

**Final**

**ACTIVITY REPORT**

**OF**

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

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*Presented to the 49<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights*

**Banjul, The Gambia, 28 April -12 May 2011**

## Introduction

1. This Report outlines the activities undertaken by the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur) during the intersession period November 2010 to April 2011.
2. This Special Mechanism was established at the 36<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples Rights (hereafter, the African Commission) held in Dakar, Senegal from 23 November to 5 December 2004.
3. Commissioner Pansy Tlakula was appointed as Special Rapporteur at the 38<sup>th</sup> Ordinary Session of the African Commission held in Banjul, The Gambia from 21 November to 5 December 2005. She was reappointed at its 42<sup>nd</sup> Ordinary Session held in Brazzaville, Republic of Congo, and 46<sup>th</sup> Ordinary Session which took place in Banjul, The Gambia respectively.
4. Any further background information and information related to the Terms of Reference of the Special Rapporteur can be found in the Resolution establishing the mandate and her previous Reports available at [www.achpr.org](http://www.achpr.org).
5. This Report is divided into four parts: **Part I** covers the activities undertaken by the Special Rapporteur in the period under review; **Part II** gives an overview of the status of the adoption of Access to Information legislation in Africa; **Part III** summarises the challenges faced by the Special Rapporteur in realising her mandate; and finally, **Part IV** presents the conclusions and recommendations of the Special Rapporteur.

## PART I

### Activities undertaken in the period under review

6. The activities of the Special Rapporteur during the reporting period are outlined as follows:

#### *Working Group Meeting on the draft Model Law on Access to Information*

7. It would be recalled that during the 48<sup>th</sup> Ordinary Session, the African Commission adopted **Resolution 167 (XLVIII)** on “Securing the Effective Realization of Access to Information in Africa,” which amongst other things, authorised the Special Rapporteur to initiate the process of developing a model Access to Information Law in Africa, and report its progress at its next Ordinary Session.
8. It would also be recalled that, as reported in her last Report, the Special Rapporteur organised an Expert Meeting from 29 to 31 October 2010, during which Principles and Guidelines that would form part of the model Law were adopted, while a Working Group and a drafting Committee was also established to start the drafting process.
9. Following the said Resolution therefore, from **19 to 21 January 2011**, the Special Rapporteur, in collaboration with the Centre for Human Rights, University of Pretoria, with the financial support of Open Society Initiative for Southern Africa (OSJI), organized a Working Group Meeting on the draft Model Law, in Pretoria, South Africa. The Workshop was aimed at bringing together members of the Working Group that was established in the October 2010 Meeting to discuss the draft Law prepared by the Drafting Committee.

*Panel Discussion on 'Whose Press Freedom'*

10. On **12 February 2011**, the Special Rapporteur participated as Panellist in a discussion entitled *"Whose Press Freedom,"* organised by the Nieman Foundation for Journalism (South Africa), in Cape Town, South Africa. This Panel Discussion examined the current debate on press freedom in South Africa.

*Conference on Freedom of Expression and the Internet in Sub-Saharan Africa*

11. On **15 February 2011**, the Special Rapporteur attended a Conference on *"Freedom of Expression and the Internet in Sub-Saharan Africa"*. The Conference was aimed at providing a report on the *"state of freedom of expression on the Internet to the UN Human Rights Council"* in line with the mandate of the United National (UN) Special Rapporteur for Freedom of Expression. The Special Rapporteur gave a brief outline of the status of freedom of expression in Africa.
12. In addition to the above, the Special Rapporteur was also party to a Joint Declaration on Freedom of Expression and the Internet in collaboration with the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, and the Organization of American States (OAS).

*Expert Workshop on the Draft Model Law on Access to Information*

13. From **14 to 16 March 2011**, the Special Rapporteur organized another Expert Workshop to discuss the Draft Model legislation on Access to Information in Pretoria, South Africa. The Workshop brought together experts in the field of Access to Information, to comment on the Draft law and Explanatory Note.

*Regional Meeting on Transparency and Anti-corruption Policy in the SADC Region*

14. From **22 to 23 March 2011**, the Special Rapporteur was invited to attend a “*Regional Meeting on Transparency and Anti-corruption Policy in the SADC Region*,” in Johannesburg, South Africa. She could not attend the meeting due to other commitments, but however forwarded her presentation paper on the “*the impact of the Declaration of Principles of Freedom of Expression in Africa since its adoption*,” to the organisers.

*Sensitization Workshop on the Draft Model Law on Access to Information*

15. On **29 April 2011**, the Special Rapporteur organized a Workshop on the draft Model Law on Access to Information, in collaboration with the Centre for Human Rights, University of Pretoria and OSJI within the margins of the 49<sup>th</sup> Ordinary Session in Banjul, The Gambia. The aim of the Workshop was to inform States Parties to the African Charter, Non Governmental Organisations (NGOs), and other stakeholders about the existence of the draft law and subsequently open the law for public consultation.
16. At the end of the Workshop, stakeholders were informed that the draft Model Law would be posted to the African Commission and the Centre for Human Rights’ website, to enable them make comments on the draft Model Law.

## PART II

### Status of adoption of Access to Information legislation in Africa

17. In line with the Special Rapporteur's mandate to "*Submit reports at each Ordinary Session of the African Commission on the status of the enjoyment of the right to freedom of expression and access to Information in Africa*,"<sup>1</sup> she is now reporting on the progress made on the same.
18. In her last Activity Report, presented to the 48<sup>th</sup> Ordinary Session of the African Commission, the Special Rapporteur stated that amongst the countries on the continent already having Freedom of Information Laws,<sup>2</sup> only the Republic of Liberia was reported to be the additional State Party to the African Charter, with a Bill passed on 6 October 2010.<sup>3</sup> This makes it six out of fifty-three States in the continent with Freedom of Information laws.
19. During the intercession however, there have been some developments in this area in the countries discussed below:

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<sup>1</sup> See 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 42<sup>nd</sup> Ordinary Session of the African Commission that took place in Brazzaville, Congo from 15 to 28 November 2007, available at [http://www.achpr.org/english/resolutions/resolution122\\_en.ht](http://www.achpr.org/english/resolutions/resolution122_en.ht).

<sup>2</sup> Angola, Ethiopia, South Africa, Uganda and Zimbabwe.

<sup>3</sup> See the Special Rapporteur's Activity Report submitted to the 48<sup>th</sup> Ordinary Session of the African Commission, 10 to 24 November 2010, Banjul, The Gambia; para 48.

## *Ghana*

20. In the Republic of Ghana, a Bill guaranteeing the right of access to information held by public bodies was drafted in 2002,<sup>4</sup> and amended in 2003, 2007, 2008 and 2009 respectively. The draft Bill was re-introduced to Parliament in 2010, and in February 2011, it was reported that the delayed passage of the Bill is due to the unavailability of funds for law makers to hold consultations on the Bill in every region of the country. The consultations are reported to cost hundreds of thousands of dollars, and the World Bank has offered to fund these consultations if they are limited to four and cost no more than eighty-thousand US dollars (\$80,000).<sup>5</sup>

21. The Special Rapporteur appreciates this development and hopes that the financial bottlenecks will be resolved in due course with the assistance of the World Bank as promised, so that the draft Bill can be passed into law as soon as possible.

## *Nigeria*

22. In the Federal Republic of Nigeria, a Freedom of Information Bill was adopted by the Nigerian House of Representatives in August 2004. This Bill was reportedly stalled, until the Senate passed a slightly different version of the Bill in November 2006.<sup>6</sup> In 2007, the two Bills were harmonised by the House of Representatives and the Senate. However, President Obasanjo reportedly refused to sign the Bill into law.

23. The draft Bill continued to be stalled until when the House of Representatives passed a Freedom of Information Law, similar to that which was passed in 2007 on 24 February

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<sup>4</sup> 'Ghana: Freedom of Information Bill' <<http://allafrica.com/stories/201006180597.html>>.

<sup>5</sup> 'World Bank Supportive of Ghana FOI Bill'. Available at <<http://www.freedominfo.org/2011/02/world-bank-supportive-of-ghana-foi-bill>>

<sup>6</sup> 'Statement in support of Freedom of Information in Nigeria' by Article 19, 31 January 2007. Available at <<http://www.article19.org/pdfs/publications/nigeria-foi-bill-statement.pdf>>.

2011.<sup>7</sup> The Bill guarantees the right of all persons to access information held by public institutions.

24. On 15 March 2011, a weaker version of the Bill was passed by the Senate which grants the right to access information only to Nigerian citizens, provided the release of information does not compromise national security.

### *Sierra Leone*

25. In the Republic of Sierra Leone, there has been a draft Access to Information Legislation since 2003, amended in 2008. On 16 June 2010, this Bill was approved by cabinet,<sup>8</sup> and on 11 November 2010, the Bill was tabled before parliament by the Minister of Information and Communication, Mr. Alhaji Ibrahim Ben Kargbo. On 4 March 2011, Minister Kargbo made comments on the Bill and promised that it would be passed into law within the next four or five weeks.<sup>9</sup>

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<sup>7</sup> The only difference between the two Bills is the deletion of clause 18 in the version passed by this House of Representatives, which had allowed access to documents containing drafts and preliminary opinions of public bodies.

<sup>8</sup> 'Sierra Leone Cabinet approves Freedom of Information Bill'  
<[http://news.sl/drwebsite/publish/article\\_200515626.shtml](http://news.sl/drwebsite/publish/article_200515626.shtml)>.

<sup>9</sup> 'Sierra Leone Minister Says FOI Bill to Pass this Week' Available at  
<<http://www.freedominfo.org/2011/03/sierra-leone-minister-says-foi-bill-to-pass-this-week/>>



## PART III

### Challenges

26. The Special Rapporteur has made great strides in the realization of her mandate since its inception. She welcomes all the support she continues to receive from Governments, Civil Society Organisations (CSOs) and other partners which have gone a long way to help her overcome the challenges that come with her mandate. Having said this, the Special Rapporteur is however still concerned about certain challenges beyond her control that greatly impede the effective realization of her mandate.
27. Some of these challenges include *inter alia*, lack of political will by some States Parties to the African Charter in implementing her recommendations; lack of cooperation between her mandate and some Governments in the continent with respect to advocacy on the importance of these rights and documenting their violation; the absence of freedom of expression and access to information laws at the national level; and the lack of recognition and non-binding nature of the Declaration of Principles on Freedom of Expression which should serve as a benchmark in the realization of freedom of expression and access to information on the continent.

## **PART IV**

### **Conclusion and recommendations**

28. Freedom of expression and access to information are fundamental human rights that play a central role in the effective functioning of any society. In this regard, respect and realization of these rights cannot be overemphasized. Despite this recognition however, obstacles still exist in the continent which impede the realization of freedom of expression and access to information.
29. It is the view of the Special Rapporteur that, the safety of journalists and Media Practitioners generally, and especially during times of conflict, remains a cause for concern. They are victims of various human rights violations, including threats and intimidation when carrying out their profession, and these violations become more imminent during conflicts. The Special Rapporteur therefore calls on Governments in war torn countries, to ensure the safety of Journalists and Media Practitioners, and consent to their independence in reporting violations and other subjects during such periods.
30. Empowering citizens is a very important aspect of participatory democracy. This is because, when citizens are empowered, they can freely express their opinions, engage in public debates that affect their lives and hold governments accountable. Accordingly, the Special Rapporteur calls on States Parties to the African Charter to put legislative and other measures in place, to facilitate the empowerment of citizens within their jurisdiction, including encouraging pluralistic media.
31. Furthermore, albeit that there have been some progress in the continent with respect to the legal framework on freedom of expression and access to information, a lot is still to be desired. The Special Rapporteur commends countries in the continent that have taken concrete steps towards enacting Access to Information Laws, as well as those who have

incorporated the right to freedom of expression and access to information in their Constitutions. She however reiterates her stance about the need to have such laws in place, and calls on States Parties, who have not yet done so, to start the process of enacting such laws. She also calls on countries that already have these laws, to accelerate their implementation.

32. The Special Rapporteur would also like to use this opportunity to draw the attention of States Parties, CSOs, and other stakeholders about the existence of a draft Model law on Access to Information mentioned above, which is now open for public consultation. In this sense, she is calling on all stakeholders to collaborate with her mandate to enrich this draft law during the time it is open for the public, with a view to take into consideration their aspirations before it is finally adopted by the African Commission in the nearest future.

33. The Special Rapporteur would also like to underscore the fact that the Declaration of Principles on Freedom of Expression in Africa is an elaboration of Article 9 of the African Charter. Therefore, even though it is not binding to States Parties to the African Charter, recognizing that it is a more comprehensive document on the rights that emanate from Article 9 which has proved to be inadequate with respect to content, should encourage States Parties to abide by it. Accordingly, the Special Rapporteur calls on States Parties to use the Declaration as a basis for drafting their national laws on freedom of expression and access to information.

34. The Special Rapporteur, as in her previous reports to the African Commission, continues to oppose all forms of defamation and seditious laws which constitute restriction to freedom of expression and access to information, in violation Principle XII of the Declaration. Principle XII provides that:

*1. 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.*

*2. Privacy laws shall not inhibit the dissemination of information of public interest.*

35. The Special Rapporteur therefore calls on all States Parties to the African Charter, who entertain criminal defamation and seditious laws, to immediately eradicate or repeal them to be in line with the African Charter, the Declaration, other regional and international instruments related to freedom of expression and access to information.

36. The Special Rapporteur continues to deplore the fact that the African Charter on Elections, Democracy, and Governance (African Charter on Democracy) has still not come into force because the number of ratifications has not attained the required number, which is fifteen (15) Member States. In this regard, while commending States Parties that have ratified the African Charter on Democracy, she continues to urge those that have not yet done so, to ratify it as soon as possible.

37. Finally, she urges all States Parties who have received her Appeals and recommendations, to act on them and report on the measures they have taken to implement them as soon as possible.