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Rev 1

**INTER-SESSION ACTIVITY REPORT**

**OF**

**ADVOCATE. PANSY TLAKULA**  
**CHAIRPERSON**

**&**

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

**(May to October 2016)**

**Presented during the 59<sup>th</sup> Ordinary Session of the African Commission  
on Human and Peoples' Rights**

**Banjul, The Islamic Republic of The Gambia**  
**21 October - 04 November 2016**

## INTRODUCTION

1. This report is presented in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission), and covers activities carried out during the intersession period between May and October 2016.
2. The Report details the activities undertaken by **Adv. Pansy Tlakula**, in her capacity as the Chairperson of the Commission, and as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur).<sup>1</sup>
3. The Report is structured in four Parts:
  - **Part I** covers the activities undertaken by Adv. Tlakula in her capacity as the Chairperson of the Commission;
  - **Part II** covers the activities undertaken as the Special Rapporteur;
  - **Part III** gives an overview of the status of adoption of access to information (ATI) legislation in Africa;
  - **Part IV** presents the conclusions and recommendations of the Report.

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<sup>1</sup> This Special Mechanism was established during the 36<sup>th</sup> Ordinary Session of the Commission, held in Dakar, Senegal, from 23 November to 05 December 2004. Commissioner Tlakula was appointed pursuant to Resolution on Freedom of Expression and Access to Information in Africa, ACHPR/Res.84 (XXXV) 05, adopted by the Commission on 05 December 2005.

## **Part I: Activities Undertaken as the Chairperson of the Commission**

### **a. Coordination of the Commission's activities and supervision of the work of the Secretariat**

4. In accordance with Rule 13 of the Rules of Procedure of the Commission, the Chairperson coordinated the promotion and protection activities of Members of the Commission and supervised the work of the Secretariat during the period under review. In this regard, the necessary guidance was provided on various issues.

### **b. The 20<sup>th</sup> Extra-Ordinary Session of the Commission**

5. From **09 to 18 June 2016**, I chaired the 20<sup>th</sup> Extra-Ordinary Session of the Commission, held in Banjul, the Islamic Republic of The Gambia. The Session was convened to deal with Communications and other urgent and outstanding matters from previous Sessions.
6. During the Extra-Ordinary Session, the Commission considered twenty-seven (27) Communications, discussed Reports and Papers, adopted Concluding Observations and Resolutions and held a meeting with a delegation from the African Peer Review Mechanism to discuss areas of cooperation and collaboration.

### **c. Participation in the meetings of African Union policy organs**

7. A delegation of the Commission comprised of the Chairperson, the Vice-Chairperson Commissioner Soyata Maiga, Commissioners Lucy Asuagbor and Zainabo Sylvie Kayitesi, in addition to members of the Secretariat, participated in meetings of the AU policy organs during the 27<sup>th</sup> Ordinary Summit of the African Union (AU).

8. In particular, the delegation attended the 3<sup>rd</sup> AU High Level Panel on Gender Equality and Women Empowerment Pre-Summit Meeting, the 32<sup>nd</sup> Ordinary Session of the Permanent Representative Committee (PRC), the 29<sup>th</sup> Ordinary Session of the Executive Council and the 27<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government, held from **10 to 18 July 2016**, in Kigali, Rwanda.
9. During the 32<sup>nd</sup> Ordinary Session of the PRC, the Chairperson presented and defended the 40<sup>th</sup> Activity Report on behalf of the Commission. The Activity Report was subsequently adopted and authorized for publication.

**d. Participation in other events/meetings organized on the margins of the AU Summit**

➤ **Conference on Popularizing Agenda 2063 Through The African Editors Forum**

10. On **15 July 2016**, the Chairperson participated in a Conference on “Popularizing Agenda 2063 Through The African Editors Forum,” where she participated in a panel discussion on the African Year of Human Rights with particular focus on Women’s Rights and gave a presentation that highlighted the empowerment of women, a theme which runs through the whole of Agenda 2063.

➤ **Ninth Meeting of the Bureaus of the Commission and the Court**

11. On **16 July 2016**, the Bureaus of the Commission and the African Court on Human and Peoples’ Rights (the Court) met on the margins of the Summit, where discussions were held on, among others, the preparations for the joint commemoration of Project 2016 in October 2016, the dates for the 5<sup>th</sup> Annual Joint Meeting between the two Institutions, referral of cases and the progress made regarding joint publications by the two Institutions.

➤ **The High Level Debate on the African Year of Human Rights with Particular Focus on the Rights of Women**

12. On **17 July 2016**, within the framework of the commemoration of the “**African Year of Human Rights with particular focus on the Rights of Women**,” the Chairperson introduced the theme of the Summit during the 27<sup>th</sup> Ordinary Session of the Assembly and gave a presentation on the situation of human rights in Africa.

13. However, although this presentation was supposed to be within the framework of a high level debate on the theme of the Summit, no debate was held on the theme.

**e. Fifth Annual Joint Meeting between the Commission and the Court**

14. From **19 to 22 September 2016**, the Chairperson attended and chaired a number of meetings during the Fifth Annual Joint Meeting between the Court and the Commission, held at the seat of the Court, in Arusha, Tanzania. During the meetings, discussions were held on the progress of, among others, the establishment of the Legal Aid Fund, the creation of the Pan African Human Rights Institute, and 2016 celebrations to mark the African Year of Human Rights.

15. The Chairperson also attended brief meetings with the new Bureau of the Court, and Ms. Karen Pluberg, Director, GIZ.

**f. Meetings, Seminars and Conferences attended**

➤ **African Regional Conference of the Open Government Partnership**

16. From **05 to 06 May 2016**, the Chairperson participated in the African Regional Conference of the Open Government Partnership, held in Cape Town, South Africa,

where she gave a statement during the opening ceremony focusing on the topic “Open Government for Sustainable Development in Africa.”

➤ **Interactive Dialogue on the Human Rights Situation in South Sudan**

17. On **22 June 2016**, the Chairperson participated in an interactive dialogue on the human rights situation in South Sudan, during the thirty-second session of the United Nations Human Rights Council, in Geneva, Switzerland

➤ **Meeting of the Honorary Champions of the Guidelines for combating sexual violence and its consequences**

18. On **22 August 2016**, the Chairperson attended and participated in the first meeting of the Honorary Champions of the Guidelines for combating sexual violence and its consequences, held in Johannesburg, South Africa. The meeting was convened by the International Federation for Human Rights (FIDH), Lawyers for Human Rights and in collaboration with the Commission’s Special Rapporteur on the Rights of Women in Africa, Commissioner Lucy Asuagbor, with the aim of strengthening the capacity of African Governments and civil society to combat sexual violence and protect victims.

19. The Chairperson gave a presentation during the opening session on strengthening cooperation between the Commission and other mechanisms of the African Union, the United Nations and Civil Society Organizations.

➤ **FIDH Triennial Congress’ International Forum**

20. From **23 to 24 August 2016**, the Chairperson attended and participated in the FIDH Triennial Congress’ International Forum which was convened under the theme of

**“Fighting back to defend and sustain Human rights / addressing the closing space for civil society,”** held in Johannesburg, South Africa.

21. During this conference, the Chairperson gave a presentation which highlighted the challenges faced in defending women’s rights within the African inter-governmental arena, and identified the dynamics in addressing the reluctance of State Parties in defending women’s sexual and reproductive rights.

➤ **16<sup>th</sup> Annual Regional Seminar on International Humanitarian Law of the International Committee of the Red Cross**

22. From **25 to 26 August 2016**, the Chairperson participated in the 16<sup>th</sup> Annual Regional Seminar on International Humanitarian Law, convened by the International Committee of the Red Cross (ICRC). Discussions at this Seminar focused on the need for protection of persons and properties during times of armed conflict, in addition to proposing various means to enhance protection.

23. The Chairperson also addressed the participants at the august gathering during the closing dinner on 25 August, where she highlighted the need for protection of a section of the population often deliberately targeted during armed conflict: that is journalists.

➤ **Introductory Course for Judges in Africa**

24. From **10 to 14 October 2016**, the Chairperson participated in a Workshop convened by the Judicial Institute for Africa of the University of Cape Town, in Cape Town, South Africa. The Workshop was convened with the aim of developing a broad knowledge of Human Rights Law at an international, regional and national level among Judges in Africa. During the Workshop, the Chairperson gave a presentation on “African Regional and Sub-Regional Judicial and Quasi-Judicial Mechanisms.”

➤ **Meeting of the Working Group on Specific Issues Relevant to the Work of the Commission**

25. From **17 to 19 October 2016**, Commissioner Tlakula chaired a meeting of the Working Group on Specific Issues Related to the Work of the Commission (the Working Group), in Banjul, The Gambia.

26. The Working Group was established by the Resolution on the Creation of a Working Group on Specific Issues Relevant to the Work of the Commission,<sup>2</sup> adopted by the Commission during its 37<sup>th</sup> Session, which took place in Banjul, The Gambia, from 27 April to 11 May 2005.

➤ **Workshop on the implementation of AU Human Rights Organs' decisions by the African Human Rights Institutions**

27. From **19 to 21 October 2016**, the Chairperson participated in a Workshop convened by the Network of National Human Rights Institutions (NANHRI), in collaboration with the Department of Political Affairs of the African Union Commission, in Banjul, The Gambia.

28. The Workshop was convened to familiarize National Human Rights Institutions (NHRIs) with the implementation processes and procedures of the African Union's Human Rights Organs. During the Workshop, the Chairperson gave a presentation on implementation process of the African Commission on Human and Peoples' Rights.

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<sup>2</sup> ACHPR/Res.77 (XXXVII)05

## **Part II: Activities Undertaken as the Special Rapporteur on Freedom of Expression and Access to Information**

29. The activities undertaken during the reporting period are divided into two sections: **Section one** deals with activities carried out in the capacity as Special Rapporteur and in **Section two**, information is provided on letters of appeal forwarded to State Parties addressing issues of freedom of expression and access to information brought to the attention of the Special Rapporteur, in addition to Press Releases issued.

### **Section One - Activities undertaken as the Special Rapporteur**

➤ *Meeting on the Development of Guidelines on Access to Information and Elections and Access to Information and Record-Keeping for Africa*

30. From **24 to 27 May 2016**, as mandated by the Resolution on the Development of Guidelines on Access to Information and Elections in Africa,<sup>3</sup> and in collaboration with the Centre for Human Rights of the University of Pretoria, the Special Rapporteur convened an experts meeting on the development of two sets of guidelines on ATI and elections, and ATI and record keeping, in Pretoria, South Africa.

31. A follow up meeting of the Reference Group working on the development of Guidelines on ATI and Elections was held from **17 to 19 August 2016**, in Johannesburg, South Africa.

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<sup>3</sup> ACHPR/Res.307 (EXT.OS/ XVIII) 2015, adopted during the Commission's 18<sup>th</sup> Extra-Ordinary Session, held in Nairobi, Kenya from 29 July to 07 August 2015

➤ *Promotion Mission to the Democratic Republic of Congo*

32. From **06 to 12 August 2016**, the Special Rapporteur led a delegation from the Commission that undertook a joint promotion mission to the Democratic Republic of the Congo (DRC).
33. During the mission, the Delegation held discussions with state and non-state actors involved in the promotion and protection of human and peoples' rights in the DRC. The Delegation was also received by the African Union Facilitator for the national dialogue in the DRC, held meetings with civil society organisations and visited the Makala Central Prison. A press conference was organised at the end of the mission.
34. The Special Rapporteur wishes to express her gratitude to the Government of the DRC for authorizing and facilitating the conduct of the mission.

➤ *Workshop on Access to Information*

35. On **16 September 2016**, the Special Rapporteur participated in a workshop held under the theme "*Reflections: International Day for the Universal Access to Information,*" in Windhoek, Namibia, and gave a presentation on the legislative landscape on access to information in Africa, the obligations of AU Member States and the role of civil society in supporting the adoption and implementation of ATI laws in Africa.
36. Prior to this meeting, the Special Rapporteur had the opportunity to meet with **Honourable Stanley Mutumba Simataa**, the Deputy Minister of Information and Communication Technology of the Republic of Namibia, who is currently the President of the 38<sup>th</sup> session of the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO). During the meeting, the Special Rapporteur encouraged the Government of Namibia to expedite the process of the adoption of an ATI law.

37. The Special Rapporteur also met the Minister of Information and Communication and Technology, **Honorable Tjekero Tweya**. The meeting served as an opportunity to commend the Minister for initiating the process of consultation on a national ATI law, and to promote the use of the Model Law as an ideal.

➤ *Promotion Mission to the Republic of Angola*

38. From **03 to 07 October 2016**, the Special Rapporteur led a delegation from the Commission that undertook a promotion mission to the Republic of Angola.

39. During the mission, the delegation met senior officials and other stakeholders involved in human rights promotion and protection, in particular, representatives of Ministries and national institutions, civil society organizations, including women's organizations working in the area of women's rights, and other human rights stakeholders in Angola. At the end of the mission, the delegation presented its preliminary findings to the competent authorities and held a press conference.

## **Section Two - Letters of Appeal and Press Releases**

40. In line with her mandate to *"make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,"* the Special Rapporteur issued the following:

➤ *Letter of Appeal to the Republic of Zambia*

41. On **08 July 2016**, the Special Rapporteur sent a Letter of Appeal to **His Excellency Mr. Edgar Chagwa Lungu**, President of the Republic of Zambia, in response to

reports received regarding the closure of the Post Newspaper and the arrests of the newspaper owner, his wife and the newspaper's deputy managing editor.

42. The letter called on the Government of the Republic of Zambia to ensure that the Post Newspaper is re-opened in order to resume its operations, in view of the fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy, and as a means of ensuring respect for all human rights and freedoms as the country headed into a crucial election in August 2016.

➤ *Joint Appeal to the Kingdom of Lesotho*

43. On **15 July 2016**, the Special Rapporteur sent a joint Letter of Urgent Appeal, in conjunction with the Special Rapporteur on Human Rights Defenders in Africa, to **His Excellency Dr. Pakalitha Bethuel Mosisili**, Prime Minister of the Kingdom of Lesotho, regarding reports of suppression of freedom of expression and attacks on the media.

44. According to the reports received, **Ms. Keiso Mohloboli**, a Lesotho national, senior political and investigative journalist for Lesotho Times and Sunday Express, and **Mr. Lloyd Mutungamiri**, a Zimbabwean national and editor of the Lesotho Times, were both interrogated by military and police officials in order to get them to disclose their sources for an article which appeared in the Lesotho Times Issue. Following interrogation, Mr. Mutungamiri and Mr. Basildon Peta the newspaper's publisher were charged with defamation and *crimen injuria* on 05 July 2016.

45. Additional reports indicated that on Saturday 09 July 2016, Mr. Mutungamiri was shot by unknown gunmen upon arrival at his home at Ha Thamae Maseru.

46. The letter, *inter alia*, noted the importance of the protection of sources and other journalistic material as stipulated in **Principle XV** of the **Declaration of Principles on Freedom of Expression in Africa** (the Declaration), which states that media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes. The letter further called on the Government to provide clarification on the reports received, in addition to ensuring investigation of the attack on Mr. Mutungamiri in order to bring those responsible to justice.

➤ *Letter of Appeal to the Republic of South Sudan*

47. On **25 July 2016**, the Special Rapporteur sent a Letter of Appeal to **His Excellency Salva Kiir Mayardit**, President of the Republic of South Sudan in response to reports received regarding attacks on journalists in South Sudan.

48. According to information received, **Mr. Alfred Taban**, the Editor in Chief of the Juba Monitor, was arrested by agents of the National Security Services, on the afternoon of 16 July 2016, and taken to an unknown location. Reports indicated that the arrest was connected to an article recently published in the Juba Monitor on a recent communiqué by the Intergovernmental Authority on Development (IGAD). Additional reports indicated that on 11 July 2016, **Mr. John Gatluak Manguet Nhial**, a journalist who worked as a station coordinator and reporter with Naath FM in Leer, was shot dead by armed men at the Terrain Hotel in Juba, in what is believed to be an ethnically motivated killing. According to his family's representative, he and his colleagues were attacked at their work place, but only he was shot dead after being identified as a member of the Nuer tribe.

49. The letter reiterated the importance of the right to freedom of expression, in accordance with the African Charter and the Declaration, requested clarification on

the reports, in addition to calling for an investigation of the murder of **Mr. John Gatluak Manguet Nhial**, in order to bring those responsible to justice.

➤ *Joint Appeal to the Republic of Zimbabwe*

50. On **01 August 2016**, the Special Rapporteur sent a joint Letter of Urgent Appeal, in conjunction with the Special Rapporteur on Human Rights Defenders in Africa, to **His Excellency Robert Mugabe**, President of the Republic of Zimbabwe, concerning reports of threats to freedom of expression during the general mass protests in the country.

51. The letter requested clarification on the reports regarding threats to freedom of expression during the general mass protests in the country; specifically the interruption to the 'WhatsApp' messaging service; the vague threats issued to the Zimbabwean public about their use of social media; in addition to the lack of clarity as to what would constitute "abusive" and "subversive" material and "irresponsible use" of social media.

➤ *Letter of Appeal to the Republic of Burundi*

52. On **15 August 2016**, the Special Rapporteur sent a Letter of Appeal to **His Excellency President Pierre Nkurunziza**, President of the Republic of Burundi, in response to reports received regarding the disappearance of **Mr. Jean Bigirimana**, a Burundian journalist working for the newspaper *Iwacu*.

53. According to reports received, **Mr. Bigirimana** was last seen on 22 July 2016. It was alleged that *Iwacu's* editor-in-chief, **Mr. Leandre Sikuyavuga**, received an anonymous call soon after the disappearance, alerting him that **Mr. Bigirimana** had been taken by people believed to be members of the National Intelligence Services

(SNR), in Bugarama, Muramvya province, which is about 46 kilometers from Bujumbura.

54. The letter called on the Government to provide clarification concerning the reports of the disappearance of **Mr. Bigirimana**, in addition to the alleged involvement of National Intelligence Services (SNR) in his disappearance.

➤ *Congratulatory Letter to the Republic of Kenya*

55. On **09 September 2016**, the Special Rapporteur sent a letter to **His Excellency President Uhuru Kenyatta**, President of the Republic of Kenya, commending the adoption and signing into law of the **Access to Information Act** on Wednesday, 31 August 2016.

56. The letter noted that enactment of the law on access to information gave effect to Article 35 of the Constitution of the Republic of Kenya, which provides that every citizen has the right of access to information held by the State, in addition to information held by another person and required for the exercise or protection of any right or fundamental freedom.

57. Additionally, it was noted that the signing of the Bill into Law was in compliance with the extant provision of Article 1 of the African Charter, which makes it incumbent on State Parties to the African Charter to adopt legislative and other measures to give effect to the rights, duties and freedoms enshrined therein, in addition to the right to freedom of information is enshrined in Article 9(1) of the African Charter.

➤ **Press Release on the human rights situation in the Republic of South Sudan**

58. On **14 July 2016**, in response to the deteriorating human rights situation in the Republic of South Sudan, the Special Rapporteur issued a Press Release, on behalf of the Commission, calling for the cessation of the hostilities in South Sudan and the

implementation of and respect for the Addis Ababa Peace Agreement by all the parties involved.

*Responses received to the Letters of Urgent Appeal*

59. With regards to these Letters of Urgent Appeal transmitted during the current reporting period, the Special Rapporteur would like to indicate that the Commission has not, to date, received any response or clarification from the State Parties concerned, regarding the allegations contained in the letters of appeal.

### **Part III: Overview of the Status of Adoption of Access to Information Legislation in Africa**

60. Pursuant to the **Resolution on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa**, the Special Rapporteur is mandated to “*submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.*”<sup>4</sup> With regards to access to information, which is enshrined in Article 9(1) of the African Charter, the Special Rapporteur highlights the progress made in the adoption of access to information legislation on the continent since the last reporting period.
61. In 2010, when the process of the development of the Model Law on Access to Information in Africa began, only five (5) AU Member States had adopted access to information laws. As at September 2016, **nineteen (19)** had adopted such laws, including: Angola; Burkina Faso; Cote d’Ivoire; Ethiopia; Guinea; Kenya; Mozambique; Nigeria; Niger; Rwanda; South Africa; South Sudan; Sierra Leone; Sudan; Tanzania; Togo; Tunisia; Uganda; and Zimbabwe.<sup>5</sup>
62. In this regard, the Special Rapporteur wishes to commend Kenya for enacting the Access to Information Act on 31<sup>st</sup> August 2016.
63. In her Activity Report submitted during the 58<sup>th</sup> Ordinary Session, in May 2016, the Special Rapporteur noted that Ghana’s Parliament began consideration of the long awaited Right to Information Bill on 08 March 2016, and urged the Republic of Ghana to ensure its speedy adoption. However, the Special Rapporteur notes that this Bill has still not been adopted by Parliament.

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<sup>4</sup> See ACHPR/Res.122 (XXXXII) 07: Resolution on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa, adopted during the 42<sup>nd</sup> Ordinary Session of the African Commission that took place in Brazzaville, Congo from 15 to 28 November 2007

<sup>5</sup> “Status of Freedom of Information in Africa (legislation and ratification) as at September 2016,” Africa Freedom of Information Centre (AFIC), <http://africafoicentre.org/index.php/resources/reports-publications/219-au-status-of-ati-treaties-law-consts-sept-2016/file>

64. The Special Rapporteur would also like to note that 2016 marks the first celebration of **28 September** as the **International Day for Universal Access to Information**, following adoption of UNESCO Resolution (38 C/70) on **17 November 2015**. In commemoration of this important day, the Special Rapporteur held a seminar in Luanda, Angola, in recognition of the role played by Angola as a co-sponsor of the Resolution.

## Part V: Conclusion and Recommendations

65. The Special Rapporteur notes that, during this inter-session period she received several reports alleging violations of freedom of expression in various State Parties including: Burundi; Lesotho; South Sudan; Zambia; and Zimbabwe. A number of these reports alleged harassment of journalists and other media practitioners, in violation of the African Charter and the Declaration.
66. Whereas clarification on the details contained in the allegations was sought from the State Parties concerned, the Special Rapporteur notes that no formal response has been received at the Commission concerning the allegations.
67. The Special Rapporteur reiterates her call to State Parties to repeal all criminal defamation laws, and to further investigate and punish perpetrators of murder, kidnapping, torture, harassment and intimidation of journalists, in accordance with the Declaration and Article 9 of the African Charter.
68. The Special Rapporteur also notes with concern, the emerging practice of States Parties, increasingly during the electoral period, of interrupting or limiting access to telecommunication services such as the Internet, social media and messaging services.
69. In this regard, the Special Rapporteur wishes to highlight the Declaration of Principles of Freedom of Expression in Africa, which underscores the vital nature of freedom of expression and reaffirms the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms, and lastly indicates that laws and customs that repress freedom of expression are a disservice to society. Furthermore, **Principle II (1) and (2)**, on interference with freedom of expression, provide that, *“No one shall be subject to arbitrary interference with his or her freedom of*

*expression,” and further, “Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.”*

70. Accordingly, the Special Rapporteur calls on State Parties to cease the practice of interrupting or limiting access to telecommunication services in general, and specifically during the electoral period.
71. The Special Rapporteur also calls on State Parties holding elections in the coming months to ensure the protection of journalists and media practitioners, in accordance with the African Charter and the Declaration.
72. Lastly, the Special Rapporteur calls on State Parties with pending ATI bills to ensure adoption and implementation of these important laws, and reiterates her call to the Republic of Ghana to adopt the Right to Information Bill, which has been pending for several years.