INTER-SESSION ACTIVITY REPORT
(NOVEMBER 2017 to APRIL 2018)

Presented to the 62nd Ordinary Session of the African Commission on Human and Peoples’ Rights

Nouakchott, Mauritania, 25 April to 9 May 2018

Commissioner Lawrence M. Mute
Vice-Chairperson of the African Commission on Human and Peoples’ Rights
And
Special Rapporteur on Freedom of Expression and Access to Information in Africa
## Contents

I: Introduction ......................................................................................................................... 3
II: Inter-sessional Activities ...................................................................................................... 4
III: My Priorities as Special Rapporteur .................................................................................. 10
I: Introduction

1. This Report is prepared pursuant to Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (‘Commission’ or ‘African Commission’), which requires each of the Commission’s subsidiary mechanisms to present a report on its work at each Ordinary Session, and each Commissioner to submit a report on activities undertaken during the inter-session.

2. I submit this Report in my capacities as the Vice-Chairperson of the Commission, the Special Rapporteur on Freedom of Expression and Access to Information in Africa (Special Rapporteur), Member of the Committee for the Prevention of Torture in Africa (CPTA), and Member of the Working Group on Older Persons and Persons with Disabilities.

3. This Report covers the inter-session between the 61st and the 62nd Ordinary Sessions of the African Commission, during the period November 2017 to April 2018.

4. The Report is divided into this introduction; inter-sessional activities; and my priorities as the Special Rapporteur.
II: Inter-sessional Activities

5. I undertook the following activities as the Vice-Chairperson of the Commission, Special Rapporteur, and Member of the CPTA and Working Group on Older Persons and Persons with Disabilities:

a. On 6 December 2017, I attended the political meeting of the African Governance Platform, held in Pretoria, South Africa. The objective of the meeting was to review progress on the operationalization of the African Governance Architecture towards enhanced coordination and cooperation among Members of the African Governance Platform.

b. From 6 to 8 December 2017, I attended the 6th High Level Dialogue on Democracy, Human Rights and Governance, held in Pretoria, South Africa, whose goal was to explore the barriers hindering meaningful youth participation and representation in Governance processes and to propose policy recommendations and practical measures to redress arising challenges.

c. From 14 to 15 December 2017, I convened a meeting with a number of stakeholders and partners of the special mechanism on freedom of expression and access to information in Africa, in Zanzibar, Tanzania. During the meeting, possible areas of collaboration were discussed to enable me to determine priorities for the mandate.

d. From 22 to 29 January 2018, I attended meetings of the policy organs of the African Union, including the 35th Ordinary Session of the Permanent Representatives’ Committee, the 32nd Ordinary Session of the Executive Council and the 30th Ordinary Session of the Assembly of Heads of State and Government, during which the Commission’s 42nd Activity Report was presented to and discussed by the policy organs before it was authorized for publication.
e. On the side-lines of the African Union Summit, I participated in the following: a meeting between the Commission and Mr. Mahamane Cissé Gouro, Chief of the Africa Branch of the Office of the United Nations High Commissioner for Human Rights, held on 26 January 2018; meeting of the Bureaux of the Commission and the African Court on Human and Peoples’ Rights held on 27 January 2018; and the launch of the Commission’s Study on HIV, the Law and Human Rights on 27 January 2018.

f. On 8 February 2018, I attended the Colourful Workplaces Conference, held in Nairobi, Kenya, which was convened with the objective of creating diverse workplaces where people can truly be themselves and an asset to their employer, and exploring how diversity and inclusion in the work place could have a lasting impact in Kenya for the future.

g. From 13 to 22 February 2018, I attended the Commission’s 23rd Extra-Ordinary Session, which was held in Banjul, The Gambia.

h. On 27 February 2018, I attended a Community and Policy Makers Dialogue on the impact of unsafe abortion on women living in informal settlements, organised by the Centre for Reproductive Rights, which was held in Nairobi, Kenya. The objective of the dialogue was to create a platform for policy makers, health practitioners, community leaders and reproductive rights advocates to discuss the impact of unsafe abortion with survivors, their families and communities, and to devise ways to combat it.

i. On 28 February 2018, I attended a meeting with the Media Foundation for West Africa, the Kenya ICT Action Network and Media Rights Agenda in Nairobi, Kenya, where discussions were held on the revision of the Declaration of Principles on Freedom of Expression in Africa, in Nairobi, Kenya.

k. On 1 March, 2018, at the School of Law of the University of Nairobi, in an event co-organised by Equality Now and the School of Law, I presented a lecture on how the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa ensures protection against sexual violence and how it anchors sexual and reproductive health rights.

l. From 26 to 28 March 2018, in Washington DC, USA, I participated in the second Joint thematic Dialogue on Sexual Orientation, Gender Identity and Sex Characteristics, hosted by the Inter-American Commission on Human Rights and also attended by United Nations human rights experts and members of the African Commission, The aims of the dialogue were to share best practices and challenges, to identify fields of collaboration, and to reaffirm the collective commitment of the different human rights systems to the eradication of violence and discrimination based on sexual orientation and gender identity.

m. On 22 April, 2018, in Nouakchott, Mauritania, I led an Article 9 stakeholders meeting which explored and agreed on how to revise the Declaration of Principles on Freedom of Expression in Africa, in conformity with Resolutions 222, 350 and 372 of the Commission.

n. On 23 April, 2018, in Nouakchott, Mauritania, I participated in a meeting of the CPTA which took stock of the Committee’s activities for the four-years period when I was its Chairperson, and which prepared its work-plan under its new Chairperson.
6. I issued the following press releases and letters of appeal in my capacities as Commissioner Rapporteur and Special Rapporteur:

a. On 22 November 2017, in my capacity as the Commissioner Rapporteur on the human rights situation in the Republic of Liberia, I issued a Press Release in relation to the general elections which were held to elect the President and members of the House of Representatives. The Press Release called on the National Elections Commission to expeditiously finalise its investigations of the alleged electoral fraud and irregularities, to ensure that the run-off elections were held within the window provided by the Constitution, and further urged all political parties, to respect the ongoing legal process, and ensure that their supporters remained peaceful during this period.

b. On 31 January 2018, in my capacity as Special Rapporteur, I issued a Letter of Appeal to the President of the Republic of Equatorial Guinea, His Excellency Teodoro Obiang Nguema Mbasogo, regarding the arrest and detention of Mr. Ramón Esono Ebalé. The Letter raised concerns that Mr. Ebalé’s arrest, which was reportedly in response to his art which was critical of the Government of Equatorial Guinea, would be in violation of the right to freedom of expression. Additionally, the Letter raised concerns on the prolonged detention of Mr. Ebalé, given that he was not formally charged until 82 days after his arrest. Whereas I did not receive any response from the Government of Equatorial Guinea, I welcome the news of his acquittal and release from custody in March 2018.

c. On 2 February 2018, as the Commissioner Rapporteur on the human rights situation in the Federal Democratic Republic of Ethiopia, I issued a Letter of Appeal to the President of the Federal Democratic Republic of Ethiopia, His Excellency Dr. Mulatu Teshome, in response to reports of the use of force during the Ethiopian Orthodox church annual festival of Epiphany on 20 January 2018, where a number of youth were reportedly shot and others injured. The Letter
raised concerns on the reported use of force by security officials against civilians during the festival, and called on the Government to provide information on the measures taken to conduct investigations on the incident, including bringing the perpetrators to justice. I have not received any response on my letter of appeal.

d. On 9 February 2018, in my capacity as the Special Rapporteur, I contributed to a Press Statement on the human rights situation in Kenya, which focused on violations related to freedom of expression, the rights of arrested and detained persons and the importance of a strong and independent judiciary.


f. On 4 April 2018, in my capacity as the Commissioner Rapporteur on the Human Rights Situation in the Republic of Ghana and as the Special Rapporteur, I issued a Letter to the President of the Republic of Ghana, His Excellency President Nana Akufo-Addo, commending Ghana’s hosting of the World Press Freedom Day, which will be held on 3 May 2018 in Accra. I also called on the Government to pass the Right to Information Bill, which has been pending before Parliament for several years, in order to ensure the right to access information in Ghana, in accordance with Article 9(1) of the African Charter. I have not received any response on my letter of appeal.
g. On 6 April 2018, in my capacity as the Special Rapporteur, I issued a Press Release condemning the abduction and assault of Mr. Ericino de Salema, a journalist and political commentator in the Republic of Mozambique. The press release called on the Government of the Republic of Mozambique, as the primary guarantor of human rights within its national borders, to investigate the attack, in order to bring those responsible to justice.
III: My Priorities as Special Rapporteur

7. The African Commission appointed me as the Special Rapporteur at its 61st Ordinary Session, held from 1 to 15 November 2017, in Banjul, The Gambia.

8. My mandate focuses on the implementation of Article 9 of the African Charter which provides that:

‘Every individual shall have the right to receive information’ and that ‘every individual shall have the right to express and disseminate his opinions within the law.’

9. My terms of reference as denoted in Resolution ACHPR/Res.122(XXXII)07 are to:
   a. Analyse media legislation, policies and practice within States Parties to the African Charter in relation to their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular;
   b. Undertake fact-finding missions to Member States in relation to reports of systemic violations of the right to freedom of expression and denial of access to information and make appropriate recommendations to the African Commission;
   c. Undertake promotional Missions and other activities to strengthen the full enjoyment of the right to freedom of expression and the promotion of access to information in Africa;
   d. Make other interventions regarding violations of the right to freedom of expression and access to information, including by issuing public statements and press releases, and sending appeals to States Parties;
   e. Keep a proper record of violations of the right to freedom of expression and denial of access to information; and

---

1 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, held from 15 to 28 November 2007, in Brazzaville, Republic of Congo
f. 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.

10. In the course of my mandate, I will seek to work with States and other stakeholders to implement these weighty terms of reference. Let me in particular highlight the following issues which I will prioritise.

Protection of the freedom of expression

11. I am of the firm belief that the right to freedom of expression, and indeed that of access to information, is a cornerstone for ensuring human dignity for each individual, and that the right strengthens democratic societies as well as facilitating respect for human rights. In the words of the Declaration of Principles of Freedom of Expression in Africa (Declaration):

‘Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.’ (Principle I 1)

12. Implementation of the right to freedom of expression, as enshrined in Article 9 of the Charter, means that Africans may enjoy more fulfilling lives, where States and private actors are accountable for their actions and where good governance prevails.

13. It remains imperative that journalists and other media practitioners are supported and facilitated to do the essential work of informing, educating and entertaining us. My appeal to all States, therefore, is that they should recommit not to interfere arbitrarily with the freedom of expression of any individual, in conformance with the Declaration which provides that:

‘No one shall be subject to arbitrary interference with his or her freedom of expression.’ (Principle II 1).
14. I am extremely concerned that journalists around Africa continue to be stopped from exercising their right to report and editorialise in terms of the Charter.

15. Journalists who write reports or editorials critical of States or powerful elites have been arrested; journalists have been charged with cyber-crime and terrorism-related offenses after publishing stories uncomplimentary of established orders; and others have been charged with criminal defamation in spite of the Commission’s exhortation in its Resolution ACHPR/Res.169 (XLVIII)10 against criminal defamation laws or insult laws which impede freedom of speech.

16. Far too often, journalists have been detained only to be released after long periods without being charged. In the last few months, journalists covering or planning to cover controversial news-stories or live events have also been intimidated and even assaulted by security forces, while other journalists have been abducted and assaulted clearly on account of their work.

17. I am very concerned about the developing trend where some States implement partial or full shut-downs of broadcasting or print media and indeed social media using the security ruse even where insecurity is determined by judicial oversight as in fact not amounting to a valid consideration.

18. Indeed, during this year’s World Press Freedom Day which, as I have already reported, is being celebrated on 2 and 3 May 2018 in Accra, Ghana, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and I are issuing a joint declaration addressing these same questions.

19. Protecting freedom of expression will remain one of my priorities and I will, towards that end, be engaging with states and other stakeholders using various strategies as necessary on pertinent issues.

Adoption and implementation of national access to information legislation

---

2 Resolution on Repealing Criminal Defamation Laws in Africa, adopted during the 48th Ordinary Session, held from 10 to 24 November 2010, in Banjul, The Gambia
20. The right to information is a fundamental human right necessary for the enjoyment of other human rights. The right to seek and receive information is essential for a transparent and accountable Government.

21. The key objective of the Model Law on Access to Information in Africa (Model Law), which was adopted by the African Commission during its 13th Extra-Ordinary Session in February 2013, is to facilitate the adoption of national legislation on the right of access to information by States Parties to the African Charter, by providing detailed and practical content on the legislative obligations related to access to information, while leaving the specific form in which such laws would be adopted to individual States Parties.

22. I commend the 22 Members States of the African Union which as of the end of 2017 had enacted specific national access to information legislation. These are: Angola; Burkina Faso; Cote d’Ivoire; Ethiopia; Guinea; Kenya; Liberia; Malawi; Morocco; Mozambique; Nigeria; Niger; Rwanda; South Africa; South Sudan; Sierra Leone; Sudan; Tanzania; Togo; Tunisia; Uganda; and Zimbabwe.

23. This however means that at least 33 African states have still not passed access to information legislation.

24. I appeal to States and other stakeholders to work with me to ensure further states enact freedom of information legislation.

25. I in particular appeal to States which have draft access to information bills to bite the bullet and finish the legislative process. This appeal in particular goes to Ghana, Zambia, Namibia and Seychelles which I commend for having draft bills that can be legislated sooner rather than later.

26. I do also recognise that adopting access to information legislation should be supported by implementation of those laws. I note that States with access to information statutes are at various levels of actual implementation, and I will work with States that require technical support to ensure full implementation of the legislation.

Decriminalisation of defamation and libel laws
27. The statute-books of many States in Africa continue to criminalise offenses which limit the freedom of expression, covering sedition, false news, insult, criminal defamation and criminal libel, despite Resolution 169 of the Commission which calls upon States to repeal criminal defamation laws or insult laws which impede freedom of speech.

28. I appeal to all States that have not done so to decriminalise offenses which limit freedom of expression.

29. In this regard, I welcome the judgement by the Court of Justice of ECOWAS in which it directed the Republic of The Gambia to immediately repeal or amend criminal laws on criminal libel, sedition and false news in compliance with international obligations. In the landmark judgment, the Court found that the rights of four Gambian journalists had been violated through the enforcement of laws criminalising speech.

Implementation of the Guidelines on Access to Information and Elections in Africa


31. The key objective of the Guidelines, which are being launched in this Session, is to elaborate on the information which should be proactively disclosed by key role players such as governments, election management bodies, the media and civil society during the electoral period.

32. The appeal I make to States and other stakeholders in respect of the Guidelines is that electoral management bodies across Africa and other relevant institutions should take note of and begin implementing the Guidelines.

Revision/expansion of the Declaration on Principles of Freedom of Expression
33. The African Commission adopted the Declaration on Principles of Freedom of Expression (Declaration) by Resolution ACHPR/Res.62(XXXII)02.\(^3\)

34. The main objective of the Declaration was to elaborate on the scope and content of Article 9 of the African Charter.

35. Over time, major pertinent issues have emerged which are either not covered at all, notably digital rights and privacy rights, or those that are covered insufficiently, such as access to information, in the Declaration.

36. I will offer direction on how to address and consolidate new developments absent from the Declaration.

37. In this respect, on 22 April 2018, in Nouakchott, Mauritania, I hosted an experts meeting on the side lines of this Session to explore the options for revising or updating the Declaration.

**Periodic reporting under Article 62 of the African Charter**

38. I thank States which continue to submit themselves to the periodic reporting procedure under Article 62 of the African Charter. Your candid interactions with us are always quite illuminating.

39. To assist states and other stakeholders to engage effectively on Article 9 issues, I will facilitate effective periodic reporting by states of Article 9 issues. In particular, I will:
   a. Prepare a non-exhaustive and flexible indicative list of questions/issues with which the African Commission may engage states on Article 9;
   b. Engage with other subsidiary mechanisms of the Commission on the application of freedom of expression and access to information as a cross-cutting issue within the exercise of other Charter rights.

**Promoting and protecting the rights of individuals from vulnerable groups**

40. I recognise that freedom of expression and access to information facilitates the exercise of rights by all individuals, including individuals from vulnerable groups.

---

\(^3\) Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa, adopted during the 32\(^{nd}\) Ordinary Session, held from 17 to 23 October 2002, Banjul, The Gambia
such as women and persons with disabilities. I in particular recognise the centrality of information in ensuring sexual and reproductive health rights.

41. Regarding persons with disabilities, I welcome the adoption of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa by the AU Assembly in January this year. I take note of the fact that the Protocol includes specific provisions on freedom of expression and access to information for persons with disabilities. I call upon all states to sign and ratify the Protocol so that it may come into force with expedition.

42. I will work with stakeholders in the above two regard to ensure protection and promotion of the right to freedom of expression and access to information for women and persons with disabilities.