ACTIVITY REPORT

OF

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

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Presented during the 50th Ordinary Session of the African Commission on Human and Peoples’ Rights

Banjul, The Gambia, 24 October - 7 November 2011
Introduction

1. This Report outlines the activities undertaken by the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur) during the intersession period April 2011 to October 2011.

2. This Special Mechanism was established at the 36th Ordinary Session of the African Commission on Human and Peoples Rights (ACHPR or African Commission) held in Dakar, Senegal from 23 November to 5 December 2004.1

3. This Report is divided into four parts: Part I covers the activities undertaken by the Special Rapporteur in the period under review; Part II gives an overview of the status of the adoption of Access to Information legislation in Africa; and finally Part III presents the conclusions and recommendations of the Special Rapporteur.

PART I

Activities undertaken in the period under review

4. Activities of the Special Rapporteur during the reporting period are divided into three sections: Section one deals with consultations, conferences, forums, meetings and workshops attended by the Special Rapporteur. Section two reports on the letters of Appreciation the Special Rapporteur transmitted to States Parties to the African Charter (hereafter referred to as States Parties) commending them on their progress related to freedom of expression and access to information. In Section three, she reports on the letters of Appeals she forwarded to States Parties addressing alleged violations of freedom of expression and access to information that were brought to her attention.

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1 Any further information concerning the Special Rapporteur on Freedom of Expression and Access to Information, including her previous reports can be assessed on the website of the African Commission on Human and Peoples’ Rights, www.achpr.org
Section One

Consultations, conferences, forums, meetings and workshops

Expert Consultation on National Security and Access to Information

5. From 20 May to 1 June 2011, the Special Rapporteur attended an Expert Consultation on National Security and Access to information organised by the Central European University (CEU) and Open Society Justice Initiative in Budapest, Hungary. The objectives of the workshop were:

“to produce a set of principles concerning national security and access to information that are widely endorsed and applied, including by intergovernmental and governmental experts and officials, especially in adopting and reforming legislation and policies; to promote the adoption of well-drafted laws and practices that protect and advance the right to information including information deemed sensitive on national security grounds; and to research and collect law and practice concerning national security restrictions on, and procedural aspects of, the right to information, with a focus on identifying evolving good law and practice.”

6. During the Workshop, she made a presentation on the “Key Provisions of the Budapest Principles: How to Strengthen Their Impact and Recommendations on the Way forward.”

7. The Special Rapporteur also had side interactions with Special Rapporteurs from other systems to discuss ways of collaborating during the Workshop, with a view to strengthen their respective mandates. The Special Rapporteurs are: Ms. Catalina Botero Marino, the Special Rapporteur on Freedom of Expression of the Organisation of American States (OAS); Ms. Dunja Mijatovic, the Representative on Freedom of the Media in the Organization for Security and Co-operation in Europe (OSCE) and Prof. Frank La Rue, the Special Rapporteur for the Promotion and Protection of the Right to Freedom of Opinion and Expression of the United Nations (UN).

Regional Consultative meetings on the Draft Model Law for African Union Member States on Access to Information

8. The African Commission adopted Resolution 167 (XLVIII) on “Securing the Effective Realization of Access to Information in Africa,” which amongst other things, authorised the Special Rapporteur to initiate the process of developing a model Access to Information Law in Africa, and report its progress at its next Ordinary Session. On the basis of this Resolution, the Special Rapporteur has since started the process of
developing this Model Law as reported in her Activity Report submitted during the 49th Ordinary Session.2

9. During the intersession, subsequent to posting the draft Model Law on the website of the African Commission to allow stakeholders to make comment on it, a series of Consultations have been ongoing in the various regions of Africa. These Consultations are organised by the Special Rapporteur, in collaboration with the Centre for Human Rights, University of Pretoria, and the financial support of Open Society Initiative for Southern Africa (OSJI).

10. In order to give impetus to the initiatives of the African Union (AU) to get as many countries as possible to ratify the African Charter on Democracy, Elections and Governance (Charter on Democracy), the Consultative meetings included a discussion on this Charter and strategies to fast track its ratification.

11. It is worth noting that in addition to the ten (10) countries reported to have ratified the Charter on Democracy,3 other countries that have ratified, but have not yet deposited their instruments of ratification at the African Union Commission (AUC) in Addis Ababa include; Cameroon, Chad, Mozambique, Nigeria and Niger. It is also worth noting that Zambia ratified the Charter on Democracy on 31 May 2011, coincidentally after the Consultative Meeting in Maputo, Mozambique. It deposited the instrument of ratification to the AU on 8 July 2011.

12. Regional Consultative meetings have already been held for Southern Africa, East Africa and West and Central Africa. These meetings drew representatives from each of the countries covered. That is, representatives from the Government, Ministry of Justice, Foreign Affairs, Parliament, National Human Rights Institutions, (NHRIs), Media, Academia, Election Management Bodies and Civil society Organisations (CSOs).

i. **Southern African Sub-regional Consultation on the African Charter on Democracy and the Draft Model Law for AU Member States on Access to Information**


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2 See paragraphs 7 to 9 of the Special Rapporteur’s Activity Report submitted during the 49th Ordinary Session of the African Commission

3 Burkina Faso, Ethiopia, Ghana, Guinea, Lesotho, Rwanda, Mauritania, Sierra Leone, South Africa, and Zambia
was organised by the Special Rapporteur, in collaboration with the Centre for Human Rights, University of Pretoria, the Centre for Human Rights at Eduardo Mondlane University in Maputo, with the financial support of the Open Society Initiative for Southern Africa (OSISA), Open Society Foundation’s Rights Initiative-Right to Information Fund, the Open Democracy Advice Centre (ODAC), and OSJI.

**ii. East African Sub-regional Consultation on the African Charter on Democracy, Elections, and Governance and the Draft Model Law for AU Member States on Access to Information**

14. From **28 to 31 August 2011**, the Special Rapporteur attended the East African Sub-regional Consultation on the African Charter on Democracy, Elections, and Governance and the Draft Model Law for AU Member States on Access to Information in Nairobi, Kenya. The Consultation was organised by the Special Rapporteur, the Centre for Human Rights, University of Pretoria, the African Freedom of Information Centre (AFIC), with the support of Open Society Regional Foundations and Network Programmes, including OSISA, the Rights Initiative Fund, OSJI, ICJ-Kenya, the Open Society Justice Initiative for East Africa (ISJIEA), the East Africa Regional Office (EARO) of the UN Office of the High Commissioner for Human Rights (OHCHR), as well as the Deepening Democracy Programme (DPP), Uganda.

**iii. West and Central African Sub-regional Consultation on the African Charter on Democracy and the Draft Model Law for AU Member States on Access to Information**

15. The Consultation in the West and Central African sub-regions took place from **10 to 12 October 2011** in Dakar, Senegal. It was organised by the Special Rapporteur, in collaboration with the Open Society Regional Foundations and Network Programmes, including Open Society Justice Initiative for West Africa (OSIWA), OSISA, Open Society Foundation-Right to Information Fund, OSJI and IDASA.


16. The North Africa Consultation is scheduled for **29 to 31 January 2012**. This will be followed by a Consultative meeting with the AU before the draft law is presented to the African Commission for adoption.
Launch of the Press Freedom Commission of South Africa


UN Inter Agency Meeting

18. On **13 September 2011**, the Special Rapporteur attended the UN Inter Agency Meeting on “the Safety of Journalists and the Issue of Impunity” in Paris, France, at the UN Educational, Scientific and Cultural Organization (UNESCO) Headquarters. During the Meeting, she made a presentation on “the Role of African Legal Instruments in addressing challenges that are faced by journalists in Africa relating to the safety of Journalists and the issue of impunity”. The meeting was also addressed by the three Special Rapporteurs mentioned above.4

Pan African Conference on Access to Information

19. On **18 to 19 September 2011**, the Special Rapporteur attended the Pan African Conference on Access to Information in Africa in Cape Town. The Conference was organized by the Windhoek +20 Campaign on Access to Information in Africa in partnership with the UNESCO, the AUC, and herself.

20. The Conference adopted the Africa Platform on Access to Information, which calls on the Africa Commission amongst others, to “promote 28 September as the Africa Right to Information Day; adopt a Resolution authorizing the Special Rapporteur on Freedom of Expression and Access to Information in Africa to expand Article IV of the Declaration of Principles on Freedom of Expression to incorporate the principles of this Declaration; to complete and approve the proposed African Model Law for AU Member States on Access to Information.” The Africa Platform of Action on Access to Information is attached to this Report as Annex I.

21. During the Conference, the Special Rapporteur delivered a key note address on “The status of the implementation of Access to information laws in Africa including the work of the Special Rapporteur on ensuring the attainment of the Right to Information in view of Resolution ACHPR/Res.167 (XLVIII) 2010 on Securing the Effective Realisation of Access to Information in Africa, and the development of the model access to information law for Africa”.

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4 See paragraph 7
22. On 28 September 2011, the Special Rapporteur attended the National Information Officer’s Forum, and the Golden Key Award Ceremony for ‘Best Performing Public Body Implementer, Non-Governmental Organisation (NGO) and the Media in so far as their Work with Access to Information is concerned’ in Johannesburg, South Africa.

23. The Forum and the Award Ceremony was organised by the South African Human Rights Commission and Open Democracy Advice Centre. She made a keynote address on “The Work and Milestone[s] that the African Commission has achieved in the Journey towards Ensuring the Attainment of the Right to Freedom of Information in Africa.”

24. During the intersession, the Special Rapporteur also collaborated with the Special Rapporteurs mentioned in Paragraph 7 of this Report to issue a joint Declaration on Freedom of Expression and the Internet on 1 June 2011. The Declaration was adopted with the assistance of the Centre for Law and Democracy and ARTICLE 19.

Section Two

Letters of Appreciation

25. The Special Rapporteur transmitted letters of Appreciation to the Federal Republic of Nigeria, the Republic of Senegal and the Kingdom of Swaziland, commending their achievements related to Freedom of Expression and Access to Information.

Federal Republic of Nigeria

26. On 10 June 2011 the Special Rapporteur sent a letter to His Excellency Mr. Goodluck Jonathan, President of the Federal Republic of Nigeria commending the Government for adopting a Freedom of Information Act in May 2011. This Act had been pending for several years, going through various stages and Parliamentary processes.

27. In the letter of Appreciation, she stated that this achievement is a mark of the Government’s commitment to transparency and accountability in governance and would serve as a best practice for other countries in the continent to follow.

28. She also expressed approval that the Act guarantees, *inter alia*, the Access to Information held by public institutions and provides protection for whistle blowers.
Republic of Senegal

29. On 5 July 2011, the Special Rapporteur transmitted a letter to His Excellency Mr. Abdoulaye Wade, the President of the Republic of Senegal commending the decision of the Senegalese Parliament to support the adoption of the law on Access to Information in the Republic of Senegal.

30. In the letter of Appreciation, she noted that in order for the Government of Senegal to expedite the process of adopting the promised law, it is imperative to ensure that the necessary processes are initiated without any delay, and also ensure that dialogue continues between media practitioners and other stakeholders. She also used the opportunity to urge the Government of the Republic of Senegal to ensure that the upcoming Access to Information Law complies with all international and regional standards on Freedom of Expression and Access to Information.

Kingdom of Swaziland

31. On 5 July 2011, the Special Rapporteur sent a letter of Appreciation to His Excellency King Mswati III, King of the Kingdom of Swaziland wherein she welcomed the establishment of a Media Complaints Commission (the MCC), in the Kingdom of Swaziland.

32. In the letter, she stated that this achievement is a mark of the Government of the Kingdom of Swaziland’s commitment to promote and protect Freedom of Expression and Access to Information in the country because the notion of a free, independent, plural, and diversified media is ideal to fully ensure the right to seek, receive and impart information.

33. In the same breath, she urged the Government of the Kingdom of Swaziland to take all necessary steps to ensure that the MMC fully comes into operation without any unnecessary delay and continue to engage in dialogue with the relevant stakeholders, including media representatives and the Swazi populace at large, so as to take into consideration proposals to make the MMC perform better.

Section Three

Letters of Appeal

34. 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

Republic of Cameroon

35. On 1 October 2011, the Special Rapporteur received allegations against the Government of the Republic of Cameroon regarding journalists arrested for reporting Southern Cameroons 50th Anniversary, and the arrest and detention of 300 Southern Cameroonians celebrating their Anniversary in Buea, Cameroon. Reference was made to the alleged violations against Mr. Elvis Tah of The Post Newspaper, Mr. Bouddih Adams, Editor of The Post Newspaper, Mr. Patrick Sianne, former CRTV journalist and Reporter with The Post Newspaper, and Mr. Mola Njoh Litumbe, Southern Cameroons Movement Organizing Officer, Coordinator of the Home Front and Chairman of Ways and Means Commission of the Southern Cameroons Coalition.

36. According to reports, Mr. Tah alleges that, while he was at Mile 17 Motor Park in Buea covering a peaceful gathering of Southern Cameroons National Council (SCNC) activists who had been surrounded by heavily armed soldiers, a policeman in mufti came and whisked him off. He alleges that the policeman confiscated his camera, phone and further asked him to identify himself. Mr. Tah further alleges that when he gave the policeman his Identity Card, the latter seized it, while other policemen ordered him to climb onto their pick-up, took him to Groupe Mobile d’Intervention (GMI), and accused him of taking pictures of SCNC activists and “sending them worldwide”.

37. Furthermore, the Special Rapporteur received information alleging that Mr. Bouddih was also arrested when he was documenting on the story he had covered earlier on the morning of 1 October 2011. According to reports, Mr. Bouddih alleges that; “Plainclothes policemen swooped on the Editorial office of The Post at 2.30 pm and whisked me away into detention, for purportedly exploiting and publishing SCNC documents and activities.”

38. It was reported that Mr. Tah and Mr. Bouddih were finally released on bail at about 8p.m on 1 October 2011 after the intervention of Ms. Tricia Oben, CAMASEJ National President; Barristers Stanislaus Ajong and Njualem; National Communication Council member for the Southwest, Chief Paul Nkemayang and Mr. Martin Nkemngu, Senior Journalist.

39. The reports received by the Special Rapporteur also alleged that Mr. Sianne, was arrested and detained while trying to cover the SCNC event. Mr. Sianne’s camera and phone were allegedly seized, while his walking stick was broken as the police forced him to sit on the ground. Allegedly, he was ferried into detention together with other
hundreds of Southern Cameroons activists to GMI, but was however released in the afternoon of 2 October 2011.

40. Furthermore, according to reports, Mola Njoh Litumbe, who organized the said celebrations and convened Southern Cameroonians to converge in Buea was allegedly held under house arrest.

41. In addition to the above, reports alleged that over forty (40) people who were also involved in the celebrations and escaping from detention and torture sought refuge in the premises of the Nigerian Consulate. According to reports, the 40 people forced their way through the gate, and the workers therein refused to allow the press to conduct interviews or take pictures of the people inside until they received instructions from the Consul General.

42. In the letter of Appeal transmitted to His Excellency Mr. Paul Biya, President of the Republic of Cameroon on 24 October 2011, the Special Rapporteur underlined Principles I (1) and II of the Declaration which states that Freedom of Expression and Information, “is a fundamental and inalienable human right and an indispensable component of democracy” and “any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society”. She also highlighted Principle XI (1) and (2) of the Declaration which provide that:

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.

2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.

43. The Special Rapporteur called on the Government of Cameroon to respect the right to freedom of expression under Article 9 and the right to peaceful assembly under Article 11 of the African Charter. She stated that dispersal of peaceful gatherings, and harsh treatment of those involved, especially in the context of commemorating anniversaries are clear violations of the right to freedom of assembly and freedom of expression guaranteed by the African Charter, the Declaration and other regional and international human rights instruments.

44. The Special Rapporteur also indicated that restriction of the right to freedom of expression and peaceful assembly must be prescribed by law enacted in the interest of national security, public safety or order, protection of public health or morals, or the protection of the rights and freedoms of others according to international legal standards.
45. She stated that the Government of Cameroon has a duty to refrain from interfering with the exercise of the right to freedom of expression and peaceful assembly and has an obligation to prevent any other third party from interfering with the enjoyment of these rights. She therefore urged the Government of the Republic of Cameroon to kindly inform her of the progress it has made in the investigation of the allegations in compliance with Article 9 and 11 of the African Charter, as well as Principles 1(I) and II, and XI (1) and (2) of the Declaration.

State of Eritrea

46. The Special Rapporteur received alleged reports about the continued arbitrary detention of several journalists in Eritrea since 2001, including Mr. Dawit Isaak. Reports alleged that in December 2008, Mr. Isaak was moved to a maximum-security prison in Embatkala, and subsequently transferred to a military hospital.

47. Allegedly, the Government has not disclosed Mr. Isaak’s whereabouts nor provided any indication as to the state of his health despite assurances that he is receiving all necessary medical treatment. Reports also alleged that Mr. Isaak’s children have not seen him for nearly a decade and have no idea whether he is dead or alive. It was alleged that none of the journalists who were detained since 2001 have been formally charged and that four of them have since died in prison.

48. On 3 October 2011, the Special Rapporteur transmitted a letter of Appeal to the President of the State of Eritrea, His Excellency Mr. Isaias Afworki. In the letter of Appeal, she recalled her appeals of 2007, 2009, as well as her Appeal through the Chairperson of the African Commission in May 2011 on the same issues which have not been responded to. She also mentioned the fact that 23 September 2011 marked ten (10) years since the said journalists were arrested and detained.

49. In the letter of Appeal, the Special Rapporteur brought Article 7 of the African Charter to the attention of the Government of the State of Eritrea which guarantees the right to fair trial, including the right to be presumed innocent until proven guilty by a competent court or tribunal. She stated that according to Article 7 of the African Charter, the effective protection of human rights depends on the practical availability of access to competent, independent and impartial courts of law to administer fair justice. Accordingly, she indicated that it is the responsibility of the State of Eritrea to ensure that such systems are put in place for the benefit of accused persons in order not to entertain situations where they are detained for many years without trial.
50. On 12 October 2011, the Special Rapporteur received reports about the alleged intimidation and harassment of journalists and Media houses by the Government of the Federal Republic of Nigeria.

51. According to information reaching the Special Rapporteur, on Tuesday 11 October 2011, the Lagos and Abuja offices of Vintage Press Limited, publishers of *The Nation* came under siege when security agents allegedly invaded the premises and arrested four Senior Editors and other employees.

52. It was alleged that the detectives, led by Mr. Emma Ogolo, came to the offices in two vehicles (a white-colour Rover Sport Utility Vehicle (SUV), marked PFN 357 B and a blue-colour Peugeot 504 Salon car, marked 2413 B). According to reports, the “Nigerian Police Force, Anti-Human Trafficking Unit” was inscribed on the sides of the SUV.

53. It was also alleged that Mr. Lawal Ogienagbon, Deputy Editor, and Mr. Dapo Olufade, News Editor of *The Nation* Newspaper, Mr. Yusuf Alli, the Managing Editor in charge of Northern Operations, and Mr. Yomi Odunuga Chief of the Abuja Bureau, were among those arrested during the operations by the security agents. Their arrest reportedly took place without a warrant, and they were not informed of the reasons for their arrest or the charges against them.

54. According to reports, it is suspected that their arrest may be connected with the lead story of *The Nation* published on 4 October 2011 headlined; “Obasanjo’s secret letter to Jonathan stirs anger. Ex-President seeks sack of PTDF chief and four others.”

55. On 24 October 2011, the Special Rapporteur transmitted a letter of Appeal to His Excellency, Mr. Goodluck Jonathan, President of the President of the Federal Republic of Nigeria, where she recalled the Government’s obligations under Article 9 of the African Charter. In the said letter, she also mentioned Principles I (1) and II, XI (1) and (2), and XII (1) of the Declaration related to the respect of freedom of expression of journalists.

56. The Special Rapporteur urged the Government of the Federal Republic of Nigeria to investigate the allegations and to bring the perpetrators to justice.

57. The Special Rapporteur notes that she has still not received any response with respect to all the above Appeals.
58. It would be recalled that Mr. Ebrima Chief Manneh has been missing since 7 July 2006 when he was arrested by the National Intelligence Agency in The Gambia for unclear reasons shortly after an AU Summit in Banjul. The Special Rapporteur has transmitted a number of urgent letters of Appeals to the Government of The Gambia on the disappearance of Mr. Ebrima Chief Manneh. The African Commission also passed a Resolution in which it amongst others, called on the Gambian Government to implement the decision of the ECOWAS Court on this matter.

59. On 11 October 2011, it was reported that Honourable Edward Gomez, the Gambian Minister of Justice said during an interview for Daily News that he is certain Ebrima Chief Manneh, is ‘somewhere.’ He is also reported to have stated that “We shall talk about this case at a later stage when it is more convenient when I can prove to you beyond any reasonable doubt…let the right time come, that’s all I can tell you.’

60. The Special Rapporteur would like to use this opportunity to make an appeal once again to the Government of the Republic of The Gambia to confirm the whereabouts of Mr. Manneh if he is till alive as stated by Honourable Edward Gomez.

PART II

Status of adoption of Access to Information legislation in Africa

61. In line with the mandate of the Special Rapporteur 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,”5 this section of the Report highlights developments that have been made on the status of adoption of freedom of expression and access to information legislation in the continent since the last reporting period.

62. The Special Rapporteur notes that the adoption of Freedom of Information laws has been very stagnant in the continent. As of the 48th Ordinary Session, only six (6) countries6 out of fifty-three (53) States in Africa were reported to have Access to

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6 Angola, Ethiopia, Liberia, South Africa, Uganda and Zimbabwe.
Information laws, with the Republic of Liberia reported to be the additional State Party to the African Charter, with a Bill passed on 6 October 2010.\(^7\)

63. During the 49\(^{th}\) Ordinary Session, the Federal Republic of Nigeria was reported to have a Bill on Freedom of Information whose adoption was pending for several years.\(^8\)

**Progress**

64. The Special Rapporteur is pleased to mention that the Federal Republic of Nigeria finally signed its Freedom of Information Act into law on 18 May 2011.

65. The Act, which provides a legal right of access to records, and documents held by Government and private bodies carrying out public functions, is worth celebrating and emulating.

66. Furthermore, the Republic of Guinea adopted its Freedom of Information Law on 24 November 2010, while the Republic of Niger passed its law on 23 February 2011. This has increased the number of countries with Access to Information laws in Africa to 9 (nine).

67. In this regard, the Special Rapporteur would like to commend Guinea, Nigeria, and Niger for this progress and hopes that other States Parties who still have Bills pending in Parliament will follow suit.

68. The Special Rapporteur notes that the following countries in the continent still have Bills pending adoption either in Parliament or being drafted by the Government or CSOs; Botswana, Burundi, Egypt, Ghana, Kenya, Malawi, Mozambique, Rwanda, Senegal, Sierra Leone, South Sudan, Tanzania, Tunisia, and Zambia.

69. It is also worth noting that in May 2011, the Tunisian Interim Government adopted a Decree on Access to Administrative Documents. The Decree is reported to provide “people, regardless of citizenship, with a right to access administrative documents; it requires public authorities to proactively disclose information about their activities; it outlines a satisfactory procedure for access to information; and it establishes that access to documents is in principle free of charge.”

70. The Special Rapporteur commends the Interim Government for this development because it indicates commitment to achieve a democratic government which is

\(^7\) See the Special Rapporteur’s Activity Report submitted to the 48\(^{th}\) Ordinary Session of the African Commission, 10 to 24 November 2010, Banjul, The Gambia; para 48.

\(^8\) See the Special Rapporteur’s Activity Report submitted to the 49\(^{th}\) Ordinary Session of the African Commission; paras 22 to 24.
facilitated by access to information for citizens. She hopes that there will be sufficient political will to implement the Decree and other strategies aimed at improving the political situation in the country.

Other initiatives

71. The adoption of the ‘Declaration on an African Platform on Access to Information’ during the inaugural Pan African Conference on Access to Information, which took place from 17 to 19 September 2011 in Cape Town, South Africa, is also welcome. The Declaration is another milestone that will give impetus to the realization of the right of access to information in Africa.

PART IV

Conclusion and recommendations

72. The right to freedom of information and access to information are central aspects of democracy. It therefore follows that laws which promote and guarantee these rights, accompanied by strategies of implementation should be the main concern of States Parties. However, even though few countries in the continent have national laws to protect the rights to freedom of expression and access to information as reported and updated in the past reports of the Special Rapporteur, the trend of adoption has been slow and completely stalled in other countries, to say the least. It goes without saying, therefore, that further impetus is needed in this area.

73. In this regard, the Special Rapporteur is calling on States Parties to speed up their processes towards adopting national policies on freedom of expression and access to information, while at the same time, providing information to its citizens to educate them about their entitlements to these rights and how to protect them. This can be done through capacity building for civil society organizations, academics, legal professionals, media professionals and even law-makers to enhance their ability to understand the essence of the rights and how to apply laws related to the same.

74. In the same token, NGOs that deal with the protection of freedom of expression and access to information should disseminate standards for media policies and laws through seminars, joint advocacy initiatives, publications, and share best practices around the continent.

75. Furthermore, States Parties should amend their Constitutions to bring them in line with regional and international standards on freedom of expression and access to information, and ensure that there is a sense of balance between the two, and not just one right being read into the other.
76. States Parties should ensure that criminal defamation and insult laws are either removed from their Constitutions and other national laws related to freedom of expression completely, or ensure that the laws are amended and applied according to international and regional standards in compliance with Principle XII(1) of the Declaration which reads:

“States should ensure that their laws relating to defamation conform to the following standards:

- no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
- public figures shall be required to tolerate a greater degree of criticism; and
- sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.”

77. The Special Rapporteur would like to use this opportunity to thank all the States Parties, Intergovernmental Organizations, Donors, National Human Rights Institutions, Election Management Bodies, NGOs and other stakeholders who have supported her project on a Model Access to Information law by participating in the ongoing consultations, and making their comments on the existing draft law which is still on the website of the African Commission. This will not only enhance the quality of the law, but will also take into account the concerns of States Parties and other stakeholders, so that when it is eventually adopted, it serves the purpose it is supposed to serve; that is, a model to guide the drafting of national legislation on Access to Information.

78. Furthermore, as has been the practice in her previous Reports, the Special Rapporteur commends States Parties who have signed and ratified the Charter on Democracy. She however calls on States Parties who have not yet done so, to ratify the document as soon as possible, especially at this time when political upheavals are the tone of the day.

79. The Special Rapporteur would like to thank stakeholders for the support given to her mandate so far, and hopes for continual support, as well as collaboration in the future.

80. Finally, she once again urges all States Parties who have received her Appeals and Recommendations, to act on them and report on the measures they have taken to implement them.
ANNEX 1

African Platform on Access to Information
19 September 2011