

Final

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

'Viewed in 25 years of the Commission'

Presented by

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INTRODUCTION

1. This Report is presented on the occasion of the 25th anniversary of the African Commission on Human and Peoples' Rights ("the Commission"). It outlines the successes/progress made, and challenges faced since the creation of the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa ("the Special Rapporteur"), as a Special Mechanism of the Commission. It concludes with some recommendations for an effective guarantee of the right to freedom of expression and access to information on the continent.
2. The structure of the Report is as follows: Divided into five (5) parts, **Part I** explains the establishment of the mandate of the Special Rapporteur; **Part II** gives an overview of the successes/progress of the mandate of the Special Rapporteur since its establishment- it includes the challenges in relation to each success/progress attained, and recommendations which also relate to the prospects of the mandate; **Part III** discusses other achievements of the Special Rapporteur, while **Part IV** sets out support from Partners which serves as opportunities to the mandate, and finally **Part V** is the conclusion of the Report and a general way forward of the mandate.

PART I

ESTABLISHMENT OF THE SPECIAL MECHANISM

3. This Special Mechanism was created by Resolution *ACHPR/Res.71 (XXXVI) 04*, adopted by the Commission at its 36th Ordinary Session held from 23 November to 7 December 2004, in Dakar, Senegal. The Commission appointed **Mr. Andrew Chigovera** as the first Special Rapporteur for this Special Mechanism.

4. **Adv Pansy Tlakula** was appointed as the second Special Rapporteur on Freedom of Expression pursuant to the *Resolution on Freedom of Expression in Africa ACHPR/Res.84 (XXXXV) 05*, adopted at the 38th Ordinary Session of the Commission held from 21 November to 5 December 2005 in Banjul, The Gambia.
5. The mandate of the Special Rapporteur on Freedom of Expression was extended to include Access to Information by *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 42nd Ordinary Session of the Commission held from 15 to 28 November 2007, in Brazzaville, Republic of Congo.
6. The terms of reference of this Special Mechanism, which represents the Commission's flagship in promoting and protecting freedom of expression and access to information in Africa are as follows:
 - ✚ Analysing national media legislation, policies and practice within Member States of the African Union (AU), monitoring their compliance with freedom of expression and access to information standards in general and the *Declaration of Principles on Freedom of Expression in Africa* ("the Declaration") in particular, and advise Member States accordingly;
 - ✚ Undertaking fact-finding missions to Member States from where reports of systemic violations of the right to freedom of expression and denial of access to information have reached the attention of the Special Rapporteur and making appropriate recommendations to the Commission;
 - ✚ Undertaking promotional country Missions and any other activities that would strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;
 - ✚ Making public interventions where violations of the right to freedom of expression and access to information have been brought to the attention of the

Special Rapporteur, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications;

- ✚ Keeping a proper record of violations of the right to freedom of expression and denial of access to information and publish this in her reports submitted to the Commission; and
- ✚ Submitting reports at each Ordinary Session of the Commission on the status of the enjoyment of the right to freedom of expression and access to information in Africa.

PART II

OVERVIEW OF THE SUCCESSES/ PROGRESS OF THE SPECIAL RAPPORTEUR

7. The mandate of the Special Rapporteur has made good progress towards protecting and promoting freedom of expression and access to information in Africa. This progress is particularly marked by the adoption of the Declaration, the draft Model Law on Access to Information in Africa, the Project to decriminalise defamation and libel laws in Africa, the Special Rapporteur's collaboration with States Parties to the African Charter ("States Parties") and Civil Society Organisations ("CSOs"), amongst others.

A. The Declaration of the Commission

8. The right to freedom of expression enshrined in Article 9 of the African Charter on Human and Peoples' Rights ("the African Charter") is fundamental to the existence and consolidation of democracy, including accountability of Governments on the African continent. This important role and the need to have continental strategies for an effective protection of the right to freedom of expression prompted the adoption of a Declaration, with Principles which uphold the spirit of Article 9 of the African Charter.

9. The process of adopting the Declaration commenced during the 26th Ordinary Session of the Commission which took place from 1 to 15 November 1999, in Kigali, Rwanda, when the Commission decided to hold a Seminar on *“Freedom of Expression and the African Charter on Human and Peoples’ Rights”*.
10. In collaboration with Article 19, the Seminar was held in Pretoria, South Africa from 22 to 25 November 2000. The Seminar examined amongst other things, the nature and content of the right to freedom of expression under Article 9 of the African Charter, reviewed its practical observance on the continent, and made recommendations on strategies for enforcement with particular reference to the role of the Commission.
11. Among its recommendations, the Seminar called upon the Commission to adopt a Declaration and to appoint a Special Rapporteur for Freedom of Expression. Subsequent to this Seminar, the Commission passed a Resolution on Freedom of Expression at its 29th Ordinary Session held in Tripoli, Libya, from 23 April to 7 May 2001 where it decided to:
 - i. Develop and adopt a Declaration to elaborate and expound the nature, content and extent of the right to freedom of expression under Article 9 of the African Charter;
 - ii. Establish an appropriate mechanism to assist it to review and monitor adherence to freedom of expression standards in general and the Declaration in particular, and to investigate violations and make appropriate recommendations to the Commission;
 - iii. Hold periodic meetings with Non-Governmental Organisations (“NGOs”) and African journalists to review progress in guaranteeing freedom of expression across the continent and in implementing the Declaration.

12. A Working Group was established at the Commission's 30th Ordinary Session to elaborate on the recommended Declaration which was composed of Honourable Commissioner Andrew Chigovera, Honourable Commissioner Jainaba Johm and Honourable Commissioner Barney Pityna, with partners from NGOs, including Article 19.
13. At its 32nd Ordinary Session held in Banjul, The Gambia from 17 to 23 October 2002, the Commission adopted *Resolution ACHPR/Res.62 (XXXII) 02*, which established the Declaration. The Declaration sets out important benchmarks and elaborates on the precise meaning and scope of the guarantees of freedom of expression laid down under Article 9 of the African Charter.
14. The Declaration has persuasive effect and is used extensively on the African continent and elsewhere as an instrument on freedom of expression and access to information. Its principles are established as a touchstone for effective protection of these rights.
15. The Commission has also shown its recognition of the nexus between the right to freedom of expression and access to information, and the need to have clear and comprehensive principles to guide the promotion and protection of the right of access to information in Africa. In this regard, during its 51st Ordinary Session which took place from 18 April to 2 May 2012, in Banjul, The Gambia, the Commission adopted "*ACHPR/RES.222 (EXT.OS/XII) 2012: Resolution to modify the Declaration of Principles on Freedom of Expression to include Access to Information and Request for a Commemorative Day on Freedom of Information.*" This Resolution authorised the Special Rapporteur to initiate the process of expanding Article IV of the Declaration to include access to information.
16. This year marks the 10th anniversary of the Declaration and presents a good opportunity to assess the development of the right to freedom of expression and access to information in Africa. Article 19, in collaboration with the Special Rapporteur

commemorated the Declaration's ten (10) years of existence on 12 October 2012 where more awareness was raised about the Declaration and States Parties were encouraged to comply with its Principles.

Challenges in implementing the Declaration

17. Despite the obvious usefulness of the Declaration in protecting and promoting the right to freedom of expression, it has a setback because it is soft law which is not legally binding. This has greatly watered down its full potential to supplement Article 9 of the African Charter.

Recommendation

18. Though not legally binding, States Parties should have the political will to look beyond the non-binding nature of the Declaration and have a broader recognition of the effectiveness of its principles which are meant to expand the content of Article 9 of the African Charter. They should put in place strategies to implement the Declaration at the national level, while NGOs and other stakeholders should continue to raise awareness for a better understanding of the same.

B. The Draft Model Law on Access to Information in Africa

19. Another triumph of this mandate is the draft Model Law on Access to Information in Africa.

20. The initiative of drafting a Model Law on Access to Information in Africa started in 2010 after the Commission adopted a Resolution to kick-start the process. During its 48th Ordinary Session, the Commission adopted *Resolution 167 (XLVIII) 2010 on "Securing the Effective Realization of Access to Information in Africa."* This

Resolution, amongst other things, authorised the Special Rapporteur to initiate the process of developing a Model Law on Access to Information in Africa. On the basis of this Resolution, the process of developing this Model Law was started and is almost complete.

21. From **29 to 31 October 2010**, the Special Rapporteur, together with partners organised an Expert Meeting during which Principles and Guidelines that would form the basis for the Model Law were adopted. At the same meeting, a Working Group and a drafting Committee was also established to start the drafting process.
22. From **19 to 21 January 2011**, in collaboration with the Centre for Human Rights, University of Pretoria, with the financial support of Open Society Initiative for Southern Africa (“OSJI”), a Working Group Meeting on the draft Model Law was organised in Pretoria, South Africa. The Workshop was aimed at bringing together members of the Working Group to discuss the draft law prepared by the Drafting Committee.
23. Members of the Working Group came from: the Commission, OSJI, Article 19, Public and Private Development Centre, South African History Archive, South African Human Rights Commission, Centre for Human Rights-University of Pretoria, Media Institute for Southern Africa and Citizens Governance Initiative and United Group.
24. The **draft Model Law** is still on the website of the Commission and the website of the Centre for Human Rights, University of Pretoria, to allow stakeholders to make comments on the same. In addition, in collaboration with partners, a series of Consultative Workshops on the draft Law have been organised in all the regions in Africa.
25. Between **June 2011 and June 2012**, Regional Consultative meetings were held for Southern Africa, East Africa, West and Central Africa (combined), and North Africa. These meetings drew representatives from the Government, Ministry of Justice,

Foreign Affairs, Communication and Information, Parliament, National Human Rights Institutions, (NHRIs), Media, Academia, Election Management Bodies and CSOs, and intergovernmental organisations.

26. From **6 to 8 July 2012**, the Working Group met in Pretoria, South Africa to finalise the draft Model Law. It is worth noting that all the feedback received at these Consultations as well as those received by email were considered by the Working Group and based on this, the draft Model law has been finalised for adoption by the Commission during this 52nd Ordinary Session.
27. After adoption of the Model Law, sensitisation meetings will be held with various organisations and institutions, including the African Union Commission (“AUC”), the Pan African Parliament, New Partnership for Africa’s Development/ African Peer Review Mechanism (APRM) and the Regional Economic Communities such as Southern African Development Community, Economic Community for West African States, and the East African Community.
28. Engagement/advocacy visits will also be carried out in some of the countries that are in the process of adopting Access to Information Laws, namely: Botswana, Egypt, Ghana, Mozambique, Rwanda, Sierra Leone and Zambia to encourage them to adopt laws which comply with the minimum standards provided for by the Model Law as well as identify the necessary steps that must be taken to create a conducive environment for the implementation of these laws.

Progress achieved by the draft Model Law

29. When the Model Law Project started, only five (5) countries on the continent had adopted Access to Information Laws, namely Angola, Ethiopia, South Africa, Uganda, and Zimbabwe, and two (2) had actionable Access to Information regulations, namely Niger and Tunisia. However, since the development of the Model Law, more countries have adopted Access to Information Laws: The Republic of Guinea, the Republic of

Liberia, the Federal Republic of Nigeria, the Republic of Niger and the Republic of Tunisia, making it ten (10) countries in total on the continent with Access to Information Laws.

30. Meanwhile, the following countries still have Bills pending adoption, some of which have been influenced by the provisions of the draft Model Law: Botswana, Burundi, Egypt, Ghana, Kenya, Malawi, Mozambique, Rwanda, Senegal, Sierra Leone, South Sudan, Tanzania, and Zambia.

Potential Challenges

31. Challenges are yet to be registered since the draft Model Law is still pending adoption by the Commission, and subsequently the AU. However, the potential challenge would be failure by States Parties to use the Model Law as a bench mark of their national laws and this will defeat the purpose for which it was drafted.

Recommendations

32. Once the Model Law is adopted and becomes effective, States Parties who do not yet have Access to Information Laws should immediately embark on, or expedite the drafting of their national Access to Information laws, and put in place strategies for implementation.
33. In addition, even where legislations exist, strong political will and leadership within the Government is required for the implementation process to take place correctly. This is only possible if Governments understand the importance of transparency and access to information in improving the development process.
34. There should also be an effective and meaningful collaboration between the Government and Civil Society (NGOs, journalists, media practitioners etc) to make

implementation a reality. CSOs should play a greater role in monitoring implementation of their national laws.

35. Another step towards promoting the Model Law post its adoption would be for CSOs to lobby Governments in their jurisdictions to repeal all laws that unduly restrict the right to access information such as Official Secrets Acts where they still exist. It is imperative that Governments and legislators promote and secure economic and social development, as such, if secrecy is encouraged within Governments and State institutions, it will hamper the realization of the right to information. In order for Governments to meet their development objectives, a freedom of information regime is required.
36. Public awareness should also be raised at all levels, especially amongst public representatives, on the advantages of having an open Government, by adopting laws that will make information held by public bodies available to the people.
37. Furthermore best practices should be adopted in countries that are still teething in drafting Access to Information Laws. South Africa's experience in access to information legislation has been considered as one of the international good practices. It can therefore provide significant lessons for other countries in Africa at various stages of draft legislations.
38. There is also a dire need to make information automatically available to the public in simple and concise language, and if possible, translated to local languages for the benefit of all. On the same note, Access to Information Laws should be available in local languages to promote diversity in accordance with Principle III of the Declaration.
39. All stakeholders should exercise commitment to the principles of accountability and transparency for a better Africa by lobbying their Governments to adopt Access to Information Laws.

40. The Model Law on Access to Information in Africa could not have come at a better time.

C. Instrumental in the coming into force of the African Charter on Democracy, Elections and Governance

41. The Model Law Consultative meetings mentioned above included a discussion on the African Charter on Democracy African Charter on Democracy, Elections and Governance (“The African Charter on Democracy”), to speed up the ratification of the same.

42. In this regard, in addition to Burkina Faso, Ethiopia, Ghana, Lesotho, Rwanda, Mauritania, Rwanda, Sierra Leone, and South Africa that have ratified the African Charter on Democracy, the Republic of Benin, Chad, Cameroon, Guinea, Guinea-Bissau, Niger, Nigeria, and Zambia have either ratified and/or deposited their instruments of ratification at the AUC as part of advocacy undertaken by the Special Rapporteur in the course of these regional Consultations.

43. The Special Rapporteur has also made it a standard practice of urging States Parties to ratify the African Charter on Democracy, as one of the recommendations in her Activity Reports presented to the Commission every Ordinary Session.

Progress achieved

44. On 15 February 2012, the African Charter on Democracy finally came into effect after the 15th instrument of ratification was deposited by the Republic of Cameroon.

45. The idea behind the Consultations on the African Charter on Democracy was to popularise the right of access to information as an integral component of the

domestication of the African Charter on Democracy and other relevant AU instruments.

Challenge

46. The process of ratification of the African Charter on Democracy has been very slow.

Recommendation

47. The Special Rapporteur commends States Parties that have ratified the African Charter on Democracy, and calls on those who have not yet done so, to start/expedite their processes of ratification of the instrument.

D. Project to Decriminalise Libel/defamation Laws in Africa

48. **Principle XII (1)** of the *Declaration* provides that;

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.*

49. **Principle XIII (1)** of the *Declaration* also provides that: “*States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.*”

50. Based on the above, and the awareness that many countries in Africa still have laws that criminalise certain types of speech (defamation and other types of ‘insult’, sedition, false news), used to punish disapproved legitimate critical expression, the

Special Rapporteur thought it crucial to support civil society and other interested actors in advocating for the repeal of such laws.

51. In this regard, the Commission adopted Resolution *ACHPR/Res.174 (XLV111)10: Repealing Criminal Defamation Laws in Africa*, during its 48th Ordinary Session, held in Banjul, The Gambia from 10 to 24 November 2010. Amongst other things, the Resolution called on State Parties to repeal criminal defamation laws or insult laws which impede freedom of speech.
52. In May 2012, in the margins of the commemoration of the World Press Freedom Day which was organized by the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), in Tunis, Tunisia, the project was launched and attended by a number of CSOs working in the area of freedom of expression.
53. The objective of the project is to spearhead a campaign to advocate for the repeal or relaxation of laws that criminalize expression. These laws include criminal defamation, criminal libel, insult laws, sedition laws and laws that prohibit the publication of false news.
54. The Project is funded by Foundation Open Society Institute (OSI-ZUG). The ‘*grant recipient*’ is the Centre for Human Rights, University of Pretoria, and is responsible for implementing the Project.
55. The tentative work plan of the project which could be amended with time includes: Research on countries that have existing laws which criminalise expression, research on countries which have laws that decriminalise such laws, identification of other stakeholders who might be involved in advocacy and litigation in the opportunity regions/countries identified; identification of initial activities to be supported on a country basis – advocacy campaigns, regional meetings with key stakeholders depending on the result of the research, and follow-up sub-regional meetings for planning and initiating national campaigns.

Progress registered

56. The Pilot Study of the project began in Zambia on 1 September 2012 and is expected to be completed at the end of October 2012.
57. The Public Launch of the Project took place on 12 October 2012 during the margins of this Session.

Potential Challenge

58. There could be a challenge during the course of the Decriminalisation Project to successfully lobby States Parties that have laws which criminalize expression to repeal these laws.

Recommendations

59. As a fundamental first step, States Parties and other stakeholders should join forces with the Special Rapporteur and her collaborating Partners, to make this Project what is worth, by providing all the necessary information and support needed in the country research activities. As indicated earlier, the Centre for Human Rights, University of Pretoria is responsible for implementing the Project. In this regard, all information deemed relevant for the progress of the Project should be forwarded to the Centre so as to facilitate its role in the implementation of the same.
60. States Parties who still have defamation/libel laws which obviate freedom of expression should start the process of repealing them, while countries that decriminalise such laws should have implementing legislation to ensure that decriminalisation is done in practice.

PART III

OTHER ACHIEVEMENTS OF THE SPECIAL RAPPORTEUR

Monitoring the situation of Freedom of Expression and Access to Information in Africa

61. The situation of freedom of expression and access to information in Africa over the last decade has deteriorated and continues to pose challenges on the continent. The Special Rapporteur has taken a series of actions to protect the rights of victims of human rights violations related to freedom of expression and access to information, through transmitting urgent letters of Appeal.
62. The letters of Appeal relate to the following issues: Intimidation, harassment, kidnapping, threats, unwarranted detention/arrest and murder of journalists and media practitioners, closure of newspapers and media houses. Some of the letters also express concerns about the content of laws related to freedom of expression and access to information, and called for an amendment of such laws to bring them in line with the African Charter, and the Declaration.
63. The most recent letters of Appeal sent by the Special Rapporteur are: A joint letter of Appeal to Ethiopia on **17 September 2012**, with the Special Rapporteur on Human Rights Defenders concerning the alleged harassments and intimidation of journalists and human rights defenders in the country; and a letter of Appeal to the Republic of Mozambique on **19 September 2012**, regarding the imprisonment of Falume Chabane for criminal libel, in Beira, Mozambique.
64. It is worth mentioning that some States Parties have positively responded to the letters of Appeal of the Special Rapporteur. A case in point is the joint letter of Appeal of the Special Rapporteur and the Special Rapporteur on the Rights of Women in Africa

which was sent to the President of The Gambia on 20 August 2009, concerning the alleged arrest and imprisonment of seven (7) journalists. The journalists were pardoned and released after the letter of Appeal, and on 10 September 2009, the Special Rapporteurs forwarded a letter of Appreciation to the President of The Gambia.

65. Having said this, the Special Rapporteur however condemns the continuous allegations concerning intimidation, threats, unwarranted arrest and detention of journalists and media practitioners in The Gambia, and appeals for a lasting solution to the problem.
66. Furthermore, in order to assist State Parties to draft their laws on Access to Information in accordance with regional and international standards, the Special Rapporteur makes comments on draft Bills related to Access to Information including proposing relevant amendments where necessary.
67. Other methods in which the Special Rapporteur monitors freedom of expression and access to information is through Resolutions on country situations adopted during the Sessions of the Commission.

Direct interaction and collaboration with States Parties through Promotion Missions

68. The Special Rapporteur is responsible for Lesotho, Mauritius, Namibia, South Sudan, Sierra Leone and Swaziland where she monitors the human rights situation therein through Promotion Missions. Some of these countries have extended an invitation to the Special Rapporteur to undertake such Missions.
69. The Missions have enabled the Special Rapporteur to interact directly with States Parties about the human rights situation generally and also ascertain the extent to which they are protecting and promoting freedom of expression and access to information. They have also led to the realisation that more has to be done in terms of

effectively protecting these rights in some countries on the continent, while at the same time, they have encouraged States Parties to adopt national laws or amend existing ones to protect these rights.

70. The Special Rapporteur has so far carried out Promotion Missions in Lesotho, Namibia and Swaziland. She was also part of the delegation for a Promotion Mission to the Republic of Sudan.

Collaboration with CSOs and other stakeholders

71. Other actions include interacting closely with stakeholders such as CSOs who keep the Special Rapporteur abreast with the situation of the right to freedom of expression and access to information in Africa.

72. Since the establishment of the mandate, the Special Rapporteur has collaborated with CSOs and other stakeholders through meetings, workshops, conferences, lectures, joint ventures such as the Declaration, the Model Law and the Decriminalisation Project.

73. Most recently, during the inter-session period of May 2012 to October 2012, the Special Rapporteur has specifically collaborated with CSOs and other stakeholders in the following activities:

i. World Press Freedom day and Launch of the Decriminalisation of libel/defamation laws

From **2 to 5 May 2012**, the Special Rapporteur participated in the World Press Freedom Day which was organized by UNESCO, in Tunis, Tunisia. In the margins of the celebrations, she launched the decriminalisation of libel/defamation laws Project.

ii. *Roundtable Discussion on Freedom of Expression Trends Worldwide*

From **23 to 26 June 2012**, the Special Rapporteur participated in a “*Roundtable Discussion on Freedom of Expression Trends Worldwide.*” The Roundtable was organised by the International Press Institute in Port of Spain, Trinidad and Tobago.

iii. *Public Lecture*

On **26 July 2012**, the Special Rapporteur conducted a Public Lecture on “*Freedom of expression: how far has Africa gone?*” in the University of Pretoria, South Africa. Her lecture was titled “*Protecting freedom of expression in Africa: The role of the African Commission on Human and Peoples’ Rights*”

iv. *Conference on Access to Information*

From **20 to 21 August 2012**, she attended a Conference on “*Access to Information Namibia: Creating a National platform for dialogue on Access to Information.*” The Conference was organised by the Law Reform and Development Commission in Namibia. She made a presentation on “*The Draft Model Law for African Union Member States on Access to Information.*”

v. *Annual General Meeting and Conference*

From **23 to 26 August 2012**, the Special Rapporteur attended the Southern African Development Community Lawyers’ Association’s Annual General Meeting and Conference in Mbabane, Swaziland. She

presented a paper on *“Utilizing the African Human Rights System to advocate for the decriminalization of Freedom of Expression in SADC”*.

vi. Pan African Parliament Planning Workshop

From **27 to 28 August 2012**, she attended the Pan African Parliament Planning Workshop on *“Campaign to Promote Media Freedom in Africa”* in Johannesburg, South Africa. She made a presentation on *“The State of Media Freedom in Africa and Actions Taken to Promote Media Freedom in Africa - The Perspective of the African Commission on Human and Peoples’ Rights.”*

vii. Academic Public Dialogue on Freedom of Expression and Information

On **17 September 2012**, the Special Rapporteur participated in an Academic Public Dialogue on freedom of expression and information in Kampala, Uganda. This Dialogue was organised by the Human Rights Network for Journalists–Uganda. She made a Keynote Address on: *“Utilizing the office of the AU special Rapporteur to realize freedom of expression in Uganda in the run up to the Abidjan AU conference.”*

viii. Workshop by Southern African Litigation Centre

From **27 to 28 September 2012**, the Special Rapporteur was invited to a Workshop organised by the Southern African Litigation Centre. She made a presentation on *“The Promotion and Protection Mandate of the African Commission on Human and Peoples’ Rights: Opportunities and Challenges.”*

ix. Workshop of the Southern African Liaison Office

On **3 October 2012**, the Special Rapporteur attended the Southern African Liaison Office Workshop, where she delivered a Keynote Address about the human rights situation on the continent, with specific reference to Swaziland, her country of responsibility.

x. Launch of the Decriminalisation of defamation/libel Project & commemoration of the 10th Anniversary of the Declaration

On **12 October 2012**, the Special Rapporteur, in collaboration with Article 19 and the Centre for Human Rights, University of Pretoria, launched the Decriminalisation Project on the margins of the 52nd Ordinary Session. The commemoration of the 10th Anniversary of the Declaration also took place the same day.

Collaboration with the UN and other international mandates on Freedom of Expression

74. The gains of the mandate of the Special Rapporteur also emanate from her cooperation with Special Rapporteurs from other systems, namely: the Special Rapporteur for Freedom of Expression in the Inter-American Commission for Human Rights, the Representative on Freedom of the Media in the Organization for Security and Co-operation in Europe and the Special Rapporteur for the Promotion and Protection of the Right to Freedom of Opinion and Expression of the United Nations (UN). In the spirit of collaboration, every year, the Special Rapporteurs issue joint Declarations.

75. In the same spirit of collaboration, from **1 to 2 March 2012**, the Special Rapporteur was invited by Professor Christof Heyns, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to a meeting of experts, to discuss his Report to the Human Rights Council. The said Report addressed issues related to the safety of

journalists, with recommendations to ensure a better protection of the right to life of journalists.

76. During the Expert Meeting, participants were invited to read the draft Report and share their suggestions and comments.

Collaboration with APRM

77. The Special Rapporteur, in collaboration with Article 19 organized a Workshop aimed at strengthening collaboration between the Commission and the APRM, on the margins of the 48th Ordinary Session which took place from 10 to 24 November 2010, in Banjul, The Gambia.

78. Following the said Workshop, the Commission adopted *ACHPR/Res168 (XLVIII) 2010: Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism* during the said 48th Ordinary Session. The Special Rapporteur was appointed as the focal point between the Commission and the APRM to coordinate and enhance cooperation between the two institutions.

Challenges

79. It is obvious that this Mechanism has made a lot of progress in protecting and promoting freedom of expression and access to information in Africa. However, the achievements of this mandate are sometimes regressed by many challenges which can be summarized hereunder:

- i. Existence of libel and defamation laws in most countries;
- ii. Lack of political will to implement the recommendations of the Special Rapporteur;

- iii. Limitations of the African Charter and the Declaration;
- iv. Lack of political will by States Parties to enact Laws on freedom of expression and access to information;
- v. The lack of real and effective democratic institutions;
- vi. The weakness of the rule of law and human rights;
- vii. Low levels of education and poverty;
- viii. Lack of collaboration/cooperation between civil societies and the Government;
- ix. Lack of responses from some State Parties on the Appeals of the Special Rapporteur; and
- x. Limited financial resources to carry out all the planned activities of the mandate.

PART IV

SUPPORT FROM PARTNERS AS OPPORTUNITIES FOR THE MANDATE

80. Over the years, since the establishment of this mandate, it has built successful collaboration with Partners who have greatly assisted the mandate financially, materially, and through joint strategies of action which has given the mandate a good face lift.

81. Partners have served as an opportunity for the Mechanism to successfully implement its terms of reference. As discussed above, the process of adopting the Declaration, drafting the Model law and even the Decriminalisation Project which is yet to take a full momentum, were mainly facilitated by Partners.

82. To this end, the Special Rapporteur expresses her profound gratitude to States Parties, Department of Political Affairs of the AU, NGOs-in particular, the Centre for Human

Rights, University of Pretoria, and Article 19; all regional journalists and Media Associations, and development partners, especially the Open Society Foundations in all its formations. Without their support, the mandate of the Special Rapporteur would not have achieved what it has to date.

PART V

CONCLUSION OF THE REPORT AND A WAYFORWARD FOR THE MANDATE

83. This Report has given a general overview of the work undertaken by the mandate of the Special Rapporteur since it was established. It has also portrayed the challenges faced by the mandate, and recommendations for a better protection of freedom of expression and access to information in Africa.
84. Despite the various challenges which have impeded the effective realisation of freedom of expression and access to information in Africa, the Special Rapporteur and her predecessor have gone a long way to implement the terms of reference of the mandate. She pays her gratitude to Partners who have supported the Mechanism all the way.
85. In order to make freedom of expression and access to information a reality in Africa, the Special Rapporteur calls for reforms geared towards promoting open Government through statutes and institutional strengthening. The reforms should have the participation of key governmental and non-governmental institutions, including the media, the judiciary, parliament, academia and regulatory agencies.
86. Adopting the Declaration was a very important milestone of the Commission, and a great achievement in the mandate of the Special Rapporteur. It is hoped that once the Declaration is expanded to include Access to Information, the Declaration would be a

better tool in protecting the right to freedom of expression and access to information, guaranteed by Article 9 of the African Charter.

87. Implementation of all national, regional and international laws that protect and promote freedom of expression and access to information is the key way forward to realising these rights. States Parties, CSOs and other stakeholders should therefore play their part in achieving implementation in practice.

88. Finally, implementing the urgent letters of Appeal and the recommendations of the Special Rapporteur in Mission Reports, Resolutions, Concluding Observations and Workshops/Conferences will go a long way in ensuring guarantee of the right to freedom of expression and access to information on the continent. To this end, the Special Rapporteur once again urges all State Parties who have received her urgent letters of Appeal and recommendations, to act on them and report on the measures they have taken to implement them.