does not contain a derogation clause. Thus, regardless of circumstances such as conflict, civil unrest or any other form of emergency,

¹⁸ Dimba, M “*The Right to Information in Africa*” Paper delivered at the regional conference on the Right to Information, University of Cape Town, South Africa, 17 – 18 June 2008.

States have a perpetual obligation to respect, promote, protect and fulfil the right to Freedom of Expression as provided under the *African Charter*, and the *Declaration on Principles of Freedom of Expression* which supplements it.

43. She notes with great concern information she has received pursuant to her mandate of violations of the right to Freedom of Expression and Information in Eritrea, Zimbabwe, Nigeria, Ethiopia, Sierra Leone, Lesotho and Cameroon in the period under review and the substance of which is further elaborated below.

Eritrea

44. The Special Rapporteur is concerned about reports of the alleged deteriorating situation of press freedom in Eritrea. She has received information alleging the clamp down on private ownership of media outlets and of undue restrictions on foreign journalists and publications by the Government. She is also concerned about the continued incommunicado detention of the 18 Eritrean journalists who were arrested during the September 2001 crackdown of the press despite the findings of the African Commission in this regard.¹⁹ She is particularly concerned about reports of the death some of these journalists in detention.

Zimbabwe

45. The Special Rapporteur has been informed that in the run up to the 27 June 2008 Presidential elections run-off, numerous journalists and leading cast members of plays perceived as critical of the Government, were allegedly harassed, arrested and some detained. She has also received reports that journalists have allegedly been convicted based on provisions of the media law for offences such as “intentionally publishing falsehoods”.

Nigeria

46. The Special Rapporteur has received reports that in Nigeria, there have been arrest and detention of local and foreign journalists, as well as violent attacks and killing of journalists. She has also been informed of the closure of *Channels TV*, an independent television station and the arrest of its employees, for airing inaccurate news reports about the President’s imminent resignation.

Ethiopia

47. The Special Rapporteur has received information about which she is concerned, that several Ethiopian journalists have allegedly been detained and convicted of various offences in relation to the trial of prominent government critics. She has also been

¹⁹ **Article 19/Eritrea**, 275/2003 (22nd Activity Report of the African Commission on Human and Peoples Rights).

informed that the media law which is in the process of being enacted, further imposes restrictions on the independent media in Ethiopia.

Sierra Leone

48. The Special Rapporteur has been informed that an NGO working in the field of Freedom of Expression in Sierra Leone has received death threats as a result of its activities. She has also received information on arrests and threats of arrests by the Government against independent newspapers for publishing reports considered defamatory.

Lesotho

49. It has come to the attention of the Special Rapporteur that Lesotho's broadcasting laws allegedly permits the closure of the broadcast media without recourse to the judiciary and that individual members of the independent media have been victimised for perceived sympathy and/or support to opposition parties.

Cameroon

50. The Special Rapporteur has been informed that in 2008, singer-songwriters openly critical of the government have allegedly been convicted and handed severe punishments for alleged participation in demonstrations and riots.
51. In the light of the above information she has received, the Special Rapporteur urges the Governments of the above mentioned States to where applicable, release or bring to trial all journalists in detention; investigate and bring to justice those responsible for threats and death of journalists within their territory; ensure all existing and proposed media laws are in conformity with Principles IV, V, VI VIII and XII of the *Declaration of Principles on Freedom of Expression in Africa*; and make certain that the operations of their media regulatory bodies conform to Principle VII of the *Declaration of Principles on Freedom of Expression in Africa*.

V Conclusion and Recommendations

52. The Special Rapporteur thanks all Member States that have made purposeful efforts towards the promotion and protection of the right to Freedom of Expression and Information. She would also like to express her gratitude to the various NGOs and individuals that have cooperated with her mandate and have provided information on issues relating to violations, progress and other developments on Freedom of Expression and Information in Africa and urges them to continue to do so. She applauds the courage and resolve of journalists, media practitioners and all others on the continent, who have given themselves at great personal cost, not forgetting those who have risked and lost their lives in the defence of Freedom of Expression and Information in Africa.

53. The Special Rapporteur notes that there remain very few State parties that have adopted legislation on Freedom of Information which conform in their entirety to regional and international human rights standards. She therefore urges Member States that are yet to adopt such legislation to do so and urges all Member States that have adopted such legislation to ensure that their laws on Freedom of Information are where necessary, amended to conform with applicable regional and international human rights standards, and in particular, Principle IV of the *Declaration of Principles of Freedom of Expression in Africa*, which provides that:
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 bodies²⁰.”
54. She welcomes the efforts by those Member States that have taken steps towards the adoption of Freedom of Information legislation and urges them to remain resolute in ensuring that these steps are concretised into laws that conform to regional and international standards on Freedom of Information. She also wishes to appreciate the efforts of NGOs which have worked tirelessly to promote the adoption of Freedom of Expression laws and through whose intervention, draft legislations have been introduced in various Member States.
55. The Special Rapporteur reiterates her call for Member States to ratify the *African Charter on Democracy, Elections and Governance*, which states as one of its objectives, “*the establishment of the necessary conditions to foster citizen participation and*

²⁰ *Declaration on Principles of Freedom of Expression in Africa* of 2002, Principle IV.

transparency, access to information, freedom of the Press and accountability in the management of public affairs". She welcomes the fact that since its adoption on 30 January 2007, this instrument has been signed by twenty five countries. She notes however, that since its adoption, there has been only one ratification i.e. Mauritania. She therefore urges Member States who have signed this instrument to ratify and others yet to take any action to sign and ratify the instrument without delay.

56. The Special Rapporteur also notes that in some countries where elections were held this year, there have been reports of irregularities in the conduct of the elections and also of attacks on the media and citizens. She therefore wishes to remind Member States that the *Declaration on the Principles Governing Democratic Elections in Africa*²¹ states that: "*Democratic elections are the basis of the authority of any representative government*". She calls upon States scheduled to hold elections in the coming year, such as South Africa, Ivory Coast, Equatorial Guinea, Tunisia, Mozambique, Botswana and Namibia, to guarantee the credibility of these elections by respecting the right to Freedom of Expression as enshrined in the African Charter, and for those who have ratified the *African Charter on Democracy, Elections and Good Governance*, to fulfil their obligations under Article 17 which requires States to:
1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.
 2. Establish and strengthen national mechanisms that redress election related disputes in a timely manner.
 3. Ensure fair and equitable access by contesting parties and candidates to State controlled media during elections.
 4. Ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by stakeholders to accept the results of the election or challenge them through exclusively legal channels.
57. Arising out of the provisions of the *Declaration of Principles on Freedom of Expression in Africa*, the Special Rapporteur urges State parties to repeal or amend laws relating to criminal defamation where such laws exist. In this regard, she reminds Member States to ensure that any laws on defamation respect the following standards:
1. No one shall be found liable for true statements, opinions, or statements regarding public figures which it was reasonable to make in the circumstances;
 2. Public figures shall be required to tolerate a greater degree of criticism; and
 3. Sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.²²

²¹ AHG/Decl.1 (XXXVIII), 2002.

²² *Declaration on Principles of Freedom of Expression in Africa* of 2002, Principle XII.