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REV 1

ACTIVITY REPORT

OF

ADVOCATE. PANSY TLAKULA SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

**Presented during the 57th Ordinary Session of the African Commission
on Human and Peoples' Rights**

**04 to 18 November 2015
Banjul, The Gambia**

INTRODUCTION

1. This Report details 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),¹ and as a Member of the African Commission on Human and Peoples' Rights (the Commission) during the intersession period from May to November 2015.

2. The Report is structured in four Parts:
 - **Part I** covers the activities undertaken by Adv. Tlakula in her capacities as the Special Rapporteur and Member of the Commission;

 - **Part II** gives an overview of the status of adoption of access to information legislation in Africa;

 - **Part III** highlights the activities undertaken in the Decriminalization of Expression Campaign; and finally

 - **Part IV** presents the conclusions and recommendations of the Report.

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

Part I: Activities Undertaken in the Period under Review

3. The activities of Adv. Tlakula during the reporting period are divided into three sections: **Section one** deals with activities carried out in her capacity as Special Rapporteur; **Section two** deals with activities undertaken in her capacity as Commissioner; and in **Section three**, she reports on the letters of appeal forwarded to State Parties addressing alleged violations of freedom of expression and access to information brought to her attention, in addition to press releases issued by the special mechanism.

Section One - Activities undertaken as the Special Rapporteur

➤ Advocacy visit to the Republic of Malawi

4. From **18 to 21 May 2015**, the Special Rapporteur undertook an advocacy visit to the Republic of Malawi, 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). Four members of the Working Group that developed the Model Law accompanied the Special Rapporteur on the visit.
5. During her mission, the Special Rapporteur met with the Minister of Information, Tourism and Civic Education, **Honourable Kondwani Nankhumwa**, and the Minister of Justice and Constitutional Affairs, **Honourable Samuel Tembenu**. In Parliament, the Special Rapporteur met with the Speaker of Parliament, **Honourable Richard Msowoya**, the Chair and Members of the Committee on Media and Communication, as well as the Chairs of several other Committees of Parliament.
6. Other Government institutions visited during the mission included the Malawi National Human Rights Commission, the Office of the Ombudsman, and the Malawi Law Reform Commission. The Special Rapporteur also had the opportunity to meet with **Ms. Mia Seppo**, the United Nations Resident Coordinator for Malawi.

7. The delegation met with a broad spectrum of civil society organisations (CSOs) on 20 May, where the Special Rapporteur had the opportunity to give a briefing on the outcome of her meetings with Governmental officials and to discuss strategies for sustained advocacy to ensure the speedy adoption of the draft Access to Information Bill, which is currently before the Ministry of Information. The mission ended with a press conference on 21 May.
8. During the visit, the Special Rapporteur noted the commitment expressed by the various Ministers that the draft Bill would be presented to Parliament, in addition to the undertaking by the National Human Rights Commission, the Ombudsman and the Law Reform Commission to actively support adoption of the Bill. In return, the Special Rapporteur committed to providing any further technical assistance required to ensure enactment of the Bill and thereafter its effective implementation.
 - *Symposium on the right of access to information in the Republic of Seychelles*
9. From **25 to 26 May 2015**, the Special Rapporteur, in collaboration with the Seychelles Media Commission (SMC) and the Centre for Human Rights of the University of Pretoria, organised a symposium on the right of access to information in Seychelles.
10. The purpose of the symposium was to enhance the understanding on the right of access to information amongst stakeholders in Seychelles, in addition to initiating discussions on the content of an ATI law for Seychelles. The opening ceremony was attended by **His Excellency President James Michel**, President of the Republic of Seychelles, Ministers, Members of Parliament, CSOs, journalists and other stakeholders.
11. This symposium was a follow-up to the January 2015 advocacy visit by the Special Rapporteur to Seychelles, during which **His Excellency President Michel** expressed his commitment towards the adoption of an ATI law and supported the idea of a national symposium as a first step towards the process of developing an ATI Bill.

The SMC is expected to lead the process of developing the ATI Bill, with the technical support of the Centre for Human Rights and its partners.

➤ *Colloquium on advancing sexual and reproductive health and human rights litigation*

12. From **22 to 24 June 2015**, the Special Rapporteur attended the Colloquium on Advancing Sexual and Reproductive Rights through Strategic Litigation held in Johannesburg, South Africa, where she delivered the key-note address. The workshop was held by the Initiative for Strategic Litigation in Africa, in conjunction with the Community Law Centre of the University of the Western Cape.

➤ *Conference on Judicial Persecution of Human Rights Defenders*

13. From **16 to 17 July 2015**, the Special Rapporteur attended a workshop on Rising Judicial Persecution of Human Rights Defenders in Africa, held in Johannesburg, South Africa. During the workshop, the Special Rapporteur gave a presentation on “The Use of Criminal defamation and insult laws to silence Human Rights Defenders.”

➤ *Advocacy visit to the Republic of Kenya*

14. From **25 to 28 August 2015**, the Special Rapporteur undertook an advocacy visit to the Republic of Kenya, accompanied by a delegation of three (3) members of the Working Group that developed the Model Law, to meet with Government officials and other stakeholders in order to advocate for the adoption of an access to information law in accordance with the principles developed in the Model Law. This visit was held against the background of the on-going consideration of the Private Members Access to Information Bill by the National Assembly, which was introduced by **Honourable Priscilla Nyokabi**.

15. During the visit, the Special Rapporteur met with the Cabinet Secretary for Information, Communication and Telecommunications, **Honourable Dr. Fred**

Matiang’i, the Attorney General, **Honourable Professor Githu Mugai**, and the Solicitor General, **Honourable Mr. Njee Muturi**. Within the Judiciary, the Special Rapporteur met with the Deputy Chief Justice, **Justice Kalpana Rawal** and the Director of the Judiciary Training Institute, **Justice Joel Ngugi**.

16. The delegation also met the Chair and Members of the Senate Committee on Information and Technology, as well as the Committee on Legal Affairs and Human Rights. Other Government institutions visited were the Constitution Implementation Commission, the Kenya National Commission on Human Rights, the Commission on Administrative Justice and the National Gender and Equality Commission. The delegation also met with Media Owners Association and the Editor’s Guild.

17. On the final day of the visit, the Special Rapporteur had the opportunity to meet with a broad spectrum of CSOs, to brief them on the outcome of her meetings and to formulate strategies for sustained advocacy towards speedy adoption of the draft Bill. Following this visit, a press conference was held.

➤ *Event on protection of journalists during the Session of the UN Human Rights Council*

18. During the 30th Session of the United Nations Human Rights Council, the Special Rapporteur attended a round table discussion on Ending Impunity for Attacks on Journalists, held by Article 19 in Geneva, Switzerland on **14 September 2015**, where she delivered the key-note address.

➤ *Advocacy visit to the Republic of Senegal*

19. From **28 to 30 September 2015**, the Special Rapporteur undertook an advocacy visit to the Republic of Senegal to advocate for the adoption of an access to information law. The Special Rapporteur was accompanied during this visit by a delegation consisting of representatives from Article 19 and Forum Civil, a legal officer from the Commission’s Secretariat, and was assisted by an interpreter from the Ministry of Foreign Affairs.

20. During the visit, the Special Rapporteur attended the commemoration of the **International Right to Know Day, on 28 September 2015**, which was convened by Article 19, and attended by Government officials, representatives from civil society and the media. The event was opened by **Professor Ismaila Madior Fall**, Minister and Legal Adviser in the Office of the President of the Republic, and the key-note address given by the Special Rapporteur. Following the opening ceremony, the Special Rapporteur addressed members of the media who were covering the occasion.
21. During the advocacy visit the Special Rapporteur met with the following Government representatives: **Mr. Mansour Tall**, the Secretary General in the Ministry of Justice; **Mr. Abdoulatif Coulibaly**, the Secretary General of Government; **Mr. Oumar Youm**, the Permanent Secretary in the Office of the President; **Mr. Massamba Sène**, the Permanent Secretary and **Mr. Ibrahima Dème**, Director for Promotion of Good Governance in the Ministry for Promotion of Good Governance and African Integration.
22. The delegation also met with **Mr. Doudou Ndir**, Chair of the Electoral Commission (CENA), **Mr. Djibril War**, Chair of the Law Commission of the National Assembly, **Ms. Nafy Ngom Keita**, Chair of the Anti-Corruption and Fraud Commission (OFNAC) and **Mr. Cheikh Ahmadou Bamba Niang**, the Directeur de Cabinet (Permanent Secretary) of the National Audio-visual Regulatory Board (CNRA). The Special Rapporteur also had the opportunity to have a meeting with the staff of the National Human Rights Committee of Senegal
23. All the stakeholders who met with the Special Rapporteur expressed their interest and intention to develop an access to information law for the Republic of Senegal, to which the Special Rapporteur indicated her availability to assist in the development of this law.

24. From **10 to 16 October 2015**, the Special Rapporteur undertook an advocacy visit to the Federal Republic of Nigeria to advocate for effective implementation of Nigeria's Freedom of Information Act (2011). The Special Rapporteur was accompanied during this visit by a delegation consisting of representatives from the Open Society Justice Initiative and the Centre for Human Rights, of the University of Pretoria.
25. During the visit, the Special Rapporteur participated in a high level public and private sector dialogue in Abuja, on the tripartite issues of open government, democracy and human rights in Africa, under the theme "Open Government, Democracy and Human Rights; Best Practice for African Governments," as the keynote speaker. This meeting was organized under the auspices of the Late Dr. Felix Okoye Memorial Lecture.
26. The meeting was well attended by senior officials in both the public and private sector in Nigeria, including civil society organisations, the Nigerian Bar Association, amongst others, and was chaired by the leadership of the Nigerian Judiciary, led by two Justices of the Nigerian Supreme Court, namely, **Honourable Justice Kekere Ekun** (JSC) and **Honourable Justice Mary Odili** (JSC), respectively, who both represented the Chief Justice of Nigeria, **Honourable Justice Mahmood Mohammed**.
27. During the advocacy visit, the Special Rapporteur met with the following Government officials: the Vice President, His Excellency, **Professor Yemi Osinbajo** (SAN) (GCON); the Chief Justice of Nigeria, His Lordship **Honourable Justice Mahmood Mohammed** and the entire fifteen (15) members of the Nigerian Supreme Court; the Speaker of the House of Representatives, **Honourable Yakubu Dogara** and some members of the leadership team in the House of Representative; the Head of the Civil Service of the Federation, **Mr. Danladi Kifasi** and his team.

28. Additionally, the Special Rapporteur met with the leadership of various key Government institutions including: the Board Members and Staff of the Nigerian Law Reform Commission led by its Chairperson, **Barrister Kefas Magaji**; the Board of the Code of Conduct Bureau led by its Chairperson, **Mr. Sam Saba**; the Senior Management Team of the National Human Rights Commission led by its Executive Secretary, **Professor Bem Angwe**; the leadership of the National Orientation Agency led by its Director General, **Mr. Mike Omeri**; and the Head of the Legal Directorate at the ECOWAS Secretariat, **Mr. Lago**.

Section Two - Activities undertaken as Commissioner

➤ Participation in the 4th Annual Joint Meeting with the African Court

29. From **27 to 28 July 2015**, Commissioner Tlakula attended the Fourth Annual Meeting of the Commission and African Court on Human and Peoples' Rights (the African Court). Discussions were held on the Reports of the following meetings: the Meeting of the Joint Committee on Referral of Cases; the Meeting of the Joint Working Group on Publications; the Meeting of the Joint Committee on Project 2016; and the Meeting of the Joint Committee on the Pan African Institute on Human Rights.

➤ Participation in the 18th Extra-Ordinary Session

30. From **29 July to 07 August 2015**, Commissioner Tlakula participated in the Commission's 18th Extra-Ordinary Session, held in Nairobi, Kenya, which was convened to deal with the backlog of Communications and other outstanding matters.

➤ Participation in the AU Election Observer Mission to Tanzania

31. From **19 to 27 October 2015**, Commissioner Tlakula was a member of the African Union Election Observer Mission to the United Republic of Tanzania, which was

mandated to cover the final preparations and conduct of the general elections held on 25 October 2015.

➤ *Activities undertaken on the margins of the 57th Ordinary Session*

32. Commissioner Tlakula participated in following activities on the margins of the 57th Ordinary Session, held in Banjul, The Gambia:

- The NGO Forum on the participation of NGOs at the 57th Ordinary Session of the African Commission, on **31 October 2015**;
- The Working Group on Communications, from **31 October** to **02 November 2015**;
- Meeting with the Norwegian delegation attending the 57th Ordinary Session of the African Commission, on **02 November 2015**;
- The joint thematic dialogue on sexual orientation and gender identity with the Inter-American Commission on Human Rights and the United Nations, on **03 November 2015**;
- Meeting of the Joint Working Group on the Addis Ababa Road Map, on **03 November 2015**;
- Meeting of the Working Group on Specific Issues related to the work of the African Commission, on **06 November 2015**;
- Consultative Meetings on Expanding Article 4 of the Declaration of Principles on Freedom of Expression in Africa (the Declaration), on **06 and 08 November 2015**.

Section Three - Letters of Appeal and Press Releases

33. 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 press release on the situation in Burundi*

34. On **01 May 2015**, the Special Rapporteur, in conjunction with the Special Rapporteur on Human Rights Defenders in Africa, issued a joint press release regarding the situation of human rights defenders and freedom of expression and assembly in Burundi. The press release condemned all forms of violence, intimidation or harassment perpetrated against civilians, journalists, human rights defenders and other civil society actors, and called upon the Government of the Republic of Burundi to ensure protection of the integrity of all civil society actors in Burundi.

➤ *Congratulatory Letter to the Kingdom of Swaziland*

35. On **01 July 2015**, the Special Rapporteur sent a letter to His Excellency King Mswati III of the Kingdom of Swaziland, commending the decision of Supreme Court of the Kingdom of Swaziland which upheld an appeal brought by human rights lawyer, Mr. Thulani Maseko, and magazine editor, Mr. Bheki Makhubu, against their conviction on two charges of contempt of court and their two year prison sentences and ordered their immediate release from prison on Tuesday 30 June 2015.

➤ *Joint Appeal to The Gambia*

36. On **20 July 2015**, the Special Rapporteur sent a joint Letter of Urgent Appeal, in conjunction with the Commissioner Rapporteur on the Human Rights Situation in the Republic of The Gambia, to His Excellency, Sheikh Professor Alhaji Dr. Yahya A.J.J. Jammeh Babili Mansa, President of the Republic of The Gambia, concerning the safety and security of **Mr. Alagie Abdoulie Ceesay**, the manager of Taranga FM, which is a community based radio station in Sinchu Alhagie, a village in the Kombo North District of The Gambia. The letter was sent following reports which alleged that, on 02 July 2015, **Mr. Ceesay** was arrested by two men in plain clothes.

37. The letter called on the Government of the Republic of The Gambia to provide clarification on the reports, in addition to investigating the allegations regarding the alleged arrest and detention of **Mr. Ceesay**.

➤ *Joint Appeal to the Kingdom of Lesotho*

38. On **08 September 2015**, acting in her capacity as the Commissioner Rapporteur on the human rights situation in the Kingdom of Lesotho, in conjunction with the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, and the Chairperson of the Committee for the Prevention of Torture in Africa, transmitted a joint Letter of Urgent Appeal to H.E. Dr. Pakalitha Bethuel Mosisili, Prime Minister of the Kingdom of Lesotho, regarding the alleged arrest and prolonged detention of at least twenty two members of the Lesotho Defence Forces (LDF).
39. According to the reports received, members of the LDF were apprehended on allegations of plotting a mutiny, and while some of the apprehended soldiers were released, twenty-two (22) soldiers remain in detention in the maximum security section of Maseru Central Prison.
40. The letter called on the Government of the Kingdom of Lesotho to provide clarification on the reports, in addition to investigating the allegations of the prolonged detention and torture of the twenty-two members of the LDF.
41. On **28 October 2015**, a response was received from the Government of Lesotho regarding the joint letter of appeal. In response to the allegations, the Government noted the following: the continuing detention of the arrested members of LDF fell within the parameters of the law; no cases had been lodged before the Courts dealing torture, save for the habeas corpus applications which did not specifically deal with the issue of torture; the reports received by the Commission relating to alleged torture of some LDF members were meant to tarnish the image of the country, since the authors of such reports had a political agenda; and allegations of abductions of members of the LDF were found by the Courts of law to be unfounded.

Responses received to the Letters of Urgent Appeal

42. With regards to these Letters of Urgent Appeal sent during the current reporting period, the Special Rapporteur wishes to note that only the Government of Lesotho has transmitted a response regarding the allegations contained in the letters of appeal.

Part II: Overview of the Status of Adoption of Access to Information Legislation in Africa

43. Pursuant to the **Resolution on the Expansion of the Mandate and Re-appointment of the Special Rapporteur on Freedom of Expression and Access to Information in Africa**, the Special Rapporteur is mandated 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.*”² With regards to access to information, which is enshrined in Article 9(1) of the African Charter, the Special Rapporteur highlights the progress made in the adoption of access to information legislation on the continent since the last reporting period.
44. In this regard, the Special Rapporteur notes that eighteen (18) African countries provide constitutional guarantees for citizens’ right to information, while seventeen (17) out of the fifty-four (54) African Union Member States currently have domestic legislation focused on the right to information namely: Angola; Burkina Faso; Côte d’Ivoire; Ethiopia; Guinea; Liberia; Mozambique; Niger; Nigeria; Rwanda; Sierra Leone; South Africa; South Sudan; Sudan; Tunisia; Uganda and Zimbabwe.³
45. The Special Rapporteur wishes to commend Burkina Faso for adopting a law on access to information during the current reporting period.

² 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 42nd Ordinary Session of the African Commission that took place in Brazzaville, Congo from 15 to 28 November 2007

³ “State of Right to Information in Africa: Citizens’ Access to Information: A tool to Build Trust and Address Corruption,” Africa Freedom of Information Centre, September 2015, Page xiv

Part III: Decriminalization of Expression Campaign

46. 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 laws, 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, which aims to rid Africa of criminal defamation, insult, false news and sedition laws.

47. Accordingly, in this section of the Report the Special Rapporteur highlights the activities which were undertaken in the decriminalization campaign.

➤ *Decriminalization of Expression in Africa Continental Campaign Meeting*

48. From **18 to 19 September 2015**, the Special Rapporteur attended the Continental Campaign Meeting on Decriminalization of Expression in Africa, which was held in Johannesburg, South Africa, where she delivered the key-note address.

Part IV: Conclusions and Recommendations

General Recommendations

49. In 2015, Commissioner Tlakula sent Notes Verbales requesting authorization to undertake promotion missions in the following State Parties: Democratic Republic of Congo on 25 March 2015; the Kingdom of Swaziland on 06 February 2015 and 23 April 2015. Additionally, copies of these NVs were handed over to Government representatives during the 56th Ordinary Session. However, to date no responses have been received to these requests.
50. Accordingly, Commissioner Tlakula would like to call on State Parties to respond to requests for authorization to undertake promotion missions, given that these missions are an important part of the Commission's promotion mandate.

Recommendations on freedom of expression and access to information

51. 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.
52. Through her mandate, the Special Rapporteur urges 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 legislation in accordance with regional and international standards, as embodied in the Model Law.
53. Accordingly, with regards to freedom of expression the Special Rapporteur calls 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.

54. Furthermore, the Special Rapporteur calls on State Parties to respond to Letters of Urgent Appeal with the information requested, and to take all appropriate action as recommended in the letters.

55. With regard to access to information, the Special Rapporteur would like to specifically call on the Republics of Kenya and Malawi to ensure speedy adoption of the Access to Information Bills which are currently before Parliament. Additionally, the Special Rapporteur would like to encourage the Republics of Senegal and Seychelles to commit to the process of formulating an access to information law, and notes her availability to provide any technical assistance required during this process.

56. Additionally, the Special Rapporteur notes that adoption of an Access to Information Law is only the first step; the laws need to be effectively implemented. Accordingly the Special Rapporteur calls on the seventeen (17) State Parties which have adopted access to information laws to ensure that these laws are effectively implemented.

57. Lastly, Commissioner Tlakula 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.⁴

⁴ “State of Right to Information in Africa: Citizens’ Access to Information: A tool to Build Trust and Address Corruption,” Africa Freedom of Information Centre, September 2015, Page iv