INTER-SESSION ACTIVITY REPORT

OF

ADVOCATE. PANSY TLAKULA

CHAIRPERSON

&

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

(May to November 2017)

Presented during the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights

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INTRODUCTION

1. This report is presented in accordance with Rules 23(3) and 72 of the Rules of Procedure of the African Commission on Human and Peoples’ Rights (the Commission), and covers activities carried out during the intersession period between May and November 2017.

2. The Report details the intersession activities undertaken by Adv. Pansy Tlakula, in her capacity as the Chairperson of the Commission, and as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur). Additionally, a Handover Report details the work undertaken by the Special Rapporteur during her tenure.

3. The Report is structured in three Parts:

- **Part I** covers the intersession activities undertaken by Adv. Tlakula in her capacity as the Chairperson of the Commission and Special Rapporteur;

- **Part II** contains a Handover Report detailing the work of the special mandate on freedom of expression and access to information in Africa;

- **Part III** presents the Conclusions and Recommendations of the Report.
Part I: Intersession Activities Undertaken as the Chairperson of the Commission and Special Rapporteur

- Activities undertaken as the Chairperson of the Commission

  a. Coordination of the Commission’s activities and supervision of the work of the Secretariat

4. In accordance with Rule 13 of the Rules of Procedure of the Commission, the Chairperson coordinated the promotion and protection activities of the members of the African Commission on Human and Peoples’ Rights (the African Commission), in addition to supervising the work of the Secretariat during the period under review. In this regard, the necessary guidance was provided on various issues.

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

5. A delegation from the Commission comprised of the Chairperson, the Vice-Chairperson Commissioner Soyata Maiga, in addition to Commissioners Lucy Asuagbor, Lawrence Mute and Solomon Dersso, attended and participated in a number of meetings during the 29th Summit of the African Union (AU).

6. The delegation attended meetings during the 34th Ordinary Session of the Permanent Representatives Committee (PRC), the 31st Ordinary Session of the Executive Council and the 29th Ordinary Session of the Assembly of Heads of State and Government (the Assembly), which were held from 27 June to 04 July 2017, in Addis Ababa, Ethiopia.

7. Following presentation and discussion on the Commission’s 41st Activity Report, it was authorized for publication.
c. Participation in other events/meetings organized on the margins of the AU Summit

8. On 29 June 2017, the Chairperson attended a roundtable discussion on ‘Ratification of AU Human Rights and Governance Instruments,’ held by the European Union Delegation to the African Union and gave a presentation on how the Commission encourages States Parties to ratify relevant regional and international human rights treaties.

9. On 01 July 2017, the Chairperson participated in a meeting with the Bureau of the African Union Commission (AUC), including the Chairperson H.E. Moussa Faki and the Deputy Chairperson H.E. Ambassador Thomas Kwesi Quartey, and held discussions on cooperation between the African Commission and the AUC.

10. The Chairperson also participated in the Ninth Meeting of the Bureaus of the Commission and the African Court on Human and Peoples’ Rights (the African Court), held on 02 July 2017. Issues discussed included the following: the outcome of Project 2016; the draft practice directives on the agreed conclusions between the Bureaus of the Court and Commission; progress of the Yearbook on Human Rights; the Legal Aid Fund; cooperation on PANAF; and a proposed tri-partite agreement between the Commission, the Court and the Committee of Experts on the Rights and Welfare of the Child.

d. The 22nd Extra-Ordinary Session of the Commission

11. From 29 July to 07 August 2017, the Chairperson chaired the Commission’s 22nd Extra-Ordinary Session, which was held in Dakar, Senegal. The Session was
convened to deal with Communications and other urgent and outstanding matters from previous Sessions.

12. During the Extra-Ordinary Session, the Commission considered twenty-seven (27) Communications and adopted the Report of the Working Group on Communications, the Communications Audit and the Paper on Article 58 of the African Charter. The Commission also discussed the draft amendments to the Rules of Procedure, dealing mainly with the provisions which related to Communications.

e. The 6th Annual Meeting of the Commission and the African Court

13. From 08 to 11 August 2017, the Chairperson participated in and chaired various sessions of the 6th Annual Meeting of the Commission and the African Court, held in Dakar, Senegal.

14. Among the topics discussed during the Annual Meeting were the joint study on consideration of cases submitted by the Commission to the Court, the Yearbook on Human Rights and the Legal Aid Fund.

f. Regional Consultation on the Right to Participate in Public Affairs

15. From 06 to 07 August 2017, the Chairperson attended and participated in a Regional Consultation on the Right to Participate in Public Affairs, held in Addis Ababa, Ethiopia. During the meeting, the Chairperson gave a presentation on African normative and institutional frameworks.
- Activities undertaken as the Special Rapporteur

a. East African Consultation on the draft Guidelines on ATI and Elections for Africa


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

b. Meeting of the Working Group on the development of the draft Guidelines on Access to Information and Elections for Africa

18. From **29 to 30 August 2017**, the Special Rapporteur chaired a meeting of the Working Group which met to consider the proposed amendments to the draft Guidelines on Access to Information and Elections for Africa, held in Johannesburg, South Africa.

c. Advocacy visit to the Democratic Republic of Congo

19. From **01 to 04 October 2017**, the Special Rapporteur undertook an advocacy visit to the Democratic Republic of Congo, the purpose of which was to advocate for the adoption of an access to information (ATI) law, in accordance with the standards embodied in
the Model Law on Access to Information (the Model Law). Members of the Working Group that developed the Model Law also participated in the advocacy visit.

20. During her mission, the Special Rapporteur met with the Minister of Human Rights Her Excellency Ms. Marie-Ange Mushobekwa, the Hon. President of the National Assembly Honourable, Aubin Minaku, the Hon. President of the Senate Honourable Leon Kengo Wa Dondo, Hon. Moïse Nyarugabo, the Senator who introduced the bill on access to information, the Vice-President of the Independent National Electoral Commission Mr. Norbert Basengezi, and the President of the National Commission of Human Rights (CNDH) Mr. Mwamba Mushikonke Mwamus.

21. The Special Rapporteur also held consultations with members of the Committee on Political, Administrative and Legal Affairs (PAJ) and the Social and Cultural Affairs Committee (CSC) of the National Assembly.

22. The delegation met with representatives from media houses and NGOs on 03 October 2017, where the Special Rapporteur gave a presentation on the ‘Experiences and lessons learned on the enactment and implementation of bills on access to information around Africa.’

- Letter of Appeal

23. 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 by issuing public statements, press releases, and sending appeals to Member States asking for clarifications,” the Special Rapporteur issued the following:

- Joint Appeal to the Federal Republic of Nigeria
24. On 06 October 2017, the Special Rapporteur sent a joint Letter of Urgent Appeal, in conjunction with the Commissioner Rapporteur on the human rights situation in the Federal Republic of Nigeria and the Special Rapporteur on Human Rights Defenders in Africa, to His Excellency Muhammadu Buhari, President of the Federal Republic of Nigeria, concerning a Bill known as “An Act to provide for the establishment of Regulatory Commission for the Supervision, Coordination and Monitoring of NGOs, CSOs and Communities Based Organizations in Nigeria,” which proposed the establishment of a Commission which would monitor, supervise, de-register, and pre-approve all activities by civil society, labour and community based organizations in the country. Specifically the letter noted concerns that a number of provisions in the Bill may have the effect of limiting the rights to freedom of association and assembly enshrined in the 1999 Constitution of the Federal Republic of Nigeria and the African Charter.
Part II: Handover Report of the Special Rapporteur on Freedom of Expression and Access to Information in Africa

Establishment of the Special Mechanism on Freedom of Expression and Access to Information in Africa

25. The process of establishing the mandate of the Special Rapporteur on Freedom of Expression and Access to Information in Africa began with the adoption of a Resolution by the Commission, during the 29th Ordinary Session, held in in Tripoli, Libya in May 2001, which authorised the creation of a Working Group to develop a Declaration of Principles on Freedom of Expression to elaborate on the scope and content of Article 9 of the African Charter and also to establish an appropriate mechanism to oversee the implementation of this Declaration. In October 2002, the Declaration of Principles on Freedom of Expression in Africa (the Declaration), was adopted by a Resolution of the Commission.

26. Following the adoption of the Declaration, the earlier decision of the Commission to set up an appropriate mechanism to oversee the implementation of the Declaration and by extension Article 9 of the African Charter, was implemented in the form of the designation of a ‘focal person’ within the Commission for this purpose. In 2004, the ‘focal person’ on freedom of expression was transformed to the ‘Special Rapporteur’ on freedom of expression with the mandate to:

- Analyse national media legislation, policies and practice within Member States;
- Monitor their compliance with freedom of expression standards and advise Member States accordingly;
- Undertake investigative missions to Member States where reports of massive violations of the right to freedom of expression are made and make appropriate recommendations to the Commission;
• Undertake country missions and any other promotional activity that would strengthen the full enjoyment of the right to freedom of expression in Africa;
• Make public interventions where violations of the right of freedom of expression have been brought to his/her attention;
• Keep a proper record of violations of the right of freedom of expression and publish this in his/her reports submitted to the Commission; and
• Submit reports at each ordinary session of the African Commission on the status of the enjoyment of the right to freedom of expression in Africa.

27. The first Special Rapporteur appointed for this Special Mechanism was Mr. Andrew Chigovera. Commissioner Tlakula was appointed pursuant to Resolution on Freedom of Expression and Access to Information in Africa, Resolution ACHPR/Res.84 (XXXXV) 05, adopted by the Commission on 05 December 2005.

28. At the 42nd Ordinary Session, held in Brazzaville, Republic of Congo in November 2007, the Commission decided to renew the mandate of the Special Rapporteur with the following amended title, Special Rapporteur on Freedom of Expression and Access to Information in Africa, and to entrust the Special Rapporteur with the mandate to:

• Analyze national media legislation, policies and practice within Member States, monitor 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, and advise Member States accordingly;
• Undertake 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 make appropriate recommendations to the African Commission;
• Undertake 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;

• Make public interventions where violations of the right to freedom of expression and access to information have been brought to her attention, including by issuing public statements, press releases, and sending appeals to Member States asking for clarifications;

• Keep 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 African Commission; and

• 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.

The achievements of the Special Mechanism on Freedom of Expression and Access to Information in Africa

29. 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 Model Law on Access to Information in Africa and the Project to decriminalize defamation and libel laws in Africa. Additionally, the Special Rapporteur initiated several Resolutions and issued Letters of Urgent Appeal to the States Parties in response to reports of violations of the right to freedom of expression.

30. The following is a summary of the major achievements of the special mechanism.
Access to Information in Africa

- Adoption of the Model Law on Access to Information in Africa

31. 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.

32. 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 ACHPR/Res.167 (XLVIII] 2010 on Securing the Effective Realization of Access to Information in Africa, which authorized 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 Model Law was adopted during the Commission’s 53rd Ordinary Session, in April 2013.

33. When the Model Law Project started, only five (5) countries on the continent had adopted Access to Information Laws. However, since the development of the Model Law, more countries have adopted Access to Information Laws. As at March 2017, twenty-two (22) had adopted such laws, including: 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.

34. The importance of the right of access to information has been bolstered by the declaration of the 28 September as the International Day for Universal Access to Information by UNESCO, through a Resolution that was adopted by its General

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1 “22 African Countries have Passed Access to Information Laws,” 25 March 2017
http://www.africafex.org/access-to-information/22-african-countries-that-have-passed-access-to-information-laws
Conference on 17 November 2015. The African continent played a role in the achievement of this milestone, with Angola, Morocco and Nigeria sponsoring the Resolution.

35. The Special Rapporteur also contributed to this achievement by proposing **Resolution ACHPR/Res.222 (LI) 2012**, which was adopted by the Commission during its 50th Ordinary Session in May 2012, which requested the African Union to consider proclaiming 28 September as the International Right to Information in Africa. Following adoption of this Resolution, the Special Rapporteur made an effort to commemorate this important day every year.

- **Development of Guidelines on Access to Information and Elections**

36. Additionally, in light of the importance of the right of access to information to the creation of a conducive environment for free, fair and transparent elections, and in recognition of the fact that no regional standard on the role of access to information in the electoral process exists as a means of guaranteeing the credibility of elections in Member States, the Special Rapporteur initiated a process of developing Guidelines on Access to Information and Elections in Africa in May 2016.

37. These Guidelines seek to elaborate on the information that should be proactively disclosed by all the role players in the elections including: political parties; election observer missions; the media; among others.

38. The draft Guidelines have undergone a wide consultation process, including being posted on the Commission’s website to ensure that the general public had the opportunity to engage with the draft document. The Guidelines will be tabled for adoption during the 61st Ordinary Session, and it is hoped will contribute to attaining transparent elections in Africa.
Freedom of Expression in Africa

- Decriminalization of Defamation

39. **Principle XII** of the Declaration proposes that laws relating to defamation, in the State Parties, should conform to certain prescribed standards, which are elaborated in the Declaration. During the Commission’s 48th Ordinary Session held in November 2010, **Resolution ACHPR/Res.169 (XLV111) 10** on “Repealing Criminal Defamation Laws in Africa” was adopted which called on State Parties to repeal criminal defamation or insult laws, which impede freedom of speech. Thereafter, the project to decriminalize defamation was launched in 2012 on the margins of the Commission’s 52nd Ordinary Session, in October 2012.

40. The objective of the project was 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. This project is ongoing.

41. The Commission’s initiative to decriminalize defamation was given impetus following adoption of the decision of the African Court, in **Application No. 004/2013 – Lohé Issa Konaté v. Burkina Faso**, delivered on 05 December 2014, in which the Court unanimously ruled that imprisonment for defamation violates the right to freedom of expression and that criminal defamation laws should only be used in restricted circumstances.

- Letters of Urgent Appeal

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

43. Since her appointment, the Special Rapporteur has sent approximately seventy-seven (77) Urgent Letters of Appeal to the States Parties of the African Charter. Generally, the Special Rapporteur expresses concerns on the allegations received, calls for action from the Government, in addition to urging action to ensure protection of the victims and investigation of the violations.

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

- **Resolutions**

45. Another method used by the Special Rapporteur to raises awareness on freedom of expression and access to information is by proposing Resolutions for adoption during the Sessions of the Commission.

46. The following country and thematic Resolutions were proposed by the Special Rapporteur during her tenure:

- Resolution to Revise the Declaration of Principles on Freedom of Expression in Africa, adopted during the 20th Extraordinary Session in June 2016;
- Resolution on the drafting of Guidelines on Freedom of Association and Assembly in Africa (319), adopted during the 57th Ordinary Session in November 2015;

- Resolution on Freedom of Expression in the Kingdom of Swaziland, adopted during the 16th Extraordinary Session in July 2014;

- Resolution on Attacks against Journalists and Media Practitioners in the Federal Republic of Somalia, adopted during the 15th Extra Ordinary Session in March 2014;

- Resolution on the Attacks against Journalists and Media Practitioners in Somalia, adopted during the 51st Ordinary Session in May 2012;

- Resolution on the Safety of Journalists and Media Practitioners in Africa, adopted during the 49th Ordinary Session in May 2011;


- **Cooperation and collaboration between the global Rapporteurs on Freedom of Expression**

47. The Special Rapporteur also collaborated with the other special rapporteurships for freedom of expression, including the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Representative on Freedom of the Media from the Organization for Security and Co-operation in Europe (OSCE).

48. In addition to participating in meetings and other fora convened by the other Special Rapporteurs, the Special Rapporteur contributed to joint declarations which were issued annually on various topics of concern related to freedom of expression. This year, the **Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda** was issued on 03 March 2017.
- Admission as an ‘amicus curiae’ in a case before the East African Court of Justice

49. On Thursday 12 November 2015, the East African Court of Justice granted the application of the Special Rapporteur, in conjunction with the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, to file amicus curiae submissions in Medical Legal Defense Initiative (MDLI) & 19 Others v. The Attorney General of the Republic of Uganda, which was a case filed before the court by a Uganda journalist challenging criminal defamation. In their joint application the Special Rapporteurs stated that they would provide the Court with expert interpretation on international law from the perspective of the African Union and the United Nations.

Analysis of the state of freedom of expression and access to information

50. The allegations of violations of freedom of expression which were brought to the Special Rapporteur’s attention relate to various issues including: intimidation, harassment and threats targeting journalists and media personnel; unwarranted detention and arrest; kidnapping; murder of journalists and other media practitioners; the closure of newspapers and media houses; and interruption of telecommunication services, including social media.

51. Additionally, the Special Rapporteur received consistent reports during her tenure of arrest of journalists and media practitioners on the basis of criminal defamation laws, or other similar laws such as false news, insult and sedition. In response, the Special Rapporteur specifically called on the States Parties to repeal or amend these laws, in order to adhere to the provisions of freedom of expression articulated in the African Charter, the Declaration, and other regional and international instruments.
Challenges

52. Whereas the Mechanism has made a lot of progress in protecting and promoting freedom of expression and access to information in Africa, the Special Rapporteur notes the following challenges:

- Existence of libel and defamation laws in most countries on the continent;
- Lack of political will in some State Parties to enact access to information laws;
- Lack of allocation of adequate resources necessary for the effective implementation of access to information laws in most State Parties that have adopted these laws;
- The lack of real and effective democratic institutions;
- Lack of effective collaboration/cooperation between civil society and the Government;
- Lack of political will to implement the recommendations of the Special Rapporteur;
- Lack of responses from State Parties to the Appeals of the Special Rapporteur.

Outstanding Projects

53. The Special Rapporteur initiated several projects during her tenure. The following project is on-going:

➢ Revising the Declaration of Principles on Freedom of Expression

54. In light of the developments in the areas of freedom of expression and access to information in Africa, since the adoption of the Declaration of Principles on Freedom of Expression in Africa by the Commission in 2002, the Special Rapporteur initiated the process of revising the Declaration; however was unable to complete the project. Accordingly, the revision of the Declaration will be tasked to the in-coming Special Rapporteur to complete this important task.
Part III: Conclusions and Recommendations

55. This Report has given a general overview of the work undertaken by the mandate of the Special Rapporteur since the special mechanism was established. It has also highlighted the challenges faced by the mandate in the promotion and protection of freedom of expression and access to information in Africa.

56. Despite the various challenges which have impeded the effective realization of freedom of expression and access to information in Africa, the Special Rapporteur was able to achieve great strides in implementation of the terms of reference of the mandate. She extends her gratitude to the mechanism’s partners who have supported the Mechanism in its projects and initiatives.

57. 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 strengthening of its institutions. The reforms should have the participation of key governmental and non-governmental institutions, including the Judiciary, Parliament, regulatory agencies, academia, civil society organizations, the media and the general public at large.

58. Adoption of the Declaration was a very important milestone of the Commission. Accordingly, it is hoped that once the Declaration is expanded to include Access to Information, the Declaration will be a better advocacy tool for protection of the rights to freedom of expression and access to information.

59. 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 realizing these rights. States Parties, CSOs and other stakeholders should therefore play their part in achieving their implementation in practice.
60. Finally, implementing the urgent Letters of Appeal and the recommendations of the Special Rapporteur as provided in Mission Reports, Resolutions, Concluding Observations and Workshops/Conferences will go a long way to ensuring the rights to freedom of expression and access to information on the continent. To this end, the Special Rapporteur reiterates her call to all State Parties to engage with the Commission and its special mechanisms, including through taking steps to implement its recommendation and reporting on these measures to the Commission.

61. The Special Rapporteur makes the following specific recommendations to the State Parties:

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

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2 Adopted during the 48th Ordinary Session, held in Banjul, The Gambia, from 10 to 24 November 2010
3 Adopted during the 59th Ordinary Session, held Banjul, The Gambia, from 21 October to 04 November 2016
62. Lastly, the Special Rapporteur also makes the following specific recommendations to the Commission:

- To continue with project to expand the Declaration;
- To adopt the Guidelines on Access to Information and Elections for Africa, given that these Guidelines will be the first standard setting document globally on the matter;
- Address emerging issues such as freedom of expression in the internet, cybercrime and cyber security and balancing the right of access to information against protection of national security.

CONCLUSION

63. It has been an immense honour and privilege for me to serve our beloved continent as the Special Rapporteur on Freedom of Expression and Access to Information for the past twelve years. I hand over the baton to my successor satisfied that I did my best to execute the mandate. However, a lot still needs to be done, particularly on the emerging issues mentioned above. As I bid you farewell, I wish to thank the Commissioners, State Parties, National Human Rights Institutions, Civil Society Organizations and all the partners who supported my mandate throughout the years. I also wish to thank all the legal officers who have worked with me. Without your support and expertise, we would not have achieved what we did in this mandate.

COMMISSIONER PANSY TLAKULA

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