INTER-SESSION ACTIVITY REPORT

OF

COMMISSIONER JAMESINA ESSIE L. KING

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

(May to November 2021)

Presented during the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights

Virtual Session
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INTRODUCTION

1. This report is presented in accordance with Rules 25(3) and 64 of the Rules of Procedure (2020) of the African Commission on Human and Peoples’ Rights (the Commission), and covers activities carried out during the intersession period between May to November 2021.

2. The Report details the activities which I undertook in my capacity as a member of the Commission, a member of the Working Group on Indigenous Populations/Communities in Africa, the Chairperson of the Committee on Resolutions, and as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur). Additionally, this Report also serves as a handover report, providing an overview of the work which I undertook during my tenure at the Commission.

3. The Report is structured in four parts as follows:

- **Part I**: Activities undertaken in my capacity as a member of the Commission, as the Chairperson of the Committee on Resolutions, and as member of the Working Group on Indigenous Populations/Communities and Minorities in Africa;

- **Part II**: Activities undertaken in my capacity as the Special Rapporteur;

- **Part III**: Report highlighting the work done during my tenure at the Commission; and

- **Part IV**: Challenges, Recommendations and Conclusions.
I. Activities undertaken as a member of the Commission, and as a member of the Working Group on Indigenous Populations/Communities and Minorities in Africa

Activities undertaken as a member of the Commission

➢ Participation in Extra-Ordinary Sessions of the Commission

4. During the intersession period I participated in the 32nd, 33rd and 34th Extra-Ordinary Sessions, held on 12 May, 12 to 19 July and 24 August respectively. These Sessions, which were held virtually, were convened in accordance with Rule 29 of the 2020 Rules of Procedure.

5. In my capacity as the Chairperson of the Committee on Resolutions, I chaired the Committee’s meeting during the 33rd Extra-Ordinary Session in July, and then led the Commission’s consideration and adoption of three (3) Resolutions, which were subsequently finalized and uploaded to the Commission’s website.

➢ Participation in Other Activities


Separation, Divorce Or Annulment Of Marriage [Article 7(d)], which was organized by Initiative for Strategic Litigation in Africa.

8. On **29 September**, I participated in the 9th Annual Meeting between the Court and the African Court on Human and Peoples’ Rights, which was held virtually, where discussions were held on how to further strengthen the complementarity roles, and to deepen human rights promotion and protection on the continent.

> **Interventions as country rapporteur**

9. On **27 August**, in my capacity as the country rapporteur for the human rights situation in The Gambia, I issued a Letter of Appreciation to **H.E. Mr Adama Barrow**, President of the Republic of The Gambia, commending the adoption and signing of the **Access to Information** bill into law on 25 August 2021. The letter noted the significance of enacting the important law, which would give effect to Article 9 of the African Charter on Human and Peoples’ Rights (the African Charter), which states that “**every individual shall have the right to receive information.**”

10. On **04 October** I initiated a letter of appeal which was transmitted to **H.E. Mr Adama Barrow**, expressing concern on reports received which indicated that the political party of former President, the APRC party, had reached an agreement with the ruling party’s National Peoples’ Party, to support the NPP’s Presidential candidate in the forthcoming presidential election in December 2021. The letter expressed concern regarding the effect of this agreement on the possibility of prosecuting the former President for alleged human rights violations, after the final report of the Truth, Reconciliation and Reparations Commission is submitted to the Government.
11. On 23 October I initiated a letter of appeal which was transmitted to H.E. Mr Emmerson Mnangagwa President of the Republic of Zimbabwe, in response to reports indicating that the convoy of Mr. Nelson Chamisa, the opposition leader, was attacked when he visited two provinces in Zimbabwe. It is reported that Mr. Chamisa car was pelted with rocks in travelled to Masvingo, and when he travelled to Manicaland, gun shots were allegedly fired at his vehicle.

Activities undertaken as a member of the Working Group on Indigenous Populations/Communities and Minorities in Africa

12. From 18 to 19 May, I participated in the first Internal Meeting of the Working Group to discuss matters of interests to the Working Group, including its 20th Anniversary and Roadmap. The Meeting also discussed terms of reference, scope and methodology of the Working Group’s Study on the ‘Impact of COVID-19 on Indigenous Populations/Communities in Africa.’

13. From 27 to 28 October, I chaired the second internal meeting of the Working Group, on behalf of the Working Group’s Chairperson, Commissioner Alexia Amesbury. Discussions were held on the Working Group’s Road Map for 2022, and a decision was taken to include the human rights situations of indigenous populations/communities and minorities on the agenda of future internal meetings.

➢ Interventions issued as the Vice Chairperson of the Working Group

Joint Letter of Appeal on the human rights situation in the Democratic Republic of Congo

14. On 12 August 2021, in collaboration with the country rapporteur on the human rights situation in the Democratic Republic of Congo (DRC), a Joint Letter of Appeal was transmitted to H.E Félix Tshisekedi, President of the DRC, in response to
reports received alleging that two pygmies and six militia were killed in an army
operation aimed at dislodging pygmies from the Kahozi-Biega Park, a habitat of
lowland gorillas, in the east of the DRC, on 23 July 2021.

Joint Letter of Appeal on the human rights situation of the Amazigh in the Peoples’ Democratic
Republic of Algeria

15. On 27 September, in collaboration with the country rapporteur on the human rights
situation in the People’s Democratic Republic of Algeria (Algeria), sent a joint letter
of Appeal to H.E. Abdelmadjid Tebboune, President of Algeria, in response to
allegations received that the Government classified an Amazigh political movement
for the self-determination of Kabylia, which has been in existence for 20 years in the
region of Kabylia, and all political movements calling for an autonomous status for
Kabylia, as “terrorist movements.” Reports alleged that the police had arrested
members of these movements, and further that at least one hundred and sixty
Kabyle were imprisoned without trial.
II. Activities undertaken as the Special Rapporteur

16. During the intersession period I undertook a number of activities and issued a number of interventions in line with my mandate as the Special Rapporteur.

- **Commemoration of World Press Freedom day 2021**

17. On **30 April**, I gave the key note address during the Africa Forum session, which was held as part of the virtual commemoration for **World Press Freedom day 2021**, celebrated annually on **03rd May**, hosted by UNESCO. The statement noted that celebration of **World Press Freedom day** has its origins in a UNESCO conference held in Windhoek, Namibia in 1991, and noted that 2021 marked the thirty anniversary of the conference, where the seminal **Windhoek Declaration for the Development of a Free, Independent and Pluralistic Press** was adopted.

- **Participation as a Guest speaker at Digital Rights and Inclusion Media Fellowship**

18. On **06 September**, I served as a guest speaker on the status of digital rights on the continent organized by Centre for Human Rights and Paradigm Initiative in its Digital Rights and Inclusion Media Fellowship (DRIMF).

- **#Tech4Rights campaign**

19. On **20 September**, I participated in #Tech4Rights campaign organized by the Centre for Human Rights and recorded a video conversation on access to information and freedom of expression online based on the revised **Declaration of Principles on Freedom of Expression and Access to Information in Africa** (the Declaration).
20. On 28 September, I convened a virtual webinar to commemorate the International Day for Universal Access to Information celebrated annually on this date. The webinar served as a forum to discuss the revised Declaration, which was adopted by the Commission during its 65th Ordinary Session, held in November 2019.

21. During the webinar, presentations were given on the various principles in the Declaration, in relation to freedom of expression, access to information, and the promotion and protection of these rights in the digital age. Lastly, in my closing remarks, I highlighted the principles in relation to implementation of the Declaration.

22. The webinar was conducted in the four (4) working languages of the African Union, and included participants from a cross section of the Commission’s core stakeholders, including States Parties, National Human Rights Institutions, media councils, civil society organizations (CSOs), and students affiliated with various academic institutions, among others.

23. On 30 September, I gave an opening statement during in a Panel on Encryption Trends in Africa and Implications for Digital Rights, which was held during a virtual Forum on Internet Freedom in Africa organised by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA). In my statement, I noted that the use of encryption in digital communications is an essential aspect in the enjoyment of freedom of expression and privacy, especially online, and in this regard made reference to Principle 40(1) of the Declaration which provides that
“everyone has the right to privacy, including the confidentiality of their communications and the protection of their personal information.”

- **Side event on Somalia**

24. On **07 October**, I participated in a virtual side event on Somalia, convened by the National Union of Somali Journalists in collaboration with the UN Independent Expert on the Human Rights Situation in Somalia, Ms. Isha Dyfan. The title of the webinar was **Spotlight on Media Freedom and Safety of Journalists in Somalia**, with the theme on Media Freedom, Freedom of Expression and Human Rights in Fragile Contexts. I gave a presentation on the Commission’s mandate, in addition to highlighting interventions which have been issued by the Commission on Somalia, including Resolutions and Press Releases.

- **Interventions issued as the Special Rapporteur**

25. In line with my 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 following were issued during the intersession period:

- **Press Releases**

  **Press statement on the commemoration of World Press Freedom Day**

26. On **03 May**, I issued a press release commemorating **World Press Freedom Day**, which noted that substantial gains had been made in the field of media freedom in Africa in the past 30 years, including the marked increase in privately owned media, the repeal of criminal defamation and insult laws, adoption of access to information
legislation, among others. The experiences of journalists and other media practitioners in Africa was also noted, observing that while the state of media freedom has greatly improved on the continent, cases of murder, enforced disappearance, arrest, harassment, intimidation and other human rights violations have persisted, often occurring with impunity.

*Press Statement on Letter of Urgent Appeal to the Federal Republic of Nigeria*

27. On **09 June**, in collaboration with the country rapporteur on the human rights situation in Nigeria, a statement was issued following transmission of a joint letter of urgent appeal regarding the indefinite suspension of Twitter’s operations in Nigeria and the threat of prosecution of Nigerians using the platform.

*Press release on the murder of journalist Joël Musavuli and the safety of journalists in the Democratic Republic of Congo*

28. On **23 August**, a Joint Press Statement was issued in collaboration with the country rapporteur on the human rights situation in the DRC, in response to the murder journalist Joël Musavuli on Saturday 14 August 2021 of, in Ituri. The Statement called on the Government to take urgent measures to ensure the safety and physical integrity of journalists and their families, especially those who are most at risk.

- **Letters of Appeal**

*Letter regarding the proposed amendments to the ICT Act, on regulating the use and addressing the abuse and misuse of Social Media in Mauritius”*

29. On **03 June**, a letter was transmitted to H.E. **Darsanand Balgobin**, Minister of Information Technology, Communication and Innovation of the Republic of
Mauritius, with regards to the consultation on the Mauritius ICT Act, which had been proposed by the Information and Communication Technologies Authority of Mauritius. The Letter requested the Government of Mauritius to take into account the provisions of the Declaration, specifically Part IV which addresses freedom of expression and access to information on the internet, during the review process of the ICT Act. Additionally, the revised Declaration was transmitted to the Government of Mauritius.

Joint Letter of Appeal regarding violations of freedom of expression and access to information in Nigeria

30. On 09 June, in collaboration with the country rapporteur on the human rights situation in Nigeria, a letter was transmitted to H.E. Muhamadu Buhari, President of the Federal Republic of Nigeria, with respect to the recent indefinite suspension of Twitter’s operations in Nigeria.

Letter of Appeal regarding violations of freedom of expression and access to information in Eswatini

31. On 22 October, I initiated a letter of appeal to H.E. Cleops Dlamini, Prime Minister of the Kingdom of Eswatini, in response reports which indicated that the internet was recently partially shut-down for at least four hours during pro-democracy protests. Specifically, reports suggest that all mobile operators in the country were ordered to shut down the internet, with all licensed operators ordered to suspend access to social networking sites, mobile network operators and other networks.

- Collaboration with partners
32. In collaboration with the Africa Freedom of Information Centre, I contributed with a foreword to the Simplified Guidelines on Access to Information and Elections in Africa, which will be launched soon.

33. In collaboration with Publish What You Pay, I issued a quote via twitter, which called on Governments and enterprises to ensure the comprehensive disclosure of all contracts relating to the extraction of oil, gas and mineral resources. The quote was issued on 28 September, in commemoration of the International Day for Universal Access to Information.
III. Report highlighting the work done during my tenure at the Commission

34. Following my election as a Member of the Commission in 2015, I was sworn in during the 57th Ordinary Session held in November 2015. The following information provides an overview of the work I accomplished during my tenure at the Commission.

Country Rapporteur

35. In my capacity as the country rapporteur, I led the Commission’s review of the following Periodic Reports:

(i) The 6th Periodic Report of the Republic of Namibia during the 58th Ordinary Session in April 2016;
(ii) The initial combined report of the State of Eritrea during the 62nd Ordinary Session in May 2018;

Promotion missions

36. During my tenure as a Member of the Commission, I participated in the following promotion missions:

(i) Fact finding mission to the Republic of Burundi, from 07 to 13 December 2015;
(ii) Promotion mission to the Republic of Côte d’Ivoire, from 26 September to 04 October 2016;
(iii) Promotion mission to the Republic of The Gambia, 19 to 24 April 2017;
(iv) Promotion Mission to the Republic of Guinea Bissau, 16 to 20 July 2018.
37. Additionally, from 26 to 28 August 2019, I undertook an advocacy country visit to the Kingdom of Eswatini to meet the victims of forced evictions and participate in a workshop on the right to adequate housing.

Membership in Special Mechanisms

38. During my tenure at the Commission, I was appointed to serve in the following special mechanisms:

**Appointed during the 57th Ordinary Session in November 2015**
- Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
- Member of the Working Group on the Rights of Older Persons and People with Disabilities in Africa;
- Member of the Working Group on Indigenous Populations/Communities in Africa;
- Working Group on Extractive Industries the Environment and Human Rights Violations;
- Member of the Working Group on Communications.

**Appointed during the 61st Ordinary Session in November 2017**
- Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa;
- Chairperson of the Committee on Resolutions;
- Member of the Working Group on Indigenous Populations/Communities in Africa;

**Appointed during the 66th Ordinary Session in July 2020**
- The Special Rapporteur of Freedom of Expression and Access to Information in Africa;
- Chairperson of the Committee on Resolutions;
- Vice-Chairperson of the Working Group on Indigenous Populations/Communities in Africa.

Norm elaboration

39. In my capacity as the Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa, I led the process of developing the following:

(i) The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security, which was adopted by the Commission during its 25th Extra-Ordinary Session in February 2019. The adopted Draft was transmitted to the Department of Social Affairs of the African Union Commission for continuation of the AU internal processes prior to its adoption by the AU Assembly of Heads of State and Government.

(ii) The Guidelines on the Right to Water, which was adopted by the Commission during the 26th Extra-Ordinary Session in July 2019. On 01 July 2020, the Guidelines were published on the Commission’s website, in addition to which I issued a press statement on the importance of the Guidelines especially in assisting States to develop appropriate preventive measures in addressing the COVID-19 pandemic.

(iii) Initiation of norm development on States’ obligations to regulate private actors involved in the provision of social services - Following adoption of Resolution 434 on the Need to Develop Norms on States’ Obligations to Regulate Private Actors Involved in the Provision of Social Services, during the 27th Extra-Ordinary Session held in March 2020, the Working Group on Economic, Social and Cultural Rights and selected partners held two virtual preparatory
meetings on 08 May and 05 June 2020 respectively, to discuss the norm to be developed, its scope and structure.

Achievements as the Special Rapporteur

40. I assumed the mandate of Special Rapporteur in July 2020 during the COVID-19 pandemic. This situation curtailed the mechanism’s regular activities, which were largely held in person.

41. In spite of this however, the mandate on freedom of expression and access to information made good progress towards protecting and promoting freedom of expression and access to information in Africa, during my tenure. This progress is particularly marked by dissemination of the revised Declaration, in order to popularize the principles contained therein.

42. The following is a summary of the major achievements of the special mechanism:

- Dissemination of the Declaration

43. The revised Declaration was officially launched during a webinar on 19 May 2020. As a result of the COVID-19 pandemic, I was unable to hold any physical meetings to disseminate the Declaration. However, as earlier reported, during the virtual event to observe the International day for Universal Access to Information, the commemorative event was used a forum to raise awareness on, unpack and disseminate the revised Declaration. Additionally, during the webinar, the Declaration was shared with the participants, in all four AU languages.
44. Additionally, the revised Declaration is routinely annexed to letters of urgent appeal sent to States Parties, in order to ensure its dissemination with these crucial stakeholders of the Commission.

- Participation in webinars with partners

45. During my tenure, I have participated in several virtual events such as launches of reports, in addition to various webinars convened to raise awareness on various issues related to freedom of expression and access to information, including data privacy, the safety of journalists, and media freedom during elections, among others.

- Issuing letters of appeal and press releases

46. A crucial aspect of the special mechanism’s mandate are the interventions made in response to reports of violations of the right to freedom of expression and access to information, which have been brought to the Special Rapporteur’s attention. Usually this is in the form of Letters of Urgent Appeal, sent to the Government of the concerned State Party, requesting clarification on the allegations, and proposing action to address them.

47. During my tenure as the Special Rapporteur, I have issued ten (10) Letters of Urgent Appeal to the States Parties of the African Charter. Generally, the Special Rapporteur expresses concerns on the allegations received, calls for action from the Government, in addition to urging action to ensure protection of the victims and investigation of the violations.

48. Whereas this is an effective way of making interventions where violations of the right to freedom of expression have been brought to the attention of the Special Rapporteur, it is noted that the majority of States Parties do not respond to the Letters of Appeal,
which severely limits the Special Rapporteur’s ability to engage further on the alleged violations.

49. Additionally, I issued two letters of appreciation which commended the States Parties concerned on legislative measures which had been implemented in order to give effect to Article 9 of the African Charter.

50. Lastly, during my tenure as the Special Rapporteur I issued seven (7) press releases; of note being the Press statement on the commemoration of the International Day for Universal Access to Information (28 September 2020) and the Press statement on the commemoration of World Press Freedom Day (03 May 2021).

- Resolutions

51. Another method used by the special mechanism to raises awareness on freedom of expression and access to information is by proposing Resolutions for adoption during the Sessions of the Commission. During my fairly brief tenure as the Special Rapporteur, I proposed adoption of Resolution 468 on the Safety of Journalists and Media Practitioners in Africa, which was adopted by the Commission during its virtual 67th Ordinary Session in December 2020. This Resolution, inter alia, called on States Parties to ensure the safety of journalists and other media professionals, and create a conducive environment for them to practice their profession, repeal criminal defamation laws or insult laws, review laws related to the guarantee of freedom of expression, in addition to ensuring that the right to express oneself through the media shall not be subject to undue legal restrictions.
IV. Challenges, Recommendations and Conclusions.

Challenges

52. Whereas the Mechanism has made a lot of progress in protecting and promoting freedom of expression and access to information in Africa, I would like to note the following challenges:

i. The existence of libel and defamation laws in a number of countries in Africa, which curtail the right to freedom of expression;

ii. The relatively slow pace of adoption of national legislation on access to information in Africa;

iii. Persisting reports of attacks against journalists and other media practitioners including murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors;

iv. Increased reports of attacks on media houses, resulting in destruction of property and equipment;

v. Increasing reports of restrictions to the internet, blocking social media platforms or other communications services, or alternatively slowing down internet speeds in Africa countries;

vi. Lack of responses from State Parties to Letters of Appeal seeking information on alleged violations of Article 9 of the African Charter;

vii. Lack of adequate information in State Periodic Reports on measures taken to ensure realization of Article 9 rights;

viii. The need for increased collective commemoration of annual dates related to Article 9 rights.
Recommendations

53. In light of these areas of concern, I would like to make the following recommendations to the State Parties:

General Recommendations

i. Increase interaction with the Commission, including through authorizing promotion missions and responding to letters of appeal;

ii. Adopt the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security;


Freedom of Expression and Access to Information

i. Urgently repeal criminal defamation laws or insult laws which impede freedom of speech, as stipulated in the African Charter, the Declaration and the Resolution 169 on Repealing Criminal Defamation Laws in Africa;

ii. 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 establish mechanisms in place to ensure their effective implementation;

iii. Ensure the protection of journalists and media practitioners, investigate incidents of violations of their rights,

iv. Establish a safe environment in which journalism can be practiced, including by promptly investigating incidents of attacks on media houses;
v. 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 revised Declaration and **Resolution 363 on the Right to Freedom of Information and Expression on the Internet in Africa**;

vi. Respond to letters of appeal from the Special Rapporteur, providing information and clarification on the alleged violations of Article 9 rights;

vii. Provide sufficient information on the measures taken to ensure Article 9 rights, including by referring to the principles contained in the revised Declaration;

viii. Commemorate the following annual days on Article 9 rights:
- **World Press Freedom Day** on 03 May;
- **International Day for Universal Access to Information** on 28 September;
- **International Day to End Impunity for Crimes Against Journalists** on 02 November;

ix. Popularize the revised Declaration at the national level, in addition to other soft law documents on freedom of expression and access to information.

**Conclusion**

54. In closing, allow me to express my gratitude to the Chair and Vice Chair of the Commission, in addition to all members of the Commission, both past and present, for the collegial spirit in which we worked together. I would also like to extend my thanks to the members of the Secretariat, including the former Secretary to the Commission, the current Acting Secretary and all Legal Officers and African Union Youth Volunteers who provided technical support to me during my tenure at the Commission.

55. I would be remiss if I did not thank my colleagues and experts who were members of the various mechanisms – it was a real pleasure to work with you all. Additionally, to
all stakeholders, such as CSOs, who partnered with me on various areas of human rights – I sincerely thank you all.

56. Allow me to thank the State Parties, in particular the countries I was mandated to monitor, including The Gambia, Zimbabwe, Eritrea, Namibia, Eswatini and Somalia – I remain hopeful for improvement in their human rights situation and engagement with the Commission. I also need to thank my country, the Republic of Sierra Leone, for nominating me, in addition to those who elected me, for giving me an extraordinary opportunity to serve the continent.

57. In closing, allow me to note that I welcome the progress and efforts to give effect to the rights in the African Charter; however this a continuous journey and I will hope that all stakeholders will increase efforts to fulfill the collective responsibility to ensure that these rights are fully and meaningfully enjoyed by all.

58. As I leave, I have the assurance that the Commission will continue to make strides as it implements its mandate and I wish my successor and colleagues all the very best.

59. May God bless you all and may God bless Africa.

COMMISSIONER JAMESINA ESSIE L. KING
SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

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Comments from presentation of the Report: Monday 22 November
- Defend Defenders;
- Maat for Peace
Closing remarks – issues raised – arbitrary arrest, blocking of internet, excessive use of force, digital restrictions. Specific cases related to South Sudan – would be followed up by the incoming SR and the country rapporteur.
Urge States Parties to comply with Art 9, and to adopt laws on ATI.