INTER-SESSION ACTIVITY REPORT

OF

ADVOCATE. PANSY TLAKULA
CHAIRPERSON
&
SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

(November 2016 to May 2017)

Presented during the 60th Ordinary Session of the African Commission on Human and Peoples’ Rights

Niamey, Republic of Niger
08 - 22 May 2017
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 November 2016 and May 2017.

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).¹

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.

¹ This Special Mechanism was established during the 36th 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 (XXXXV) 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 the members of the African Commission on Human and Peoples’ Rights (the African Commission), in addition to supervising the work of the Secretariat during the period under review. In this regard, the necessary guidance was provided on various issues.

b. Participation in the meetings of African Union (AU) policy organs

5. A delegation from the Commission comprised of the Chairperson, the Vice-Chairperson Commissioner Soyata Maiga, in addition to Commissioners Lucy Asuagbor, Yeung Kam John Yeung Sik Yuen and Solomon Dersso, attended and participated in a number of meetings during the 28th Summit of the African Union (AU). The delegation was supported by staff of the Secretariat.

6. The Commission’s delegation attended meetings during the 29th Pre-Summit Consultative Meeting on Gender Mainstreaming in the African Union, held from 22 to 23 January 2017, in addition to the 9th African Union Gender Pre-Summit, held from 24 to 27 January 2017. The delegation also attended the 33rd Ordinary Session of the Permanent Representatives Committee (PRC), the 30th Ordinary Session of the Executive Council, from 25 to 27 January 2017 and the 28th Ordinary Session of the Assembly of Heads of State and Government (the Assembly), which were held from 22 to 31 January 2017.
7. During the 33rd Ordinary Session of the PRC, the Chairperson presented the Commission’s 41st Activity Report, which was subsequently adopted and authorized for publication.

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

8. The Bureau of the Commission also had the opportunity to meet with the following:

- **Ambassador Araia Desta**, the Permanent Representative of the State of Eritrea to the African Union and United Nations Economic Commission for Africa;
- **H.E. Karen Elleman**, the Minister for Equal Opportunities and Nordic Cooperation of Denmark;
- A delegation from the African Peer Review Mechanism (APRM) led by **Hon. Brigitte Mabandla**, a member of the African Peer Review Mechanism (APRM) Panel of Eminent Persons, and **Professor Eddy Maloka**, the CEO of the APRM Secretariat;
- **Mr. Mahamane Cisse-Gouro**, the Chief of the Africa Branch in the Office of the High Commissioner for Human Rights (OHCHR); and
- **Ambassador Ranieri Sabatucci**, the Head of the European Union (EU) Delegation to the African Union.

d. The 21st Extra-Ordinary Session of the Commission

9. From **23 February to 04 March 2017**, I chaired the Commission’s 21st Extra-Ordinary Session, which was held in Banjul, The Gambia. The Session was convened to deal with Communications and other urgent and outstanding matters from previous Sessions.
10. The Session commenced with a courtesy call on the President of the Republic of The Gambia, H.E. Adama Barrow, and included a working meeting on the human rights situation in The Gambia with the Minister of Foreign Affairs, H.E. Ousainou Darboe.

11. The Commission also held discussions with delegations from the APRM, in addition to the World Bank and the African Development Bank.

12. During the Extra-Ordinary Session, the Commission considered a number of Communications, being seized of eight (8) and granting five (5) requests for provisional measures, discussed and adopted Concluding Observations, Resolutions and Guidelines, in addition to adopting the Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples’ Rights under the theme “Women’s Rights: Our Collective Responsibility.”

e. Meeting of the Working Group on Specific Issues Relevant to the Work of the Commission


14. 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,² adopted by the Commission during its 37th Session, which took place in Banjul, The Gambia, from 27 April to 11 May 2005.

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² ACHPR/Res.77 (XXXVII)05
Part II: Activities Undertaken as the Special Rapporteur on Freedom of Expression and Access to Information

15. This section deals with activities related to freedom of expression and access to information carried out by the Special Rapporteur during the reporting period.

> **Southern Africa Consultation on the Draft Guidelines on ATI and Elections in Africa**

16. From **14 to 15 March 2017**, the Special Rapporteur convened the Southern Africa Regional Consultation Meeting on the *Draft Guidelines on Access to Information and Elections in Africa*, in partnership with the University of Pretoria and the Universidade Eduardo Mondlane, in Maputo, Mozambique.

17. Participants in the Consultation included, among others, representatives from National Human Rights Institutions, Members of Parliament, members of National Election Commissions, in addition to representatives from academic institutions and civil society organizations from Southern Africa.

**Letters Issued**

18. In line with the 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:

> **Congratulatory Letter to the President of the United Republic of Tanzania**

19. On **22 February 2017**, the Special Rapporteur sent a letter to His Excellency President John Magufuli, President of the United Republic of Tanzania, commending the adoption and signing into law of the Access to Information Act.
20. On 25 February 2017, the Special Rapporteur sent a letter to His Excellency President Peter Mutharika, President of the Republic of Malawi, commending the adoption and signing into law of the Access to Information Law.

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

21. 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 report on “the status of the enjoyment of the right to freedom of expression and access to information in Africa.”

22. 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.

23. 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 April 2017, twenty (20) had adopted such laws, including: Angola; Burkina Faso; Cote d’Ivoire; Ethiopia; Guinea; Kenya; Malawi; Mozambique; Nigeria; Niger; Rwanda; South Africa; South Sudan; Sierra Leone; Sudan; Tanzania; Togo; Tunisia; Uganda; and Zimbabwe.

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24. In this regard, the Special Rapporteur wishes to commend Malawi and Tanzania for recently enacting laws on access to information, thereby ensuring that citizens realize their right to fully participate in public decision-making processes and enhances their ability to fully comprehend and abide with the policies, plans and processes of Government, all of which contribute to strengthening democratic processes in any given country.

Part IV: Conclusion and Recommendations

25. In light of the importance of the right of access to information as an essential tool for strengthening democracy, good governance and citizen participation in public affairs, and in light of the fact that currently there are no regional standards on the role of access to information in the electoral process, in 2016 the Special Rapporteur initiated the process of developing draft Guidelines on Access to Information and Elections.

26. This initiative was mandated by the African Commission through Resolution on the Development of Guidelines on Access to Information and Elections in Africa (ACHPR/Res.307 (EXT.OS/ XVIII) 2015), adopted during the 18th Extra-Ordinary Session held in Nairobi, Kenya from 29 July to 07 August 2015.

27. These draft Guidelines will soon be uploaded on the African Commission’s website, in order to receive comments on the text from all the Commission’s stakeholders. Accordingly, the Special Rapporteur calls on State Parties, NHRIs, NGOs and other interested parties, to submit comments, suggestions and any other relevant information to the African Commission.

28. Once adopted, it is hoped that the Guidelines on Access to Information and Elections will make a meaningful contribution to peaceful, free, fair and transparent
elections, referenda and participatory governance in Africa, and further contribute to the overall maintenance of peace and security in Africa.

29. The Special Rapporteur also reiterates the following recommendations to State Parties:

- Adopt access to information legislation in line with the regional and international standards elaborated in the Model Law on Access to Information in Africa, and ensure effective implementation of these laws;
- Popularize the Declaration of Principles on Freedom of Expression in Africa (the Declaration) at the national level;
- Repeal criminal defamation laws or insult laws which impede freedom of speech, as stipulated in the African Charter, the Declaration and the Resolution on Repealing Criminal Defamation Laws in Africa (ACHPR/Res.169 (XLVIII) 10);⁴
- Refrain from interrupting or limiting access to telecommunication services such as the Internet, social media and messaging services, especially during the electoral period, as noted in Resolution on the Right to Freedom of Information and Expression on the Internet in Africa (ACHPR/Res. 362(LIX) 2016);⁵
- Commemorate the International Day for Universal Access to Information on 28 September in light of the importance of this right.

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⁴ Adopted during the 48th Ordinary Session, held in Banjul, The Gambia, from 10 to 24 November 2010
⁵ Adopted during the 59th Ordinary Session, held Banjul, The Gambia, from 21 October to 04 November 2016