

**INTER-SESSION ACTIVITY REPORT**  
**(May to October 2019)**

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Presented to the 65<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights

Banjul, The Gambia  
21 October to 10 November 2019

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## **I. Introduction**

1. This Report is prepared pursuant to Rules 23(3) and 72 of the Rules of Procedure, 2010, of the African Commission on Human and Peoples' Rights ('Commission' or 'African Commission'), which requires each of the Commission's subsidiary mechanisms to present a report on its work at each ordinary session, and each Commissioner to submit a report on activities undertaken during the inter-session.
2. I submit this report to the 65<sup>th</sup> Ordinary Session of the African Commission in my capacities as the Vice-Chairperson of the Commission and as the Special Rapporteur on Freedom of Expression and Access to Information in Africa (Special Rapporteur).
3. This report covers the inter-session between the 64<sup>th</sup> and the 65<sup>th</sup> Ordinary Sessions, during the period May to October 2019.
4. The Report is divided into this introduction; my inter-sessional activities; and a Situation Report on freedom of expression and access to information in Africa for the period January-October 2019.

## **II. Inter-sessional Activities**

5. I undertook the following activities as the Vice-Chairperson of the Commission and as Special Rapporteur:
  - a. From 16 to 30 July 2019, I attended the Commission's 26<sup>th</sup> Extra-Ordinary Session, which was held in Banjul, The Gambia.
  - b. From 16 to 20 September 2019, I undertook an advocacy visit to the Republic of Namibia with the aim of providing technical support towards enactment of access to information legislation. During my visit, I was granted audience with H.E. President Hage Geingob who reiterated his commitment that the government of Namibia would enact access to information legislation expeditiously. I also held consultations with the Parliamentary Standing Committee on Information, Communications and Technology and Innovation, the Chairperson of the Law Reform and Development Commission, the Ombudsman, the Chief Executive Officer of the Electoral Commission of Namibia, the Media Ombudsman and representatives from the Editors' Forum of Namibia. As well, I held consultations with representatives from civil society organizations and the media; gave a guest lecture at the Law Department of the University of Namibia, attended the launch

of a report on ‘fake news’ and Elections in Namibia, and participated in radio and television events to raise awareness on Article 9 issues.

- c. As part of my advocacy visit to Namibia, on 19 to 20 September 2019, I participated in a Consultation on the draft revised Declaration on Principles of Freedom of Expression and Access to Information in Africa involving participants from six countries in Southern Africa.
  - d. On 27 September 2019, I was a guest-speaker at a conference marking the International Day for Universal Access to Information (IDUAI). I addressed the conference on the subject of ‘Digital Equality and Universal Internet Access as a basic Human Right’. The conference was organized by the Information Regulator of South Africa, the South African Human Rights Commission and the Centre for Human Rights- University of Pretoria and it was held in Pretoria, South Africa.
  - e. On 28 September 2019, I participated in a breakfast roundtable discussion on ‘Combatting Online Harassment and Abuse of Journalists’ organized by the South Africa National Editors’ Forum in Johannesburg.
  - f. From 30 September to 1 October 2019, in my capacity as the Special Rapporteur, I convened and participated in the Technical Drafting Workshop on the Revision of the Declaration of Principles of Freedom of Expression and Access to Information in Africa which was held at the University of Pretoria, South Africa.
  - g. On 4 October 2019, I participated in the National Dialogue on the Study: “HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV in Nairobi, Kenya; organized by the African Commission through its Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV.
  - h. On 18 to 19 October 2019, I convened a meeting involving state and non-state participants from Francophone countries from North and West Africa to build capacities on the effective exercise of the freedom of expression and access to information.
6. During the intersession, I issued the following press releases and letters of urgent appeal:
- a. On 4 June 2019, I transmitted a letter of appeal to the President of the Arab Republic of Egypt, H.E. Abdel Fattah el-Sisi, regarding the arrest and prolonged pre-trial detention of Mahmoud Hussein, a journalist with Al Jazeera Media

Network, who had reportedly not been charged since his arrest on 23 December 2016. I have not received any response on my appeal.

- b. On 20 June 2019, in collaboration with the Special Rapporteur on the Rights of Women in Africa, and the country rapporteur for the Republic of Kenya, I issued a press statement welcoming the judgement of the High Court of Kenya of 12 June 2019 on the Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya and the National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies. The High Court declared as unconstitutional the withdrawal by the Director of Medical Services of the 2012 Standards and Guidelines, in addition to the withdrawal of the Training Curriculum.<sup>1</sup>
- c. On 10 September 2019, in collaboration with the Commissioner Rapporteur on the human rights situation in the United Republic of Tanzania, I transmitted a letter of appeal to the President of the United Republic of Tanzania, H.E. John Pombe Magufuli, regarding the arrest of Tanzanian journalist, Erick Kabendera. The letter requested clarification on reports that Kabendera's health had deteriorated while in remand and that he was very weak and unable to walk. Although the journalist needed urgent medical attention, permission for a medical evaluation was not granted by the court.<sup>2</sup> I have not received any response on my appeal.

### **III. Situation of Freedom of Expression and Access to Information in Africa**

#### **A. Introduction**

7. This section of my report focuses on the situation of freedom of expression and access to information in Africa during the period January to October 2019. Its preparation is pursuant to my mandate as Special Rapporteur of submitting reports at each Ordinary Session of the African Commission on the exercise of the right to freedom of expression and access to in Africa.

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<sup>1</sup>Press Release on the decision of the High Court of Kenya regarding the Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya and the National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies, <https://www.achpr.org/pressrelease/detail?id=417>

<sup>2</sup>Press Statement on the Joint Letter of Appeal issued on the Human Rights Situation in the United Republic of Tanzania; <https://www.achpr.org/pressrelease/detail?id=435>

8. The report is premised on Article 9 of the African Charter which guarantees every individual's right to receive information and the right to express and disseminate opinions.
9. This guarantee is elucidated in the Declaration of Principles on Freedom of Expression in Africa (the Declaration),<sup>3</sup> the Model Law on Access to Information for Africa,<sup>4</sup> and the Guidelines on Access to Information and Elections in Africa.<sup>5</sup> The Commission has also developed a number of Resolutions to further elaborate Article 9 of the Charter.

## **B. Limitations**

10. The scope of the right to freedom of expression is broad. Under Article 9 of the African Charter, it is a distinct human right which should be enjoyed by everyone. No distinctions are permitted in its enjoyment on bases such as a person's race, colour, nationality, sex, language, social origin, disability or property.
11. The right to freedom of expression includes the right to 'seek and receive' information from others,<sup>6</sup> and the right to impart or disseminate information, ideas and opinion, that is, the right to speak and the right to be heard.<sup>7</sup> This right also protects all forms of expression and the means of their dissemination, including spoken, written and sign language and such non-verbal expression as images and objects of art.<sup>8</sup>
12. Freedom of expression is not an absolute right. Any limitations on the right however may not be framed so as to erode the substance of the right to the extent that it becomes illusory.<sup>9</sup>
13. Hence, the Declaration states that 'No one shall be subject to arbitrary interference with his/her freedom of expression'; and that 'any restrictions on freedom of expression shall be provided by law, serve a legitimate aim and be necessary in a democratic society.'<sup>10</sup> This is a reaffirmation of what has come to be referred to as the 'three part test'.
14. The first test requires the limitation to be provided in law under the principle of legality. The law must be clear and unambiguous, drafted with such clarity as to inform the

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<sup>3</sup>Adopted by the African Commission in 2002.

<sup>4</sup>Adopted by the Commission in 2012.

<sup>5</sup>Adopted by the Commission in 2017.

<sup>6</sup>Article 19, Universal Declaration of Human Rights, 1948. Also see: CCPR/C/GC/34 Human Rights Committee, General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights, Para 11

<sup>7</sup>Ibid, Para 12

<sup>8</sup>Ibid

<sup>9</sup>ACHPR Communication 290/04: Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) v Cameroon

<sup>10</sup>Principle II of the Declaration

subject's behaviour. The second test requires that the limitation should serve a legitimate purpose, usually set out in domestic law. However, the legitimate purpose must be in line with international standards. Article 27(2) of the African Charter provides that rights 'shall be exercised in respect of the rights of others, collective security, morality and common interest.' The third test is that the limitation must be necessary in a democratic society. This test requires that the limitation should be the least restrictive means of achieving the purpose coupled with the requirement that the restriction should be proportionate to the goal it seeks to achieve.

15. States should ensure that they do not institute legislative or administrative measures on freedom of expression that do not conform with the three-part test.

### **C. Freedom of Expression**

16. Freedom of expression is an enabler of other rights and an anchor of a democratic society. 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'.<sup>11</sup>

### **Criminal defamation**

17. The African Commission has called on States to repeal criminal defamation laws which impede freedom of speech and to refrain from imposing general restrictions that violate freedom of expression.<sup>12</sup>
18. Criminal defamation laws have the effect of seriously interfering with freedom of expression. They present practical challenges for journalists and media practitioners when they seek to act as watchdogs in support of public transparency and accountability.
19. During the reporting period, criminal defamation became manifest in the ways some States sought to enact or use such laws while other States sought to stop their use. I commend Liberia where on 8 February 2019 President George Weah signed into law the Kamara Abdullai Kamara Act of Press Freedom which amends Chapter 11 of the Penal Law of 1978 repealing Sections 11.11 on criminal libel against the president, sedition and criminal malevolence.<sup>13</sup>

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<sup>11</sup> Preamble of the Declaration

<sup>12</sup> Resolution on Repealing Criminal Defamation Laws in Africa (ACHPR/Res.169(XLVIII) 10)

<sup>13</sup> IFEX, 'President George Weah signs new press freedom Act which repeals libel' <https://ifex.org/president-george-weah-signs-new-press-freedom-act-which-repeals-libel/>

20. Africa's judiciaries continue to play key roles in pushing back laws on criminal defamation. In Rwanda, on 24 April 2019, the Supreme Court repealed provisions in the Penal Code that criminalize humiliation and defamation through cartooning and gestures against religion and public servants, observing that it is undemocratic for public servants to be exempted from checks and balances of accountability through media. However, the Court sustained criminal defamation against the President, stating that the President of the Republic is a unique figure and that defaming the President is equivalent to defaming the whole nation.<sup>14</sup> Yet, I note and welcome President Paul Kagame's statement of 25 April 2019 expressing his disagreement with the judgment. The President said his position has always been that defamation should be a civil and not a criminal matter, and that that there should be further debate on the issue.<sup>15</sup>
21. Attempts to criminalise insult or obscenity are also being reviewed carefully by courts. In Kenya, on 31 July 2019, the High Court declared Section 84D of the Information and Communications Act unconstitutional for criminalizing publishing of obscene information in electronic form. The Court found that the provision was drafted in an ambiguous and overly broad manner that was void of clarity.<sup>16</sup>

## Media

22. The Declaration recognises the key roles that media and other means of communication play in a democratic society to ensure full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy.
23. Media actors on all platforms are entitled to enjoy the fundamental right to freedom of expression and to the safe exercise of this right. The importance of the media cannot be understated. It is at the centre of the full realisation of the public's right to receive and access information. Freedom of expression, press freedom and access to information can only be enjoyed when journalists and media practitioners are free from intimidation, pressure and coercion.<sup>17</sup>

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<sup>14</sup> The Independent, 'Rwanda's Supreme Court decriminalizes cartooning, except for President' <https://www.independent.co.ug/rwandas-supreme-court-decriminalizes-cartooning-except-for-president/>

<sup>15</sup> The Chronicles, President Kagame's Disagreement With Supreme Court Advances Rule of Law <https://www.chronicles.rw/2019/05/03/president-kagames-disagreement-with-supreme-court-advances-rule-of-law/>

<sup>16</sup> Techweez, 'High Court Declares Section of the Kenya Information and Communication Act as Unconstitutional' <https://techweez.com/2019/07/31/high-court-declares-section-of-the-kenya-information-and-communication-act-as-unconstitutional/>

<sup>17</sup> Resolution on the Safety of Journalists and Media Practitioners in Africa (ACHPR/Res.185 (XLIX)11)

24. The Declaration reiterates that States should not use their power over the placement of public advertising as a means to interfere with media content.<sup>18</sup> States have a positive obligation to promote a general economic environment in which media can flourish. Media regulatory bodies should enjoy the same independence and should be adequately protected against interference of a political, commercial or other nature.
25. While some States continue to exercise direct censorship of media, more States are increasingly engaging in indirect censorship or soft censorship manifested through Government pressure on media through advertising decisions and restrictive legislation. Some States especially exercise abuse of regulatory and inspection powers under the color of law or market rules such as broadcast licensing processes which are manipulated to stifle critical voices or other excessive fiscal, labour or regulatory requirements.<sup>19</sup> More often, soft censorship practices are a combination of measures with a semblance of legality with obvious unlawful methods and goals of improperly influencing media content and other forms of political expression.
26. I am concerned that national security continues to be used to justify stopping the media from performing its functions:
- a. In Nigeria, on 6 January 2019, soldiers reportedly raided the offices of Daily Trust in Abuja and Maiduguri, Borno State where they arrested Uthman Abubakar, the regional editor and well as Ibrahim Sawab, a reporter, on the ground of compromising national security. The raid happened hours after the newspaper reported on an operation by the military to retake Baga and five other towns in Borno from Boko Haram.<sup>20</sup>
  - b. In Burkina Faso, the Burkinabe Constitutional Council, on 21 June 2019, amended the Criminal Code to criminalize certain kinds of online content, including fake news and terrorism reporting that could have negative consequences compromising public order and the conduct of security operations, and demoralise the defence and security forces. I however note

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<sup>18</sup>Principle XIV

<sup>19</sup> Open Society Justice Initiative, ‘ The growing threat of soft censorship- A paper on indirect restrictions on freedom of expression worldwide’ (2005)

<sup>20</sup> Premium Times ‘Nigeria: Armed Soldiers Raid Nigeria Newspaper Offices, Arrest Journalists’

<https://aallafrica.com/stories/201901070007.html>

that on 3 July 2019, the Constitutional Council decided on its own initiative to examine the new law to determine whether it complies with the Constitution.<sup>21</sup>

27. State and other officials also continued the use of bans and prohibitions on media which did not tow their line:

- a. In Liberia, on 26 February 2019, the Speaker of the House of Representatives, Bhofal Chambers, revoked the parliamentary accreditation for some journalists.<sup>22</sup>
- b. In Zambia, on 28 February 2019, the ruling party Patriotic Front barred *Prime Television* from covering any of its party activities.<sup>23</sup>
- c. In Tanzania, on 27 February 2019, the Information Services Department banned *The Citizen* for seven days for publishing ‘false, misleading and seditious information’ about the devaluation of the Tanzanian shilling.<sup>24</sup>
- d. In Congo-Brazzaville, in August, the media regulator, the Superior Council for Freedom of Communication (CSLC), threatened the news weekly *Manager Horizon* with closure if it did not desist from its coverage of alleged mismanagement at a state agency.<sup>25</sup>

28. I am concerned that States continue to establish and employ onerous measures and inordinate fees to undermine the media:

- a. In Tanzania, in July 2019, Parliament enacted the Written Laws (Miscellaneous Amendments No. 3 of 2019) Bill, introducing an onerous approval process for those wishing to challenge Government data or publish ‘non-official’ statistics, with criminal penalties for noncompliance. The law also established a statutory Film Board with the power to censor films

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<sup>21</sup> Reporters without Borders, ‘Burkina Faso: legislative threat to press freedom must be declared unconstitutional’

<https://rsf.org/en/news/burkina-faso-legislative-threat-press-freedom-must-be-declared-unconstitutional>

<sup>22</sup> IFEX, ‘Liberian Parliament revokes press accreditation of journalists’

<https://ifex.org/liberian-parliament-revokes-press-accreditation-of-journalists/>

Also See: Reporters without Borders, ‘RSF condemns Liberian parliament’s ban on four reporters’

<https://rsf.org/en/news/rsf-condemns-liberian-parliaments-ban-four-reporters>

<sup>23</sup> IFEX, Verbal and physical onslaught against private TV station by Zambians ruling party’

<https://ifex.org/verbal-and-physical-onslaught-against-private-tv-station-by-zambians-ruling-party/>

<sup>24</sup> Committee to Protect Journalists, ‘Tanzania imposes 7-day publication ban on *The Citizen*’

<https://cpj.org/2019/03/tanzania-citizen-7-day-publication-ban.php>

Also see: Leading Tanzanian daily suspended for seven days

<https://rsf.org/en/news/leading-tanzanian-daily-suspended-seven-days>

<sup>25</sup> Reporters without Borders, ‘Media regulator threatens Brazzaville weekly with closure’

<https://rsf.org/en/news/media-regulator-threatens-brazzaville-weekly-closure>

exhibited in the country, and requiring all foreign companies shooting films in Tanzania to submit raw footage of their work to the Board.<sup>26</sup>

- b. In Uganda, in August 2019, the Communications Regulator directed that influencers with large commercialized online followings must register their activities for monitoring with the state. The scheme would charge influencers a \$20 fee and it is aimed to clamp down on immoral or prejudiced content.<sup>27</sup>

## Media Shutdowns

29. Media shutdowns are an affront to press freedom and are usually designed to suppress political and media space. Media shutdowns during the reporting period manifested themselves in the context of elections, civil protests and intolerance to diverse expression:

- a. In Malawi, on the evening of 21 May 2019, shortly after the close of general elections, the broadcast signals of *Times Television* and *Zodiak Broadcasting* were interrupted and the social network platforms Facebook and WhatsApp became inaccessible. Access was restored in the course of the night.<sup>28</sup>
- b. In Burundi, on 29 March 2019, the National Council of Communication (CNC) rescinded the BBC's operating license after it aired a documentary which was termed as 'mendacious, slanderous and derogatory'. The documentary had accused the Burundian security services of operating secret torture and detention sites with the aim of silencing dissent. In the same communiqué, the CNC announced that the suspension of broadcasting by *Voice of America* was being extended, accusing it of continuing to employ a person who was wanted on an international arrest warrant issued by the Burundian judicial authorities.<sup>29</sup>

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<sup>26</sup> Committee to Protect Journalists 'CPJ urges Tanzania lawmakers to revise proposed legislative amendments' <https://cpj.org/2019/06/cpj-urges-tanzania-lawmakers-to-revise-or-drop-pro.php>

Also see: Amnesty International 'Discard the new law limiting human rights' Tanzania: Discard new law restricting human rights <https://www.amnesty.org/en/latest/news/2019/06/tanzania-authorities-rushing-to-pass-bill-to-further-repress-human-rights/>

<sup>27</sup>Techweez 'Uganda Wants to Register Social Media Influencers' <https://techweez.com/2019/08/09/uganda-wants-to-register-social-media-influencers/>

Voice of Africa, Ugandan Online Publishers Criticize Registration as Political Control <https://www.voanews.com/africa/ugandan-online-publishers-criticize-registration-political-control>

<sup>28</sup> Social networks and TV signals down after close of polls in Malawi <https://rsf.org/en/news/social-networks-and-tv-signals-down-after-close-polls-malawi>

<sup>29</sup> Reporters without Borders, 'Burundi bans BBC, extends VOA suspension' <https://rsf.org/en/news/burundi-bans-bbc-extends-voa-suspension>

- c. On 12 June 2019, two news websites in Algeria, Tout Sur l'Algérie and Algérie, became widely inaccessible amid anti-government protests.<sup>30</sup>
- d. Since 9 May 2019, the website of *al-Tahrir* newspaper in Egypt was blocked inexplicably, with the board of directors stating that the newspaper would be insolvent within two months if the website was not unblocked.<sup>31</sup>

### **Protection of journalists and other media practitioners**

30. I remain concerned about the threats, attacks and killings of journalists and other media practitioners which continue to take place around the continent. Even where these attacks and killings are not perpetrated by State agents, States have the positive obligation to take proactive measures to prevent the attacks, protect journalists and to investigate, prosecute and punish perpetrators.<sup>32</sup>

31. I urge all States to systematically investigate, prosecute and punish all those responsible for crimes of violence against journalists. I, in particular welcome measures taken towards this end, including the following:

- a. In Somalia, two soldiers were arrested on 24 March 2019 on charges of torturing and threatening two reporters. The charges were brought by the Armed Forces Attorney-General in connection with the treatment of two reporters on 18 February 2019, Abdullahi Abdi and Said Warsame Sabriye of Dhanbaal.<sup>33</sup>
- b. Sudanese security agents on 29 March 2019 released Osman Mirghani, editor-in-chief of Al-Tayar, who had been detained since 22 February for criticising a state of emergency imposed by President Omar Al-Bashir.<sup>34</sup>
- c. The Ghanaian Criminal Investigations Department announced on 1 April 2019 that it had arrested a key suspect and that several people had been questioned in the course of investigations into the killing of journalist Ahmed Hussein-

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<sup>30</sup> VOA 'The TSA info site blocked on the Algerian territory' <https://www.voafrique.com/a/le-site-d-info-tsa-bloqu%C3%A9-sur-le-territoire-alg%C3%A9rien/4957790.html>. Also See: Committee to Protect Journalists, 'Two news websites inaccessible in Algeria amid protests, social media shutdowns' <https://cpj.org/2019/06/two-news-websites-inaccessible-in-algeria-amid-pro.php>

<sup>31</sup> Committee to Protect Journalists, 'Al-Tahrir newspaper threatened by insolvency as website blocked in Egypt since May' <https://cpj.org/2019/06/al-tahrir-newspaper-threatened-by-insolvency-as-we.php>

<sup>32</sup> See Principle XI of the Declaration

<sup>33</sup> Reporters without Borders, 'Unprecedented arrest of two Somali soldiers for mistreating journalists' <https://rsf.org/en/news/unprecedented-arrest-two-somali-soldiers-mistreating-journalists>

<sup>34</sup> Arab News, 'Sudan frees editor held for criticising emergency rule' <https://www.arabnews.com/node/1474681/media>

Suale in January 2019.<sup>35</sup> The journalist, an undercover reporter with AnasAremeyawAnas' Tiger Eye PI, was shot dead by gunmen in Madina, Accra. This happened after the release of a documentary about corruption in Ghana football.<sup>36</sup>

- d. In Mauritania, on 29 July 2019, the government released Mohamed Cheikh Ould Mkhaitirn, a blogger who had been held for over 5 years on blasphemy charges.<sup>37</sup>

32. I am extremely concerned about reports of threats, harassment, killings, arrest and imprisonment of journalists on the Continent on charges meant to curb press freedom and free speech. In particular, I am concerned about reports indicating that:

- a. In Sudan, on 4 January 2019, authorities arrested 28 journalists as they attempted to deliver a petition to the National Intelligence Security Service (NISS) protesting media censorship and repeated seizure of print-runs of Al-Jareeda. The journalists had organised a sit-in in front of the NISS offices in Khartoum.<sup>38</sup>
- b. In Cameroon, on 1 February 2019, a reporter for the privately owned news website, *Cameroon Web*, Paul Chouta, was stabbed and beaten as he left his Yaoundé home just after 6 a.m. in reports indicating that the attack was linked to his work.<sup>39</sup>
- c. In Mozambique, journalists Amade Abubacar and Germano Daniel Adriano spent 107 days and 65 days respectively in pre-trial detention, before they were freed on bail on 23 April 2019.<sup>40</sup>
- d. In Nigeria, on 22 August 2019, police officers with the special Anti-robbery Squad arrested Agba Jalingo, publisher of online news outlet Cross River Watch, in Lagos in attempts believed to be tied to the report the media made on alleged corruption involving the Cross River Microfinance Bank and

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<sup>35</sup> Reporters without Borders, ‘“Key suspect” arrested in Ghanaian journalist’s murder’ <https://rsf.org/en/news/key-suspect-arrested-ghanaian-journalists-murder>

<sup>36</sup> Citi News Room ‘Lead Investigator of Anas’ Tiger PI shot dead in Madina’ <https://citinewsroom.com/2019/01/17/lead-investigator-of-anas-tiger-eye-pi-shot-dead-in-madina/>

<sup>37</sup> Mauritania: Blogger in ‘Blasphemy’ Case Freed After 5 Years Death Row, then Arbitrary Detention, Now Exile <https://www.hrw.org/news/2019/07/30/mauritania-blogger-blasphemy-case-freed-after-5-years>

<sup>38</sup> The East African ‘Sudanese authorities arrest 28 journalists’ <https://www.theeastafrican.co.ke/news/africa/28-journalists-arrested-in-sudan-protest/4552902-4934786-k3xw/index.html>

<sup>39</sup> Reporters without Borders, ‘Knife attack on well-known Cameroonian investigative reporter’ <https://rsf.org/en/news/knife-attack-well-known-cameroonian-investigative-reporter>

<sup>40</sup> MISA Zimbabwe ‘Safety of journalists and access to information critical to credible SADC elections’ <http://zimbabwe.misa.org/2019/04/24/safety-of-journalists-and-access-to-information-critical-to-credible-sadc-elections/>

Benedict Ayade, the governor of Cross River state on 12 July 2019. He was charged with disturbance of public peace and treason.<sup>41</sup>

- e. In Ghana, on 27 June 2019, Emmanuel Ajarfor Abugri, the deputy editor of the *ModernGhana* website, and reporter Emmanuel Yeboah Britwum, were arrested without warrants at the website's office in Accra, shortly after they posted a story criticising the minister. After their release on 1 July 2019, the journalists said that they were tortured while held and were forced to remove three posts from the site in which readers had criticized the national security minister.<sup>42</sup> The Minister denied the allegations.

33. At the same time, I wish to raise my concerns in respect of the harassment of journalists on social media. Such harassment includes threats of rape, physical violence and murder, and the online publication of graphic images of the journalists, particularly female journalists. Notably, in South Africa, on 5 March 2019, Karima Brown, a journalist, was subjected to online attacks through publication of graphic messages on social media. She was sent racially-charged messages as well as others threatening her with rape and murder only hours after the leader of the Economic Freedom Fighters (EFF) published the journalist's phone number in a tweet accusing her of pushing the African National Congress's agenda.<sup>43</sup> I welcome the decision of the High Court in Johannesburg declaring that EFF breached the Electoral Code of Conduct by doxxing the journalist and for failing to ensure that the journalist was not subjected to attacks by their supporters.<sup>44</sup>

#### **D. Freedom of expression and access to information on the internet**

34. The internet is important in accelerating developmental goals as well as being a tool that facilitates various other rights, including freedom of expression and access to information. Online platforms have become popular fora for social and public discourses

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<sup>41</sup>The Guardian, 'Group berates Ayade over journalist's detention' <https://guardian.ng/news/group-berates-ayade-over-journalists-detention/> Also see: Nigerian publisher AgbaJalingo detained since 22 August without charge <https://cpj.org/2019/08/nigerian-publisher-agba-jalingo-detained-since-aug.php>  
Nigerian publisher AgbaJalingo charged with treason <https://cpj.org/2019/09/nigerian-publisher-agba-jalingo-charged-with-treas.php>

<sup>42</sup> Reporters without Borders, 'RSF calls for probe into Ghanaian website journalists' torture claims <https://rsf.org/en/news/rsf-calls-probe-ghanaian-website-journalists-torture-claims>

<sup>43</sup> CPJ, 'South African journalist doxxed by Economic Freedom Fighters leader, threatened' <https://cpj.org/2019/03/south-african-journalist-doxxed-by-economic-freedom.php>

<sup>44</sup> CPJ, 'South African court rules Malema, EFF violated Electoral Code of Conduct in Karima Brown doxxing incident' <https://cpj.org/2019/06/south-african-court-rules-malema-eff-violated-elec.php>

among people - giving them voice, allowing them to access information and enhancing media diversity.<sup>45</sup>

35. The African Commission has urged States to ‘respect and take legislative and other measures to guarantee, respect and protect citizen’s right to freedom of information and expression through access to internet services’.<sup>46</sup> African citizens are also urged to ‘exercise their right to freedom of information and expression in the Internet responsibly’<sup>47</sup> Users of internet should not use it in a way that interferes with other people’s rights.
36. As the internet continues to gain power and agency around the world, some States have resorted to deliberate shutdowns. Internet shutdown is the disruption of internet or electronic communications, rendering them inaccessible or effectively unusable, for a specific population or within a location, often to exert control over the flow of information.<sup>48</sup> Internet shutdowns make it impossible for journalists to publish content and for the public to freely express themselves on online platforms and they impede the right to access information. Internet shutdowns also limit citizens’ engagements in public discourse.
37. Internet shutdowns may take three forms. First, a State may block access to the internet completely on all platforms. Second, a State may apply content blocking techniques which restrict access to particular sites or applications. Finally, a State may use stealth, through what is generally known as ‘bandwidth throttling’, by making telecom operators or internet service providers to lower the quality of cell signals or internet speed. This makes the internet too slow to use.<sup>49</sup>
38. States are increasingly justifying internet shutdowns as a means for curbing the spread of disinformation, misinformation and mal-information. However, in fact, internet shutdowns undermine the option of proactive responses to the spread of falsehoods and incorrect information while at the same time curtailing the exercise of a host of cross-cutting rights by individuals.

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<sup>45</sup> ACHPR/Res. 362(LIX) 2016: Resolution on the Right to Freedom of Information and Expression on the Internet in Africa

<sup>46</sup> Resolution 362.

<sup>47</sup> Ibid

<sup>48</sup> Access Now, ‘What is Internet Shutdown?’ <https://www.accessnow.org/keepiton>

<sup>49</sup> George Ogola, ‘Shutting down the internet doesn’t work—but governments keep doing it’ The Conversation, PHYS ORG

39. Considering the importance of the internet, I continue to welcome and encourage positive innovations and interventions which aim to ensure its full universal access in Africa. I in particular welcome the initiative of South Africa's online and media industry who are exhorting the State to take specific measures to ensure full universal internet access. These proposals include: the implementation of free access to the internet at State sites; the 0-rating of access to Government websites and databases; the provision of free Wi-Fi access as a basic service like electricity and water for the poor; and the institution of digital literacy programmes. Many of their proposals have merit for consideration and adaptation for use in other countries on the continent.<sup>50</sup>
40. I also welcome the decision of the High Court of South Africa on 16 September 2019 declaring various sections of the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 (RICA) unconstitutional for failing to provide a procedure for notifying the subject of the interception; failure to address expressly the circumstances where a subject of surveillance is either a practising lawyer or a journalist; failure to prescribe proper procedures to be followed when State officials are examining, copying, sharing, sorting through, using, destroying and/or storing the data obtained from interceptions; and failure to adequately provide for a system with appropriate safeguards to deal with the fact that the orders in question are granted ex parte. Bulk surveillance activities and foreign signals interception was also declared unlawful and invalid.<sup>51</sup>
41. I however remain concerned by the continuing trend of internet shutdowns around Africa implemented to undermine communications in the contexts of elections, civil actions and significant national events such as the administration of national examinations.
42. Regarding elections:
- a. The Government of the DRC blocked the internet and social media on 31 December 2018, following the conduct of polls on 30 December. These services were not restored fully until 20 January 2019 when the Constitutional Court confirmed Felix Tshisekedi as president elect.<sup>52</sup>

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<sup>50</sup> Izak Minaar, 'Universal internet access and digital equality in South Africa' 2019

<sup>51</sup> High Court of South Africa, Gauteng Division, Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others (25978/2017) [2019] ZAGPPHC 384 (16 September 2019)

<sup>52</sup> BBC, 'DRC –Congo election- Internet shutdown after presidential vote' <https://www.bbc.com/news/world-africa-46721168> Also see: Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Continuing Trend of Internet and Social Media Shutdowns in Africa <https://www.achpr.org/pressrelease/detail?id=8>

- b. On 28 April 2019, internet providers were disconnected in Benin on the day of election.<sup>53</sup>
- c. In Malawi, on 21 May 2019, shortly after the close of polls in presidential, parliamentary and local council elections, the social network platforms Facebook and WhatsApp became inaccessible. Access was restored in the course of the night.<sup>54</sup>
- d. On 25 June 2019, the Government of Mauritania imposed near-total internet blackout following contested presidential elections held on 22 June 2019. All commercial internet providers were impacted by the outage although a few people had intermittent connectivity.<sup>55</sup>

43. The internet was also shut down in situations of internal strife or civil protests:

- a. In Gabon, the Government ordered internet shut down on 7 January 2019 for one day, following a military coup attempt.<sup>56</sup>
- b. In Zimbabwe, internet service providers shut down the internet on diverse dates in January 2019, following a directive by the State Security Minister.<sup>57</sup> Commendably, on 21 January 2019, the High Court ruled that the internet shutdowns were unconstitutional and ordered the restoration of internet access.<sup>58</sup>

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<sup>53</sup> Internet Without Borders, 'Internet Shutdown and Democratic Backsliding In Benin' [https://translate.googleusercontent.com/translate\\_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=fr&sp=nmt4&u=https://internetwithoutborders.org/internet-shutdown-and-democratic-backsliding-in-benin/&xid=25657,15700021,15700186,15700191,15700256,15700259,15700262&usg=ALkJrhjfHb6dAqZ24zY-jEpL40uSVBnwCw](https://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&sl=fr&sp=nmt4&u=https://internetwithoutborders.org/internet-shutdown-and-democratic-backsliding-in-benin/&xid=25657,15700021,15700186,15700191,15700256,15700259,15700262&usg=ALkJrhjfHb6dAqZ24zY-jEpL40uSVBnwCw). Also see

<sup>54</sup> Social networks and TV signals down after close of polls in Malawi

<https://rsf.org/en/news/social-networks-and-tv-signals-down-after-close-polls-malawi>

<sup>55</sup> QuartzAfrica, 'Mauritania blocked the internet over protests though just one in five are online'

<https://qz.com/africa/1655017/mauritania-shuts-down-internet-after-disputed-elections/>. Also see: Netblocks

'Post election internet shutdown in Mauritania following widespread mobile disruptions'

<https://netblocks.org/reports/post-election-internet-shutdown-in-mauritania-following-widespread-mobile-disruptions-JA6zmeAQ>

MFWA, 'Authorities Shut Internet during National Exams' <http://www.mfwa.org/country-highlights/mauritania-shuts-internet-during-national-exams/>

<sup>56</sup> Netblocks, 'Evidence of internet shutdown in Gabon amid apparent coup attempt'

<https://netblocks.org/reports/evidence-of-gabon-full-internet-shutdown-coup-attempt-dQ8oo18n>

<sup>57</sup> Access Now, 'Zimbabwe orders a three-day, countrywide internet shutdown'

<https://www.accessnow.org/zimbabwe-orders-a-three-day-country-wide-internet-shutdown/> Also see:

Netblocks, 'Zimbabwe internet shutdowns amid fuel price protests' <https://netblocks.org/reports/zimbabwe-internet-shutdowns-amid-fuel-price-protests-OxAGDdBz>

<sup>58</sup> Techweez, 'Zimbabwe High Court orders government to restore internet access'

<https://techweez.com/2019/01/21/zimbabwe-high-court-orders-internet-access-restoration/>

News24, 'Zimbabwe High Court rules internet shutdown illegal, orders government to restore full internet to the country' <https://www.news24.com/Africa/Zimbabwe/just-in-zim-high-court-rules-internet-shutdown-illegal-orders-govt-to-restore-full-internet-to-the-country-20190121>

- c. On 13 July 2019, the government of Chad allowed access to social media platforms after a 16 month black out which began in March 2018.<sup>59</sup>
- d. In Sudan, the Government shut down social media platforms such as Instagram, Twitter and Facebook from 21 December 2018 to 26 February 2019 amid protests over economic hardships in the country which in due course escalated into demands for the resignation of President Omar al-Bashir. Key telecom companies including MTN Sudan, Zain Sudan, Kanartel and Sudatel were blocked from providing internet services.<sup>60</sup>
- e. On 25 February 2019, parts of Algeria were cut off from the internet, limiting communications and media coverage of protests against president Abdelaziz Bouteflika's bid for a fifth term.<sup>61</sup>
- f. On 22 June 2019, the Ethiopian government enforced an internet shutdown for a period of 6 days after an attempted coup in the Amhara Regional Government.<sup>62</sup>
- g. On 7 June 2019, the Liberian government blocked social media platforms including WhatsApp, Twitter, Snapchat, Facebook and Instagram amid anti-government protests regarding alleged financial mismanagement. Two leading internet service providers were impacted by the outage.<sup>63</sup>

44. Governments also acted by shutting down the internet during periods of significant national activities:

- a. From 16 to 20 June 2019, the internet was disrupted in Algeria, a measure taken by the Government every year during the period of the baccalaureate exams to prevent cheating.<sup>64</sup>

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<sup>59</sup> IFEX, 'Hydara killers revealed, internet blockages lifted and mounting concern for media freedom in Tanzania' <https://ifex.org/hydara-killers-revealed-internet-blockages-lifted-and-mounting-concern-for-media-freedom-in-tanzania/>

<sup>60</sup> Ibid

<sup>61</sup> Netblocks, 'Internet outages in Algeria during new wave of re-election protests'

<https://netblocks.org/reports/algeria-internet-disruptions-during-re-election-protests-eQyKwOyD>

<sup>62</sup> Netblocks, 'Internet shutdown in Ethiopia amid reports of attempted coup'

<https://netblocks.org/reports/internet-shutdown-in-ethiopia-amid-reports-of-attempted-coup-pA5KvNy7>

<sup>63</sup> Quartz Africa, 'Liberia has blocked social media as protesters demand the return of missing millions'

<https://qz.com/africa/1638173/liberia-protests-block-facebook-whatsapp-instagram/>. Also see: Netblocks 'Liberia blocks social media to quell Monrovia anti-corruption protests' <https://netblocks.org/reports/liberia-blocks-social-media-to-quell-monrovia-anti-corruption-protests-RyjozX8g>

<sup>64</sup> ObservAlgerie.com, 'BAC 2019 in Algeria: Internet connection badly disrupted'

<https://www.observalgerie.com/actualite-algerie/bac-2019-en-algerie-la-connexion-internet-fortement-perturbee/>. Also See: Committee to Protect Journalists, 'Two news websites inaccessible in Algeria amid protests, social media shutdowns' <https://cpj.org/2019/06/two-news-websites-inaccessible-in-algeria-amid-pro.php>. Also See: Internet Without Borders, 'A week of disruptions to the internet access in Algeria' [https://translate.googleusercontent.com/translate\\_c?depth=1&hl=en&prev=search&rurl=translate.google.com&s](https://translate.googleusercontent.com/translate_c?depth=1&hl=en&prev=search&rurl=translate.google.com&s)

- b. Similarly, on 11 June 2019, internet in Ethiopia was cut off for four days as a measure for countering cheating during the national secondary school final exams. Connection was partially restored on 14 June 2019.<sup>65</sup>

#### **E. Access to information**

45. The right to access information is a fundamental human right necessary for the enjoyment of other human rights. The right to seek and receive information is essential for a transparent and accountable government.
46. The key objective of the Model Law is to provide guidance on the enactment of national legislation on the right to access information by state parties to the African Charter. The right to access information, as guaranteed by Article 9 of the African Charter, is a facilitative right as it enables the exercise of other rights. In this regard, I welcome the decision of the High Court of Kenya on 12 June 2019 declaring as unconstitutional the withdrawal by the Director of Medical Services of the 2012 Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya and the National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies.<sup>66</sup>
47. I continue to encourage the enactment of more freedom of information laws. I commend Ghana, whose parliament passed the Right to Information Act on 27 March 2019<sup>67</sup> while the President assented to it on 21 May 2019.<sup>68</sup>
48. Hence, African countries that have enacted specific national access to information legislation are: Angola; Burkina Faso; Cote d'Ivoire; Ethiopia; Ghana; Kenya; Liberia; Malawi; Morocco; Mozambique; Niger; Nigeria; Rwanda; Seychelles; Sierra Leone; South Africa; South Sudan; Sudan; Tanzania; Togo; Tunisia; Uganda; and Zimbabwe.

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[l=fr&sp=nmt4&u=https://internetwithoutborders.org/une-semaine-de-perturbations-dacces-a-internet-en-algerie/&xid=25657,15700021,15700186,15700191,15700256,15700259,15700262&usg=ALkJrhj3lwq0JE196Mae3tX9HfSQvtDD1A](https://internetwithoutborders.org/une-semaine-de-perturbations-dacces-a-internet-en-algerie/&xid=25657,15700021,15700186,15700191,15700256,15700259,15700262&usg=ALkJrhj3lwq0JE196Mae3tX9HfSQvtDD1A)

<sup>65</sup>Netblocks, 'Total internet outage identified in Ethiopia' <https://netblocks.org/reports/total-internet-outage-identified-in-ethiopia-gBLkVoA4>

<sup>66</sup>Press Release on the decision of the High Court of Kenya regarding the Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya and the National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies <https://www.achpr.org/pressrelease/detail?id=417>

<sup>67</sup>Africa News 'Ghana Parliament Passes Right to Information law after long delays' <https://www.africanews.com/2019/03/27/ghana-parliament-passes-right-to-information-law-after-long-delays/>  
Also see: IFEX 'MFWA urges stakeholders to push for effective implementation of Ghana's RTI law' <https://ifex.org/mfwa-urges-stakeholders-to-push-for-effective-implementation-of-ghanas-rti-law/>

<sup>68</sup>Africa News 'Ghana President assents to Right to Information Bill' <https://www.africanews.com/2019/05/22/ghana-president-assents-to-right-to-information-bill/>

49. I commend the Governments of Liberia and Sierra Leone, which have access to information laws, for working in concert with other Governments to sponsor the recent United Nations resolution adopting 28 September as the International Day of Universal Access to Information as a means of supporting global promotion and protection of the right of access to information.<sup>69</sup> In furtherance of this objective, I call on the Government of Liberia, Sierra Leone and other Member States to the African Charter that co-sponsored the Resolution to ensure effective realization of this right in their countries.
50. I also reiterate my welcome of the firm assurances made to me by the President of Namibia, Hage Geingob, when I met him on 16 September 2019, of his government's commitment to enact access to information legislation, and I do look forward to publication of the necessary bill.<sup>70</sup>
51. While adoption of national access to information legislation is commendable, it should be supported by implementation. I note that States with access to information statutes are at various levels of actual implementation. I, in particular appeal to the government of Angola, which enacted Law No. 11/02 of 16 August 2002 on Access to information, to establish the anticipated access to information oversight mechanism so as to support the law's effective implementation.
52. At the same time, I encourage States to take account of the Guidelines on Access to Information and Elections in Africa<sup>71</sup> to ensure access to information at all stages of the elections in their countries.
53. Again, I wish to offer States technical support to ensure full implementation of access to information legislation. I recognise that some States are revising their access to information laws, and I offer my continued technical support towards those revisions.

#### **IV. Recommendations**

54. The state of freedom of expression and access to information on the continent remains mixed. Legislative and judicial actions continue to enhance the rights to freedom of expression and access to information. The instinct for states to use legislation to clamp down on internet use for any number of reasons however remains untamed. The practice of journalism also remains under great pressure from statist forces which are not

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<sup>69</sup> UN General Assembly Resolution A/RES/74/5, 15 October 2019

<sup>70</sup> Press Statement on the advocacy visit to the Republic of Namibia by the Special Rapporteur on freedom of Expression and Access to Information in Africa <https://www.achpr.org/pressrelease/detail?id=437>

<sup>71</sup> Adopted by the African Commission during the 61<sup>st</sup> Ordinary Session in Banjul, The Gambia in 1-15 November 2017

amenable to independent journalism. The power of the internet and social media as tools for economic, social and indeed political change may not be dismissed, and states need to forthwith recognise that that genie cannot be bottled and rather it should be harnessed to support development, and that ultimately states have legal commitments to ensure the rights to freedom of expression and access to information which they should fulfil.

55. In the above regards, I call on States to:

- a. Decriminalise defamation and insult laws;
- b. Ensure a safe environment in which journalism may be practised;
- c. Enact or implement access to information legislation;
- d. Establish programmes to support universal access to the internet; and
- e. Invite me to undertake advocacy visits to support implementation of Article 9 of the African Charter.