

**ACTIVITY REPORT**

**OF**

**ADV. PANSY TLAKULA**

**AS**

**THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS  
TO INFORMATION IN AFRICA & MEMBER OF THE AFRICAN  
COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

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## INTRODUCTION

1. This Report outlines the activities undertaken by **Adv. Pansy Tlakula**, in her capacity as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Special Rapporteur),<sup>1</sup> and Member of the African Commission on Human and Peoples' Rights (the Commission) during the intersession period October 2012 to April 2013.
2. The Report is divided into three parts: **Part I** covers the activities undertaken by Adv. Tlakula in both capacities; **Part II** gives an overview of the status of the adoption of access to information legislation in Africa; and finally **Part III** presents the conclusions and recommendations of the Report.

### PART I

#### Activities undertaken in the period under review

3. The activities of Adv. Tlakula during the reporting period are divided into four sections: **Section one** deals with Lectures, Consultations, Conferences, and Meetings attended in her capacity as Special Rapporteur; **Section two** deals with activities undertaken in her capacity as Commissioner or Member of the Commission; **Section three** reports on the letters of Appreciation transmitted in her capacity as Special Rapporteur to States Parties to the African Charter on Human and Peoples' Rights (the African Charter); In **Section four**, she reports on the letters of Appeals she forwarded to States Parties addressing alleged violations of freedom of expression and access to information brought to her attention.

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<sup>1</sup> This Special Mechanism was established at the 36<sup>th</sup> Ordinary Session of the Commission held in Dakar, Senegal from 23 November to 5 December 2004. Commissioner Tlakula was appointed pursuant to *Resolution on Freedom of Expression and Access to Information in Africa*, **ACHPR/Res.84 (XXXV) 05**, adopted by the Commission on 5 December 2005.

## SECTION ONE- Activities as Special Rapporteur

### Lecture, Consultations, Conferences, and Meetings

#### *Carlos Cardoso Memorial Lecture at the University of Witwatersrand*

4. On **29 October 2012**, the Special Rapporteur delivered the first Carlos Cardoso Memorial Lecture at the University of Witwatersrand in Johannesburg, South Africa. The Carlos Cardoso Lecture was launched in memory of Mr. Carlos Cardoso, a Mozambican journalist assassinated in 2000, while exposing massive fraud at Mozambique's largest bank. He was also a former student of the University of Witwatersrand, deported in 1975 from South Africa because of his support for Frelimo. The theme of the Lecture was *"Power Reporting: the African Investigative Journalism."* It drew over 200 people, including investigative journalists from at least 20 African countries and various parts of the world.
5. The Special Rapporteur's lecture covered the situation of freedom of expression and access to information in the Southern African Development Community (SADC) region in general, and Mozambique in particular, and made some observations and recommendations.

#### *International Conference on the 30<sup>th</sup> Anniversary of the African Charter at the University of South Africa (UNISA)*

6. From **5 to 7 November 2012**, the Special Rapporteur attended the International Conference on the 30<sup>th</sup> Anniversary of the African Charter, organized and hosted by UNISA. She presented a paper on *"The African Commission and the Promotion and Protection of Rights under the African Charter on Human and Peoples' Rights"*.

7. From **22 to 23 November 2012**, the Special Rapporteur was part of the UN Inter-Agency Meeting on the Safety of Journalists and the Issue of Impunity which took place in Vienna, Austria. The Meeting follows the endorsement of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (Plan of Action) by the UN Chief Executives Board on 12 April 2012. The Plan was prepared during the 1<sup>st</sup> UN Inter-Agency Meeting on this issue, convened by the Director-General of UNESCO at the request of the Inter-governmental Council of the International Programme for the Development of Communication (IPDC).
  
8. The Special Rapporteur participated *via* telephone in the roundtable discussion session which focused on special procedures related to freedom of expression. She gave an overview of the Special Mechanism on Freedom of Expression and Access to Information in Africa, and also made the following recommendations on her contribution to the implementation of the Plan of Action:
  - Popularization of the UN Plan of Action on the African Continent;
  
  - Submission of a report at each Ordinary Session of the Commission on the safety of journalists and impunity in the States Parties to the African Charter;
  
  - Campaign to decriminalize defamation and other laws that criminalize free speech on the African Continent.
  
9. She recommended the following initiatives at the Regional level:
  - The UN should encourage the AU to adopt the UN Plan of Action or a similar plan;
  
  - The AU should coordinate all efforts and initiatives between all AU Organs/ Institutions on freedom of expression in general and safety of journalists and

impunity, in particular. For instance, in addition to the work that the mandate of the Special Rapporteur is doing in this area, the Special Rapporteur is also aware of the initiatives of the African Union Commission (AUC) and the Pan African Parliament (PAP) in promoting the right to freedom of expression and access to information in Africa. For instance, PAP passed a Resolution on 18 October 2012 encouraging AU Member States to adopt the Commission's Model Law on Access to Information.<sup>2</sup>

- The Commission has also appointed the Special Rapporteur as the focal point on strengthening collaboration between the Commission and the African Peer Review Mechanism (APRM). In this regard, a workshop was held a year ago in which the possibility of including freedom of expression in the peer review process was discussed. There is a need not only to coordinate these activities but also to strengthen cooperation between all AU Organs/ Institutions dealing with this matter. The implementation of the UN Plan of Action should be included in the work of these Organs/Institutions.

10. The Special Rapporteur also recommended cooperation between the Special Mechanisms of the UN and the Commission as follows:-

- The Joint Working Group of the Special Mechanisms of the UN and the Commission established by the UN High Commissioner for Human Rights to strengthen cooperation between these institutions should come up with strategies for incorporating the UN Plan of Action in its work. To this end, the Working Group can for instance decide on joint programmes for the implementation of the UN Plan of Action by relevant mechanisms such as the Special Rapporteurs on Freedom of Expression and Human Rights Defenders.

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<sup>2</sup> See PAP Resolution on the campaign on "*Press Freedom for Development and Governance: Need for Reform*"

## *Decriminalisation Project in Africa*

11. On **20 November 2013**, the Special Rapporteur held a meeting with Mr. Simon Delaney, a human rights lawyer working with the Southern African Litigation Centre (SALC), to discuss the cooperation between her mandate and SALC on the Project to decriminalise defamation and similar laws in Africa.

### *Stakeholders Consultative Meeting on the Decriminalisation of Laws Limiting Freedom of Expression in Malawi*

12. On **6 February 2013**, the Special Rapporteur organised a Stakeholders' Consultative Meeting on the Decriminalisation of Laws Limiting Freedom of Expression in Lilongwe, Malawi. The Consultation was organised in partnership with the World Association of Newspapers (WAN-IFRA), Media Institute of Southern Africa Malawi (MISA-Malawi) and the Centre for Human Rights, University of Pretoria. The meeting was honoured by the presence of a member of PAP, Honourable Gitobu Imanyara.
13. The meeting adopted a Plan of Action for the campaign. Some of the activities agreed upon in the Plan of Action include the following:
  - The campaign to repeal laws which restrict freedom of speech and fight for access to information to be multi-faceted and include government/civil society/rule of law/intergovernmental organizations and the AU and its Organs;
  - The narrowing and identification of laws as quickly as possible i.e. (decriminalization of defamation, insult, false news and sedition and draft amendments and motivation for amendments );
  - Identification of key Ministries/Government officials/elected representatives to be the driving force at the Government level (e.g. Justice Committee in Parliament and the PAP member in Malawi - Hon. Hjobuulema as part of advocacy campaign);
  - That the Law Society Malawi and/or the Human Right Consultative Committee should lead the campaign with assistance of MISA- Malawi;
  - Presentation of a shadow report to the UNHRC and the Commission;

- Lobbying President of Malawi to sign the Declaration of Table Mountain;
- Making freedom of expression, access to information and repealing of legislation that restricts speech an election issue.

*Paper for the Labour Law Clinic of Cornell University, USA*

14. Following a request from the Labour Law Clinic of Cornell University, USA, the Special Rapporteur sent a discussion paper on **14 March 2013** regarding the process of bringing a Communication to the Commission for violations of Article 10 of the African Charter; the Commission's approach to freedom of association matters, particularly in the labour context and the Special Rapporteur's role in addressing complaints to the Commission.

*Launching of the Model Law*

15. On **12 April 2013**, the Special Rapporteur launched the Model Law on Access to Information, adopted during the 13<sup>th</sup> Extra-Ordinary Session of the Commission which took place from 19 to 25 February 2013.

## SECTION TWO

### *Activities as Commissioner*

*Study on the Rights of LGBTI Persons in an African Context*

16. On **24 January 2012**, Adv. Tlakula met with Mr. Ulrik Spliid, a Senior Legal Advisor with the Danish Institute for Human Rights in Pretoria to discuss the Institute's Study on the Rights of LGBTI Persons in an African Context. The Study is being done for the Danish Ministry of Foreign Affairs to examine the challenges faced, in particular for Danish and other non-African actors, in trying to advocate for the rights of LGBTI persons in a rapidly changing African context.

17. From **19 - 25 February 2013**, Adv. Tlakula participated in the 13<sup>th</sup> Extra-Ordinary Session of the Commission in Banjul, The Gambia.

### **SECTION THREE**

#### ***Letters of Appreciation***

##### *The Republic of Rwanda*

18. On 27 March 2013, the Special Rapporteur transmitted a letter of Appreciation to the President of the Republic of Rwanda, His Excellency President Paul Kagame commending his Government for the adoption of the Access to Information Law formally gazetted on 11 March 2013. In the letter of Appreciation, the Special Rapporteur urged the Government of the Republic of Rwanda to ensure that the Law complies with all international and regional standards access to information and also encouraged the Government to benchmark its law against the Commission's recently adopted Model Law on Access to Information in Africa.

### **SECTION FOUR**

#### ***Letters of Appeal***

19. 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 forwarded letters of Appeals to the Somali Republic and the Republic of The Gambia during the period under review.



## *Somali Republic*

20. On **15 March 2013**, the Special Rapporteur, together with the Special Rapporteur on the Rights of Women in Africa transmitted a joint urgent letter of Appeal to His Excellency Sharif Ahmed, President of the Somali Republic.
21. The letter addressed allegations of rape, detention, conviction and imprisonment of an internally displaced Somali woman; arbitrary arrest, detention, conviction and imprisonment of Mr. Abdiaziz Abdinur Ibrahim (a freelance journalist) and the arbitrary arrest and detention of Mr. Daud Abdi Daud (a journalist).
22. In the letter of Appeal, the Special Rapporteurs respectfully urged the Government of the Somali Republic to kindly inform the Commission of the progress it has made, or is making to curb violence against women, arbitrary arrests and detention of journalists in the country. They underscored **Articles 4(2) (a) and (b)** of the African Charter, as well as **Article 9**, and also highlighted **Principles I (1), IV (2) and XII** of the *Declaration on the Principles of Freedom of Expression in Africa (the Declaration)*.

## *Progress*

23. It is worth noting that, the Special Rapporteurs received information that on **17 March 2013**, the Supreme Court of Somalia overturned the conviction of journalist Abdiaziz Abdinur Ibrahim and ordered his immediate release.

## *Republic of The Gambia*

24. On **28 March 2013**, the Special Rapporteur transmitted a letter of Appeal to His Excellency, Professor Sheikh Yahya A.J.J. Jammeh, President of the Republic of The Gambia. The letter of Appeal addressed allegations on violations of the right to

freedom of expression and access to information of three (3) journalists in the Republic of The Gambia: **Mr. Abdoulie John, Mr. Baboucarr Ceesay and Mr. Fabacary Ceesay.**

25. The three journalists were allegedly arrested and detained in the course of carrying out their duties as journalists. The travel documents of Mr. Abdoulie John and Mr. Baboucarr Ceesay were also allegedly confiscated.
26. In the letter of Appeal, the Special Rapporteur underlined **Principles I (1), IV (2) and XI (1) and (2)** of the *Declaration*. She respectfully urged the Government of the Republic of The Gambia, to kindly inform her of the steps taken, or steps intended to be taken to investigate the allegations, and punish the perpetrators accordingly. She also made an appeal for the President of the Republic of The Gambia to kindly authorise the return of the travel documents to the concerned journalists to enable them practice their profession without any impediments.

## **PART II**

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

27. In line with the mandate of the Special Rapporteur 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>3</sup> this Section of the Report highlights the progress made in the adoption of access to information legislation on the continent since the last reporting period.
28. It is worth noting that before the Model Law Project, there were only five (5) countries in the continent with access to information laws, namely: Angola, Ethiopia, South

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<sup>3</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).

Africa, Uganda, and Zimbabwe, with two (2) countries having actionable Access to Information regulations, namely Niger and Tunisia.

29. As at the 52<sup>nd</sup> Ordinary Session, a total of ten (10) countries had adopted Access to Information laws, including the Republic of Guinea, the Republic of Liberia, the Federal Republic of Nigeria, the Republic of Niger and the Republic of Tunisia. This is a noteworthy shift from the situation that existed before the start of the Model Law Project.

### *Progress*

30. On 11 March 2013, the Republic of Rwanda adopted an Access to Information Law, making it the eleventh AU Member State with an Access to Information Law.

31. The Special Rapporteur commends the Government of the Republic of Rwanda on the adoption of the Law and notes this achievement as indicator of the country's commitment to attain a democratic government which is facilitated by access to information for its citizens.

## **PART III**

### **CONCLUSIONS AND RECOMMENDATIONS**

32. The Commission recognises the significance of a comprehensive freedom of expression and access to information law to build a successful and thriving democracy. The Commission has also stated that international human rights standards must always prevail over contradictory national laws.<sup>4</sup> It is with this in mind that the Special Rapporteur continues to call upon States Parties to amend their Constitutions and laws to bring them in line with regional and international standards on freedom of expression and access to information.

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<sup>4</sup> Communications 105/93, 128/94, 130/94 and 152/96 – *Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project v Nigeria* (1998) ACHPR para 66.

33. Slowly, but surely African States are going along the path of adopting access to information laws. However, they also have the obligation to ensure that these laws are not only adopted, but implemented, with a conducive environment for citizens to exercise their right to freedom of expression and access to information without impediment. This would avoid situations where a State has an access to information law, yet citizens, including journalists, human rights defenders and opposition party members are imprisoned for voicing their opinions, most commonly on the count of defamation, or having their rights limited due to unreasonably restrictive laws.
34. The Special Rapporteur calls on States Parties to also educate citizens about their entitlements and how to enforce their rights to freedom of expression and access to information. This can be achieved through awareness raising campaigns, dissemination of standards for media policies and laws through seminars, joint advocacy initiatives, publications, and sharing of best practices around the continent.
35. The Special Rapporteur thanks all States Parties, Intergovernmental Organizations, Development Partners, National Human Rights Institutions, Election Management Bodies, NGOs, Experts and other stakeholders that have supported the Model Law on Access to Information Project, and other activities that enhanced her mandate to this point. The Special Rapporteur also wishes to express sincere gratitude to the members of the Commission for the invaluable input they made to improve the text of the Model Law.
36. The Special Rapporteur commends States Parties that have signed and ratified the African Charter on Democracy, Elections and Governance. She however calls on States Parties that have not yet done so, to ratify as soon as possible.

37. In conclusion, the Special Rapporteur 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.