

Special Rapporteur on Freedom of Expression and Access to
Information in Africa - 73OS

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INTER-SESSION ACTIVITY REPORT

OF

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of the

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INTRODUCTION

1. This report is presented in accordance with Rules 25(3) and 64 of the Rules of Procedure (2020) of the African Commission on Human and Peoples' Rights (the Commission), and covers activities carried out during the intersession period between May to October 2022.
2. The Report details the activities undertaken in my capacity as a member of the Commission, the Vice Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (the Working Group on Extractive Industries), a member of the Working Group on the Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa (the Working Group on the Death Penalty), and as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur).
3. The Report is structured in four parts as follows:

- **Part I:** Activities undertaken in my capacity as a Member of the Commission, Vice Chairperson of the Working Group on Extractive Industries and as a member of the Working Group on the Death Penalty;
- **Part II:** Activities undertaken in my capacity as the Special Rapporteur;
- **Part III:** Report on interventions issued in response to human rights violations;
- **Part IV:** Challenges and recommendations.

Part I:

Activities undertaken in my capacity as a Member of the Commission

- *Participation in the 72nd Ordinary Private Session*
4. From 19 July to 02 August 2022, I participated in the Commission's 72nd Ordinary Private Session, which was held virtually to consider Communications, adopt Concluding Observations on State Periodic Reports and Resolutions, in addition to considering a number of Reports, and other outstanding matters.

Activities undertaken in my capacity as the Vice Chairperson of the Working Group on Extractive Industries

5. Although no activities were planned during the intersession period, a panel discussion has been convened on 27 October 2022, on the Inaugural Regional Forum on the State of Extractives Industries, Human Rights and the Environment in Africa. The forum would serve to take stock of the state of affairs on the continent as far as extractives industries and human and peoples' rights under the African Charter are concerned; as a platform for enabling the Commission to sensitize stakeholders on the normative frameworks governing extractive activities and environmental protection on the continent; to gather relevant information from stakeholders; as well as to facilitate experience-sharing and the documentation of best practices on the continent. Regrettably, I will not take part in this inaugural panel.

Part II: Activities undertaken as the Special Rapporteur

- *Consultative Meeting with Fesmedia Africa*
6. On **16 May 2022**, I participated in a consultative meeting with *Fesmedia Africa*, convened to discuss possible areas of collaboration. Following a discussion on the work being done by *Fesmedia* and future projects which the special mechanism could be involved in, a presentation was made on a publication which *Fesmedia* is working on, namely a "Comparison between the 2002 Declaration and the revised 2019 Declaration on Freedom of Expression and Access to Information in Africa."
 7. Following the presentation and discussion, a number of action points were agreed on to take the collaboration forward. Additionally, during the intersession period,

the draft document was reviewed and proposed amendments and comments on the text were transmitted to *Fesmedia*.

- *Participation in the National Consultation Workshop on Fostering the tripartite relationship among the Ethiopian Human Rights Commission, CSOs and the Media*
8. On **19 May 2022**, I delivered the key note address at the virtual **National Consultation Workshop on Fostering the Tripartite Relationship among the Ethiopian Human Rights Commission, CSOs and the Media for Coordinated Advocacy**, which was convened by the CSOs-EHRC Coordination Platform on Human Rights in Ethiopia.
 9. In my statement, I took the opportunity to stress the importance of freedom of expression and access to information in relation to press freedom, in addition to the role which can be played by the Ethiopian Human Rights Commission and Civil Society Organizations (CSOs) to promote press freedom in Ethiopia. Additionally, regarding laws related to freedom of expression in Ethiopia, I noted the adoption of **Proclamation NO. 1185-2020 on Hate Speech and Disinformation Prevention and Suppression**, buttressing that while hate speech poses a threat to the peace and security of a State and its population, the definition of 'hate speech' and 'disinformation,' as well as their interpretation, should not be too broad.
- *Participating in a podcast on the Guidelines on Access to Information and Elections in Africa, for the Centre for Human Rights (UP)*
10. On **30 June 2022**, I participated in a podcast of the Centre for Human Rights which focused on the **Guidelines on Access to Information and Elections in Africa** (the Guidelines) and the importance of access to information in an electoral context.
 11. During the discussion, I highlighted the soft law documents related to Article 9, which were spearheaded by the special mechanism; namely the **Model Law on Access to Information in Africa**, the revised **Declaration of Principles on Freedom of Expression and Access to Information in Africa** (the Declaration), in addition to the Guidelines.
 12. Furthermore, I buttressed the link between access to information and elections, noting that without access to reliable information on a wide-range of issues prior to, during and after elections, it is difficult for citizens to effectively exercise their right to vote as envisioned in Article 13 of the African Charter. I stressed that in order for elections to be free, fair, and credible, voters must have access to information at all stages of the electoral process, as this enables them to be educated and informed on the political processes.
- *Consultative Meeting with the International Press Institute*
13. On **12 June 2022**, I participated in a consultative meeting with the International Press Institute. The consultation was convened to introduce the new Africa Program officer and discuss possible areas of collaboration.

14. Following the constructive discussion, a number of action points were agreed, including the commitment to hold regular virtual engagements with journalists and media practitioners working in Africa, to apprise the special mechanism on challenges facing press freedom in Africa, in addition to regular submission of shadow reports and complaints on human rights violations related to the safety of journalists to the special mechanism.

- *Participation in the Launch of “The Digital Rights Landscape in Southern Africa”*

15. On **03 August 2022**, I delivered a key note address at the launch of a report on the **Digital Rights Landscape in Southern Africa**, convened by the Centre for Human Rights. During my brief remarks, I touched on Part IV of the Declaration, in addition to highlighting digital rights with specific reference to Southern Africa.

16. Furthermore, on **15 August 2022**, I delivered opening remarks at the Digital Rights in Southern Africa Training for CSOs, a workshop convened to raise awareness on the report which was launched.

17. In addition, on **04 and 05 October 2022**, I delivered opening remarks at the Digital Rights in Southern Africa Training for NHRIs and Government respectively. These trainings followed the CSO workshop, and were similarly awareness raising trainings, on the report launched on **03 August 2022**.

- *Forum on Internet Freedom Africa (2022)*

18. From **27 to 28 September 2022**, I attended activities during the Forum on Internet Freedom (2022), held in Lusaka, Zambia.

19. The meeting was convened by African Freedom of Expression Exchange. The objective of the meeting was to create an opportunity for dialogue and reflection on freedom of expression, access to information and digital rights, in Africa, and to think critically about emerging needs and the necessary interventions.

20. At the event themed “An Evening with the Special Rapporteur,” I took the opportunity to address the attendees on the priority areas of focus in the special mechanism:

21.

- a. Increased efforts towards the promotion of digital rights as they relate to freedom of expression and access to information;
- b. Strengthening the implementation of the right to access to information; the improvement of quality freedom of expression and access to information in Lusophone region;
- c. Considering the impacts of AI on freedom of expression and access to information; and
- d. Continuing to strategically engage stakeholders on the continued crackdown on journalism and the shrinking of the civic space.

22. Following the meeting, a number of action points were determined, including a commitment to continuously engage with relevant FOE, ATI and digital rights oversight mechanisms, continued mutual cooperation and the strengthening of knowledge and information sharing.

- *Consultative meetings on the Regional Seminar*

22. During the intersession period a series of meetings were held on the proposed Regional Seminar on Freedom of Expression and Access to Information for Lusophone Africa (the Regional Seminar), which was scheduled to be held in Praia, Cabo Verde, from 29 to 31 August 2022. Regrettably the Seminar was cancelled due to logistical challenges which were beyond our control. The special mechanism still intends to hold this Regional Seminar in February 2023.

Part III: Report on interventions issued in response to human rights violations

23. In line with the special mechanism's 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,*" this section of the Report provides information on the interventions taken to address alleged violations of freedom of expression and access to information brought to my attention.

24. During the period under review, I issued the following interventions:

- **Letters of Appeal**

- *Joint Letter of Appeal regarding violations of freedom of expression in the Federal Democratic Republic of Ethiopia*

25. On **02 June 2022**, I participated in a joint Letter of Appeal to **H.E. Abiy Ahmed**, Prime Minister of the Federal Democratic Republic of Ethiopia, in response to reports of the arrest of journalists and media workers working for Nisir International Corporation and Ashara, both Youtube Channels in Ethiopia's northern Amhara region, by security forces and local police. Reportedly, the arrests occurred during a raid on the offices of the two media outlets in May 2022, during which the police did not show a warrant and confiscated office equipment, including laptops and external hard drives.

26. The letter, *inter alia*, requested clarification on the alleged reports, and called on the Government to carry out independent and impartial investigations into the allegations of arrests and detention of journalists. Furthermore, the letter called on the Government to reaffirm the indispensable role of the media, in particular by taking all necessary measures to provide journalists and other media practitioners with an environment which is conducive to free expression without undue interference, or fear of reprisal.

27. To date, however, a response has not been received from the Government with regards to the issues raised in this letter of appeal.

- *Joint Letter of Appeal regarding violations of Freedom of Expression in the Federal Republic of Somalia*

28. On **05 September 2022**, I participated in a joint Letter of Appeal to **H.E. Hassan Sheikh Mohamud**, President of the Federal Republic of Somalia, in response to reports regarding an attack on **Mr. Ahmed Omar Nur**, a journalist working in Somalia. It was reported that on 21 August 2022, while reporting on a story, **Mr. Nur** was attacked by two security personnel, and following a brief altercation was shot at point-blank range in the mouth, resulting in a serious injury. Additional reports indicate that the security personnel allegedly responsible for the injury were arrested; however, on the evening of the same day were released from custody. Reportedly, the investigation was closed, and charges have not been brought against the two security personnel. In response to the incident, the National Union of Somali Journalists (NUSOJ) filed a Complaint with the office of the Special Prosecutor tasked with investigating crimes against journalists.

29. The letter, *inter alia*, requested clarification on the alleged reports, and called on the Government to carry out independent and impartial investigations into the assault of **Mr. Nur**. To date, however, a response has not been received from the Government with regards to the issues raised in this letter of appeal.

- *Joint Letter of Appeal regarding violations of Freedom of Expression and the shrinking of the civic space in the Arab Republic of Egypt*

30. On **20 September 2022** I participated in a joint letter of concern to H. E. Abdel Fattah El-Sisi, President of the Arab Republic of Egypt in response to reports on intimidation and obstruction of members of CSO, activist and local groups working on issues related to climate change and the environment. These reports indicated that there was significant resistance for the expression of dissenting voices and views, prohibition of protests and the enforcement of public policies and practices which encourage the earlier mentioned intimidation.

31. The letter, *inter alia*, recalled the need to strengthen institutions which have been established to ensure the protection of freedom of expression and access to information, in Egypt.

- **Press Statements**

- *Statement commemorating the International Day for Universal Access to Information, 28 September 2022*

32. On **28 September 2022** I issued a press release commemorating the International Day for Universal access to Information. This year's theme *Artificial intelligence, e-governance and access to information*, I emphasised the importance of Resolution 473 on **The need to undertake a study on human and peoples' rights and artificial**

intelligence, robotics and other new and emerging technologies in Africa. I extended the Commission's recognition of the need to better understand the legal, ethical, safety and security opportunities and challenges raised by artificial intelligence, robotics and emerging technologies.

33. In addition to this, I took the opportunity to remind State Parties of their obligations enshrined in Article 9(1) of the African Charter as further elaborated in the Declaration of Principles and the Model Law on Access to Information. I advised that State parties would consider application of the guidance contained in Resolution in 473, taking note of how AI and e-governance affect access to information.

Part IV: Challenges and Recommendations

34. The **Declaration of Principles on Freedom of Expression and Access to Information in Africa** (the Declaration) provides, in Principle 1 on the importance of the rights to freedom of expression and access to information, that "*States Parties to the African Charter shall create an enabling environment for the exercise of freedom of expression and access to information.*"

Challenges

- *Internet shutdowns*

35. During the 71st Ordinary Session, a number of statements on the human rights situation in Africa highlighted the incidence of internet and social media shutdowns, notably occurring during elections and protests in Africa.

36. This runs counter to the principles contained in the Declaration, in which it is noted "*... that the exercise of the rights to freedom of expression and access to information using the internet are central to the enjoyment of other rights and essential to bridging the digital divide.*" This is further buttressed in **Principle 38** of the Declaration, on non-interference, **Resolution 362 on the Right to Freedom of Information and Expression on the Internet in Africa**, and in a number of press releases issued by the Commission including the **Statement commemorating World Press Freedom Day** issued this year.

- *Attacks on Journalists and media practitioners*

37. The rise in the attacks on journalists and media practitioners is a persistent concern. As reported in the intersession report presented during the 71st Ordinary Session, and in this report, the interventions issued by the special mechanism to the States Parties have all been generated in response to attacks on journalists.

38. Furthermore, as noted in the **Statement commemorating World Press Freedom Day**, online violence has become a new frontline in journalism safety, often characterized by physical threats, sexual violence, online harassment, intimidation and verbal abuse. The Statement decries the fact that while men journalists are also subject to abuse online, abuse directed against women journalists tends to be more

severe, with reports indicating that women journalists are increasingly and persistently facing gender-based harassment and abuse online. The impact of these online attacks can have a stifling impact on freedom of expression and press freedom, in addition to a direct impact on the safety and security of journalists.

39. In addition to the Commission's **Resolution 468 on the Safety of Journalists and Media Practitioners in Africa**, adopted in 2020, which calls on States Parties to ensure "*the safety of journalists and other media professionals and create a conducive environment for them to practice their profession,*" the Commission adopted **Resolution 522 on the Protection of Women Against Digital Violence in Africa**, during its 72nd Ordinary Session, which calls on States Parties to, *inter alia*, "*review or adopt legislation that aims at combating all forms of digital violence, and expanding the definition of gender-based violence to include digital violence against women including cyber-harassment, cyberstalking, sexist hate speech amongst other ICT-related violations.*"

- *Surveillance of journalists and other media practitioners*

40. A rising issue which has been noted by the special mechanism, and referenced in the **Statement commemorating World Press Freedom Day**, is the exponential rise of surveillance throughout the continent. Noted in the Statement are the multiple reports of States deploying surveillance technologies in their jurisdiction, the steady rise in facial recognition tools that track and identify individuals unbeknown to them, in addition to the installation of facial recognition-enabled surveillance cameras, that are reportedly being utilized to keep track of, and remotely hack journalists and critics of the State. These surveillance technologies access and process data without the consent of subjects and contravene the right to privacy.

41. In response to this emerging threat, I would like to reiterate **Principle 41 on privacy and communication surveillance** which provides that "*States shall not engage in or condone acts of indiscriminate and untargeted collection, storage, analysis or sharing of a person's communications,*" and further that "*States shall only engage in targeted communication surveillance that is authorized by law, that conforms with international human rights law and standards, and that is premised on specific and reasonable suspicion that a serious crime has been or is being carried out or for any other legitimate aim.*"

42. Furthermore, **Principle 20(2)** of the Declaration stipulates that "*States shall take measures to prevent attacks on journalists and other media practitioners, including [...] unlawful surveillance undertaken by State and non-State actors.*"

Recommendations

43. In light of the aforementioned challenges, I wish to make the following recommendations:

To States Parties:

- Guarantee protection of the right to freedom of expression and access to information through ensuring access to internet and social media services, unless such interference is justifiable and compatible with international human rights law and standards;
- Ensure the protection of journalists and media practitioners, and take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists and other media practitioners, and ensure that victims have access to effective remedies;
- Review legislative frameworks in order to weed out discriminatory laws that exacerbate violence against women, to afford them better protection and criminalize digital violence against women in national laws;
- Ensure that any law authorizing targeted communication surveillance provides adequate safeguards for the right to privacy, as stipulated in **Principle 41(3)**.

To NHRIs and NGOs:

- Partner with the Commission to popularize its soft law documents related to freedom of expression and access to information, in addition to Resolutions **468** and **522**;
- Continue to collaborate with the special mechanism by submitting cases or reports of violations of the right of freedom of expression and access to information in Africa.

I thank you for your attention.