

Special Rapporteur on Freedom of Expression and Access to Information in Africa - 75OS

May 08, 2023

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 November 2022 to April 2023.

2.The Report details the activities undertaken in my capacity as a member of the Commission, 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, 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: Activities undertaken in my capacity as the Country Rapporteur;
- Part IV: Report on interventions issued in response to human rights violations;
- Part V: Challenges and recommendations.

Part I:

Activities undertaken in my capacity as a Member of the Commission

–Participation in the 73rd Ordinary Public Session

4.From 29 October to 09 November 2022, I attended the 73rd Public Ordinary Session (OS) of the Commission. Although the session was in person, I was unable to attend physically, due to work commitments in Mauritius, and as result I attended virtually.

5.During the public session, in addition to other activities undertaken by the Commission in which I participated, including the review of the State Report of the Republic of Mauritania and Cote D'Ivoire.

6.Furthermore, during the subsequent private session, I participated in the deliberations of the Commission, which yielded, amongst others, decisions on Communications, Resolutions on the renewal of mandate and reconstituting fifteen (15) Special Mechanisms, including internal committees, country Resolutions, and five (5) thematic Resolutions.

–36th Extraordinary Session

7.On 9 January 2023, I participated in the Commission's 36th Extra-Ordinary Session (EOS), which was held virtually. In line with the Commission's working methods, I participated in deliberations which produced, amongst others, the adoption of the Commission's 2023 workplan, and resolutions.

→Participation in the 74th Ordinary Private Session

8.From 21 February to 7 March 2023 I participated in the Commission's 74th Ordinary Private Session (OS), which was held virtually. I contributed to dialogue and arriving at decisions on Communications, adopt Concluding Observations on State Reports, in addition to considering a number of Reports, and other outstanding matters.

Activities undertaken in my capacity as a member of the Working Group on the Death Penalty, Extrajudicial, Summary of Arbitrary Killings and Enforced Disappearances in Africa

9.In the intersession period, there have been no events of the working on death penalty, extrajudicial, summary of arbitrary killings and enforced disappearances. We have however made several interventions which will be addressed elsewhere in this report.

Part II: Activities undertaken as Country Rapporteur

10.In my capacity as Country Rapporteur, I led the promotion mission to the United Republic of Tanzania, from 23 to 28 January 2023. Commissioner Litha Musyimi-Ogana was part of the mission, as the Chairperson of the Working Group on Indigenous Populations/Communities and Minorities in Africa.

11.During the mission, the delegation of the Commission met with state officials from relevant government ministries, relevant community leaders, civil society organisation, a cross-section of human rights actors in the country, as well as other individuals and institutions who enlightened us on the general human rights situation in the United Republic of Tanzania.

12.The main objective of the mission was to assess the human rights situation of Indigenous Populations/Communities in Tanzania, including particularly to review the situation in Ngorongoro Conservation Area, Loliondo and Msomera.

13.Subsequent to the mission, in February 2023, a delegation from the United Republic of Tanzania travelled to Banjul to submit supplemental evidential documents in relation to the mission.

14.We are in the process of considering all information and evidence before us, towards the development of a report for adoption by the Commission.

Part III: Activities undertaken as the Special Rapporteur

→Symposium on Access to Information in South Africa

15.On 10 November 2022, I participated in a symposium on Access to Information. The symposium was collaboratively hosted by the University of Pretoria Centre for Human Rights, the Independent Electoral Commission (IEC), the Information Regulator (IR), the South African Human rights Commission (SAHRC), the Human Sciences Research Council (HSRC), and the Media Monitoring Africa (MMA).

16.The symposium followed a study on south Africa's compliance with the Commission's Guidelines on Access to Information in Africa. It facilitated the implementation of the recommendations towards promoting transparent elections and improving Access to Information and Elections in South Africa. It was an effort to advance a structured advocacy strategy for the consideration and implementation of the Guidelines.

→Internet Governance Forum side event on Gender and Freedom of expression

17. On 27 November 2022 I virtually participated in a side event at the Internet Governance Forum, which took place in Addis Ababa. The event was posted by the Association for Progressive Communicators (APC). The event built on the recommendations of the 2021 report on Freedom of Expression and Gender Justice by the UN Special Rapporteur. I delivered an opening address, and participated in deliberations to explore potential synergy and collaborative work for the future.

–The Future of Free Speech Conference

18. On 15 December 2022 I delivered a key note address at the Conference on “The Future of Free Speech” which was convened by Justicia International, in Copenhagen, Denmark. The conference marked the closing of the 1st phase of the Future of Free Speech project. It convened experts from technology companies, civil society, international organisations and academia to discuss burning issues on the future of free speech, as well as the future of content moderation online, looking at global developments from around the globe.

–Regional Seminar on freedom of expression and access to information in Africa

19. During the intersession period and from 1-3 February 2023, I led the Commission delegation in hosting a Regional Seminar on Freedom of Expression and Access to Information in Africa. The Seminar took place in Johannesburg, South Africa. The main aim of the seminar was to disseminate the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa, as well as other soft law instruments on Access to Information in Africa. The seminar convened 53 delegates, from government, NHRIs, civil societies and media practitioners.

20. The seminar was an incredible success, and we left with some very key recommendations and targeted strategies to advance the work of the mandate, and to deepen engagement by various stakeholders, with the principles on freedom of expression and access to information.

21. The main outcome of the seminar was increased awareness, understanding and commitment to and ownership of the Declaration. The participants left with strengthened capacity for implementation at national level.

–Internet for Trust Global side event on Social Media 4 Peace

22. From 21st to 23rd February 2023, I attended and delivered a keynote address at the Internet for Trust conference side event on. The conference was hybrid and I participated virtually. The focus of my intervention was social media for peace. The side event provided us with the opportunity to share and exchange experiences of best practices, took stock of key achievements in the project on social media for peace. We discussed and conceptualised concrete strategies and actions for follow up.

–Joint Declaration on Why Media Freedom is Paramount to Uphold Democratic Values

23. On the 2 May 2023 I participated in the launch of the Joint Declaration at the UN in New York. All the Special Rapporteurs have contributed towards the preparation of the Joint Declaration which this year has as theme ‘Media Freedom and Democracy’. On the 1 May 2023 all the Special Rapporteurs will continue the work started at UNESCO Headquarters in Paris on the means to regulate media platforms.

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

24. 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.

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

-Letters of Appeal

–Joint Letter of concern regarding allegation of extrajudicial executions and threats against journalists in the Republic of Benin

26. In January 2023 I participated in a letter of joint concern to H. E. Mr. Patrice Talon, President of the Republic of Benin, in response to the alleged extrajudicial executions by state agents in the republic of Benin. We expressed concern over the recurrences of these incidents, and the lack of response from the competent authorities, as well as the resulting serious violations of human rights in contravention of the African Charter, and specifically article 4.

27. In the letter we urge the state to proceed with impartial and independent judicial investigation to determine the violations committed in the context of the reported incidents, establish responsibilities, and bring the perpetrators to justice.

–Joint letter of Appeal regarding the assassination of Mr. Mbani Zogo

28. In January 2023, I participated in a joint letter of appeal to H.E Paul Biya President of the Republic of Cameroon, in response to the assassination of Mr. Mbani Zogo. In this regard, we urged the state to inform the Commission of the measures taken by the government to carry out rapid, independent and impartial investigations on the facts, to establish responsibility and bring the alleged perpetrators to justice. We further urge the state to take appropriate measures to put an end to threats and reprisals against journalists and human rights defenders and to guarantee, in all circumstances, the safety and protection of all persons residing in the country.

–Joint letter of Appeal regarding allegations of forced evictions of Kasima Community in Mongu District

29. In March 2023, I participated in a joint Letter of Appeal to H.E. Mr. Hakainde Hichilema, President of the Republic of Zambia, in response to allegations reaching the Commission regarding the forced eviction of Kasima Community in Mongu District, Zambia. In the letter, we expressed concern at the allegations. We referred to articles 5 on the protection from inhuman treatment, 9 on the protection of freedom of expression, 10 on the protection of freedom of assembly and association, 12 of freedom of movement, 14 on the right to property, on the 18 on the protection of the family as well as 21 and 22 on the right to people to enjoy natural resources and the rights to socio economic developments.

30. Amongst other things, we called on the state to provide urgent medical treatment, psychosocial and material support, and temporary alternative accommodation to the displaced persons. We urged the state to review, and if proven unlawful, revoke the alienation of communal land in Kasima, and allow the displaced persons to return to their land. Where restitution is not possible, we encouraged the state provide alternative land and accommodation of equal value.

–Joint Letter of Urgent Appeal regarding the alleged arbitrary detention of Mr. Abdalle Ahmed Mumin in the Federal Republic of Somailia

31. On 6 April 2023 I participated in the joint urgent appeal regarding the alleged arbitrary detention of Mr. Abdalle Ahmed Mumin. We raised concerns that if the allegations that are made are true, the actions taken against Mr. Mumin suppress the right to freedom of expression, access to information and media freedom, which the Federal Republic of Somalia is obligated to respect by virtue of the international human rights instruments to which the State is a signatory.

32. Amongst other things we requested that the State Party provide the Commission with sufficient clarification regarding the above-stated allegations; to investigate reasons for arrest of Mr. Mumin on 23 February 2023 and release him if it is found arbitrary; to guarantee Mr. Mumin's right to legal representation and to be defended by counsel of his choice; to give due attention to Mr. Mumin's health and provide him with access to health care; to respect individuals' rights to freedom of expression and opinion and disseminate them within the law; to eliminate the suppression of media practitioners and organization.

-Letters of commendations

33. In this period I have also jointly participated in the development of letters of commendation to countries who have made strides in the protection and promotion of human rights. This part of the report deals with those letters

→ Joint letter of Commendation to Zambia

34. In December 2022, I participated in a joint letter of commendation to His Excellency Mr. Hakainde Hichilema, President of the Republic of Zambia, in response to the Penal Code Amendment Act No. 25 of 2022 aimed at abolishing the death penalty in the Republic of Zambia. In the letter the Commission also welcomes the fact that the measure to abolish the death penalty covers all crimes and was taken in conjunction with the abolition of the crime of defamation of the President. In this spirit, the Commission encouraged the Government of the Republic of Zambia to pursue these efforts by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty, and by supporting efforts towards the adoption of the Draft Protocol to the African Charter on the abolition of the death penalty in Africa, in order to strengthen the framework for the promotion and protection of human and peoples' rights in the Republic of Zambia.

35. In response to this letter, we have received a response from His Excellency, which we will respond to, in due course.

→ Joint letter of appreciation to Zambia

36. In February 2023 I participated in a joint letter of commendation to His Excellency Mr. Hakainde Hichilema, President of the Republic of Zambia, in response to the commutation of 390 death sentences to life imprisonment following the abolition of the death penalty.

-Press Statements

→ Statement commemorating the International Day to end Impunity for Crimes Against Journalists

37. On 2 November 2022, I issued a press statement commemorating the International day to end impunity for crimes against journalists. The theme of the day was Protecting Media to Protect Democracy.

38. In the statement, which is published on the ACHPR website, I noted with concern, the increasing trend of crimes against journalists going unpunished. Of great concern, I noted that

the whilst laws criminalising journalistic work are proliferating, there is no corresponding enforcement of laws meant to protect journalists. I called on states to comply with the provisions of article 9 of the Charter, as read with article 1, and specifically, to investigate, prosecute and punish perpetrators of attacks against journalists; to ensure that cases of attacks against journalists that have been pending for prolonged periods of time are handled fairly and effectively; to desist from weaponizing law enforcement and the judiciary against journalists by limiting their access to justice in cases where they have been victims of attacks; to ensure that any law enforcement officials responsible for prolonged delays or ineffective service in cases relating to attacks against journalists are identified and punished accordingly; and to promote the eradication of impunity for crimes against journalists including by perpetuating a positive narrative on journalists amongst law enforcement and the public at large.

Part V: Conclusion and Recommendations

General Conclusions and Recommendations
39. In 2022, I sent Note Verbales requesting authorisation to undertake promotion missions in The Republic of Botswana, The Kingdom of Lesotho, The United Republic of Tanzania, and The Republic of Zambia.

40. The Kingdom of Lesotho has granted the Commission access to undertake a promotion mission, which I intend to undertake during intersession. The Mission will enable me to interact directly with the state party, about the human rights situation generally. It is also an important opportunity to consider how Lesotho's protection and promotion of human rights can be supported and strengthened.

41. Promotion missions are an important part of the Commission's promotion mandate. To this end, I accordingly encourage states parties to respond to requests for authorisation to undertake promotion missions.

Recommendations on freedom of expression and access to information

42. The Declaration reaffirms the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms. While there is consensus that freedom of expression is a fundamental human right, it is equally important to note that this right is not very effective if there is no way for those who wish to access that information to obtain it.

43. Through the mandate, I urge State Parties to ensure protection of freedom of expression, including through ensuring protection of journalists and media practitioners and revising laws which impede the right of freedom of expression, in addition to consistently calling for adoption of access to information in legislation in accordance with regional and international standards, as embodied in the Model Law.

44. Accordingly, with regards to freedom of expression I call on State Parties to take the necessary measures to prevent attacks on journalists and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies, as provided in Principle XI of the Declaration.

45. Furthermore, I urge State Parties to respond to Letters of Urgent Appeal with the information requested, and to take all appropriate action as recommended in the letters.

46. With regard to access to information, I would like to specifically call on states who have not adopted Access to Information Laws, to do so and to commit to the process of formulating an access to information law. I remain available to provide any technical assistance required during this process.

47. Additionally, I note that adoption of an Access to Information Law is only the first step; the laws need to be effectively implemented. Accordingly, I call on the State Parties which have adopted access to information laws to ensure that these laws are effectively implemented.

48. Lastly, I would like to call on the State Parties which have not done so, to ratify and domesticate the various instruments of the African Union which guarantee the right of access to information, such as the Convention on Preventing and Combating Corruption, the African Youth Charter and the African Charter on Elections, Democracy and Governance. The ratification and domestication of these treaties, coupled with adoption and implementation of access to information laws, will contribute to the eradication of corruption, observance of human rights and improvement of quality of life on the Continent.

49. I thank you for your attention.