

**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**

***Presented during the 54<sup>th</sup> Ordinary Session of the African Commission on  
Human and Peoples' Rights***

**22 October – 5 November 2013**

**Banjul, The Gambia**

## 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 April to October 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 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 letter of Appeal she forwarded to a State Party addressing alleged violations of freedom of expression and access to information brought to her attention.

#### SECTION ONE

##### Activities as Special Rapporteur

#### *Dialogue on Media Freedom in Africa and the Launch of the Pan African Parliament Campaign on Media Freedom in Africa*

4. The Special Rapporteur presented the Model Law on Access to Information in Africa during the Dialogue on Media Freedom in Africa and the Launch of the Pan African

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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.

Parliament Campaign on Media Freedom in Africa, that was held on the margins of the Second Ordinary Session of the Third Pan African Parliament in Midrand, South Africa, from **6 – 17 May 2013**.

*Open Government Partnership Africa Regional Meeting*

5. From **29 – 30 May 2013**, the Special Rapporteur attended the first Open Government Partnership Africa Regional Meeting held in Mombasa, Kenya. The Meeting was organised by the Ministry of Information of the Republic of Kenya with the aim of identifying how African countries are achieving open governance as well as determining strategies for Africa to contribute to the global open government partnership network.
6. The Special Rapporteur participated in the “*Status of Access to Information in Africa*” Panel, wherein she shared experience and insight on the theme, “*Status of Access to Information in Africa*”.

*Meeting with the African Peer Review Mechanism (APRM) Secretariat*

7. On **22 June 2013**, the Special Rapporteur held a meeting with the Chief Executive Officer of the African Peer Review Mechanism (APRM), Mr. Aseffa Sifa. The Meeting explored the possible areas of collaboration with the New Partnership for Africa’s Development (NEPAD)/APRM in relation to the ‘implementation’ of the Model Law on Access to Information in Africa. The Meeting particularly intended to identify ways in which access to information can be incorporated into the APRM country review process, using the Model Law as the normative standard.

*Meeting on Decriminalisation of Laws Limiting Freedom of Expression and the Safety of Journalists in Burundi*

8. On **24 and 25 June 2013**, the Special Rapporteur, in collaboration with the Centre for Human Rights of the University of Pretoria, Article 19 Eastern Africa and the Burundi Union of Journalists, organised a stakeholders meeting on the “Decriminalisation of Laws

Limiting Freedom of Expression and the Safety of Journalists in Eastern Africa”, in Bujumbura, Burundi.

9. Participants in the Meeting included governmental officials, National Human Rights Institutions (NHRIs), National Journalist Associations, and Civil Society Organisations (CSOs). They discussed issues relating to the decriminalisation of freedom of expression and the safety of journalists in Eastern Africa.

*Interview for an article entitled “A bid to rid Africa of criminal defamation, sedition laws”*

10. The Special Rapporteur gave an interview, with Tom Rhodes of the Committee to Protect Journalists (CPJ), East Africa for an article posted on **12 July 2013** on the CPJ Website titled “A bid to rid Africa of criminal defamation, sedition laws” available at <http://www.cpj.org/blog/2013/07/a-bid-to-rid-africa-of-criminal-defamation-seditio.php>.

*Meeting on Decriminalisation of Laws Limiting Freedom of Expression in Africa*

11. On **16 July 2013**, the Special Rapporteur convened a meeting of selected researchers from all over the continent, in Pretoria, South Africa. The Meeting held an in-depth discussion of the research template, interview guidelines, time lines, etc..., for the research on “*Decriminalisation of Laws Limiting Freedom of Expression in Africa*” which is to be commissioned by the Special Rapporteur.

*Meeting on the Decriminalisation of Laws Limiting Freedom of Expression and on the Safety of Journalists in Southern Africa*

12. On **20 and 21 August 2013**, the Special Rapporteur, in collaboration with the Centre for Human Rights, University of Pretoria convened a stakeholders Meeting on decriminalisation of laws limiting freedom of expression and on the safety of journalists in Southern Africa at the Farm Inn Country Hotel in Pretoria, South Africa.

13. The Meeting brought together government officials, including two Ministers from the Republic of Malawi, i.e. Hon. Moses K. Kalongashawa: Minister of Information and Civic Education, and Hon. Raphael Kasambara, SC: Minister of Justice, NHRIs, National Journalist Associations as well as CSOs from ten (10) Southern African countries (Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Seychelles, South Africa, Zambia and Zimbabwe) to discuss issues related to the decriminalisation of laws which inhibit freedom of expression, the safety of journalists, and the problem of impunity in Southern Africa.

*Promotion Mission to the Republic of Uganda*

14. From **25 to 30 August 2013**, the Special Rapporteur, together with Honourable Commissioners Lucy Asuagbor, in her dual capacity as Commissioner responsible for human rights in the Republic of Uganda, and the Chairperson of the Committee on the Rights of People Living with HIV, and Those at Risk, Vulnerable to, and Affected by HIV (the Committee); Med S.K Kaggwa, in his capacity as the Special Rapporteur on Prisons and Conditions of Detention in Africa; and Pacifique Manirakiza, in his capacity as the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, undertook a Joint Promotional Mission to the Republic of Uganda in accordance with Article 45(1) of the African Charter.

15. She took part in the Mission in her capacity as the Special Rapporteur on Freedom of Expression and Access to information.

16. The objectives of the Mission were to, amongst other things: raise awareness about the importance of the right to freedom of expression and access to information generally, as well as before and after elections and to engage in dialogue with the authorities and relevant CSO's on the state of, and measures taken to promote the realisation of the right to freedom of expression and access to information in Uganda.

**SECTION TWO**  
**Activities as Commissioner**

*Meeting with the African Court Coalition and HURISA*

17. Adv. Tlakula met with Mr. Dieu-Donné Wedi Djamba, Executive Secretary to the Coalition for an Effective African Court on Human and Peoples' Rights (African Court Coalition) and Ms Sophia Ebby, Legal Officer at the African Court Coalition during their advocacy Mission held in collaboration with the Human Rights Institute of South Africa (HURISA) in South Africa from **10 - 14 June 2013**.
18. The Meeting covered the possibility of South Africa making a declaration in line with Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol), enabling individuals and NGOs to institute cases directly before the African Court.
19. The visits by the African Court Coalition and HURISA were generally meant to strengthen the progress made by South Africa following its ratification of the Court Protocol. It aimed to promote South African citizens' right to access justice by going to the African Court, and also presented a good opportunity to popularize the mandates of African Union (AU) Organs as well as mark the 50<sup>th</sup> Anniversary of the Organisation of African Unity/AU.

**SECTION THREE**  
**Letter of Appeal**

20. 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 a joint letter of Appeal to the Republic of Burundi during the period under review.

21. On May 30 2013, the Special Rapporteur, together with the Special Rapporteur on Human Rights Defenders, Honorable Commissioner Reine Alapini-Gansou, sent a joint letter of Appeal to the Republic of Burundi on the adoption of a new Draft Media Law (the Law) by Burundi's National Assembly and Senate on 3 and 19 April 2013 respectively.
22. Whilst commending the adoption of the Law, the Special Rapporteurs expressed concern about certain provisions in the Law, in particular **Articles 6, 16, 18, 19, and 60**, which are reported not to comply with the African Charter, the Declaration on the Principles of Freedom of Expression in Africa (the Declaration), the UN Declaration on Human Rights Defenders (the UN Declaration), and other international and regional standards on freedom of expression and access to information.
23. In the letter of Appeal, the Special Rapporteurs respectfully made a humble appeal to **H.E Pierre NKURUNZIZA**, President of the Republic of Burundi, to take their concerns about the Law into account and make amendments to the same, so as to ensure that it fully complies with the African Charter, the Declaration, the UN Declaration and other applicable international and regional standards on freedom of expression and access to information.
24. They underscored **Article 9** of the African Charter, **Article 6** of the UN Declaration, and also highlighted **Principles I (1), X (2), XII (1) and XIII (1)** of the Declaration.

## PART II

### STATUS OF ADOPTION OF ACCESS TO INFORMATION LEGISLATION IN AFRICA

25. 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>2</sup> this part of the Report highlights the

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<sup>2</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).

progress made in the adoption of access to information legislation on the continent since the last reporting period.

26. The period between April to October 2013 was marked by some notable progress, but has also seen some regression in terms of the promotion and protection of access to information in Africa.
27. Of great significance is the launching of the long-awaited Model Law on Access to Information in Africa during the 53<sup>rd</sup> Ordinary Session of the Commission, held from 9 to 23 April 2013, in Banjul, The Gambia. The decision to draft this Model Law was made by the Commission during its 48<sup>th</sup> Ordinary Session held from 10 to 24 November 2010. As indicated in the previous Activity Reports of the Special Rapporteur, the Model Law is the result of a two and a half year long process, developed in collaboration with the Centre for Human Rights, University of Pretoria and the Special Rapporteur.
28. The adoption of the Model Law represents a significant milestone in the work of the Commission, as it is the very first time the Commission has developed a model law on any particular rights issue on the continent. It is meant to guide law makers in translating obligations emanating from international treaties into detailed national legislation.
29. There are reports that the Model Law has been used by Non-Governmental Organisations (NGOs) to assist State Parties in drafting Access to Information Laws. Mr. Gilbert Sendugwa, Coordinator and Head of Secretariat of the Africa Freedom of Information Centre (AFIC) stated that AFIC has used the Draft Model Law *“to analyse and provide inputs into draft Freedom of Information Bills for Kenya, Zambia and Botswana.”*<sup>3</sup>
30. However, since the last reporting period, the number of African countries with Access to Information Laws remains eleven (11)-Angola, Ethiopia, Guinea, Liberia, Niger, Nigeria, Rwanda, South Africa, Tunisia, Uganda and Zimbabwe. It must be noted that the adoption of Access to Information Laws is not an end, but a means to an end, which is the respect for peoples’ rights to access information. It is therefore of great concern to the Special

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<sup>3</sup> Freedom Info, (22 April 2013) < <http://www.freedominfo.org/2013/04/model-access-law-for-africa-a-response-to-africas-felt-need/>> (accessed on 18 September 2013).



Rapporteur that some of the above-stated countries still display gross violations of peoples' rights to freedom of expression and access to information.

31. Furthermore, Access to Information Laws in some countries contain sections/provisions which are not in line with the African Charter as well as other regional and international human rights instruments on the right to freedom of expression and access to information. In other countries, Information Laws are being used to clamp down on the free flow of information instead of creating a conducive environment for accessing information.

### **PART III**

#### **CONCLUSIONS AND RECOMMENDATIONS**

32. The Commission has taken steps to create awareness and understanding amongst State Parties about their duties in the implementation of the rights under the African Charter, including the rights to freedom of expression and access to information. It has adopted several documents expounding on the rights to freedom of expression and access to information, such as Resolutions and most notably the Declaration, and recently the Model Law.
33. It is known that all human rights are inalienable, indivisible, inter-dependant and inviolable. Hence, the relevance of the respect for peoples' rights to freedom of expression and access to information to the protection of other human and peoples' rights cannot be over-stressed. Likewise, the respect of other human and peoples' rights is crucial to the protection and promotion of freedom of expression and access to information.
34. Freedom of expression and information is of fundamental importance as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms. One of the objectives of the African Charter on Democracy, Elections and Governance (the African Charter on Democracy) is "*the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.*" A society free

to express itself and free to access information is a society prone to stability, and a society which can question and hold its government accountable.

35. With the adoption and launching of the Model Law, State Parties can now easily draft and adopt an Access to Information Law suitable for the legal and other realities in their country.
36. The work of the Commission certainly does not end with launching the Model Law. A lot remains to be done with regards to advocacy and sensitisation campaigns in partnership with various stakeholders. Key actors in the implementation of the Model law are called upon to develop effective strategies to ensure that the purpose of the Model law is achieved by strongly and effectively supporting the Special Rapporteur in the implementation phase of this process.
37. Additionally, being indispensable partners of the Commission and providing information to the same, it will be imperative for NHRIs and NGOs to constantly update the Commission in their reports and statements made during the public session, or through direct contact with the Office of the Special Rapporteur, on the efforts being made by their Governments to adopt progressive national laws on Access to Information that meet the standards established in the Model Law and the extent to which the Model Law is being used as a guide in the process of enacting such laws.
38. Member States should also ensure their representation at every step of the implementation phase of the Model Law, display strong political will to adopt Access to Information laws that meet the benchmarks established in the Model Law and make implementation of such laws a reality.
39. CSOs should also take steps to lobby Governments in their jurisdictions to repeal all laws that unduly restrict the right of access to information, including Official Secrets Acts and similar restrictive national laws where they still exist.
40. The Commission has noted that national law cannot set aside the right to express and disseminate one's opinion guaranteed at the international level and that national law

cannot take precedence over international law.<sup>4</sup> Therefore, State Parties must ensure that their national laws on freedom of expression and access to information comply with international and regional standards. Hence, the Special Rapporteur calls upon States Parties to amend their Constitutions and laws to align them to regional and international standards on freedom of expression and access to information.

41. The Special Rapporteur commends States Parties that have signed and ratified the African Charter on Democracy, and calls upon those that have not yet done so, to ratify as soon as possible.
42. Finally, 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.

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<sup>4</sup> Communications 140/94, 141/94 and 145/95 - *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria* (1999) ACHPR para 40.