Struggles for freedom of information in Africa

The ‘third wave’ of transitions to democracy has been amply studied.
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On the African continent, the conditions that have made access rights both important and hard to implement in the global south generally, are found in their most extreme forms. This chapter, therefore, does not consist of a series of stories in which virtue triumphs over oppression. On the contrary, the fragility of post-colonial and post-settler state formations in Africa, the linguistic, cultural and ethnic diversity within particular countries, widespread violent conflict, the absence of adequate economic and social infrastructure, and the near-universal replacement of politics-as-policy-making by the politics of patronage under the aegis of the Bretton Woods institutions and the World Trade Organization, all mean that demand-driven state compliance with the requirements of transparency and freedom of information is rarely seen. More specifically, as far as freedom of information is concerned, good record-keeping and archival practices – an essential pre-condition for compliance – are often lacking, and bureaucracies themselves are disorganised and poorly trained. In many African countries the post-colonial languages of administration – English, French, Portuguese, Arabic – may make such documents as are available incomprehensible to the majority of the population.

By themselves, these explanatory factors are necessary but insufficient, particularly as they lead all too easily to the conclusion that it is the backwardness of the political and judicial systems in African countries, and perhaps even inadequacies in actual African people, that have prevented this 'essential right for every person'[2] from attaining universal recognition on the continent. But it is also legitimate to ask what it might be about the universalised paradigm of freedom of information that is an obstacle to its own success. Makau wa Mutua has written persuasively in a broader context of a

> grand narrative of human rights discourse [that] contains a subtext that depicts an epochal contest pitting savages, on the one hand, against victims and saviors, on the other [. . .] This rendering of the human rights corpus and its discourse is uni-directional and predictable, a black-and-white construction that pits good against evil.[3]

Makau wa Mutua goes on to describe this phenomenon as 'deeply unsettling', as it indeed is.[4] If he is correct about this subtext in the human rights

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2 Banisar, Freedom of Information around the World 2006, p. 6.
3 Makau wa Mutua, 'Savages, victims and saviors, pp. 201–2.
4 Makau wa Mutua, 'Savages, victims and saviors', p. 202.

context, then his strictures must apply to freedom of information in Africa and elsewhere in the global south – a narrative that is heir not only to the righteousness and power of the broader discourse but also to the incredulity shown towards it.[5]

The data presented in Chapter 2 showed that the number of African countries where battle has been successfully joined between civil society alliances and the legislatures over the need to pass freedom of information laws is tiny, with only a handful of the 53 countries on the continent having enabling laws actually in place. The 'veritable wave' that has been 'sweeping the globe'[6] has passed the African continent almost completely by, for reasons that merit examination. The data in Chapter 2 may even have presented an exaggerated picture, since neither Zimbabwe nor Angola makes any serious pretence that the laws on their statute books are intended to encourage a new kind of relationship between state and citizen. Table 7.1 presented below, of African countries and their status with regard to access rights, is derived from a 2008 survey by Roger Vleugels, and reveals in detail a dismayingly widespread lack of interest and engagement with the issue.[7]

Of the 53 independent African countries, 36 (or 68 per cent) have so far given no indication of any interest in freedom of information, according to Vleugels' data; there is no lobbying activity, no NGO alliance and no draft legislation on the horizon. Another eleven (or 21 per cent) have draft legislation or bills underway, but as the Nigerian example shows us, such processes can be lengthy with no guarantee of a successful outcome. Two countries have some undefined lobbying activity going on. With the exception of Cameroon, which is officially bilingual, not a single French-speaking sub-Saharan African country has apparently manifested any detectable public interest in freedom of information. There is consequently little that can be said about Francophone Africa with regard to this issue. A meeting of activists that discussed the broader media situation in the entire continent in May 2007 concluded bluntly that 'the situation of journalists and freedom of expression activists in

Table 7.1 African countries and the adoption of freedom of information legislation, as of September 2008

Country	Dominant language	Region	Year	Status

Africa [. . .] remain[s] dire', and it is hard to disagree with regard to information access rights as well.[8]

A note of caution is necessary, however. The absence of information regarding activity may not necessarily mean that there is no public or political interest in freedom of information, merely that it goes unreported. There is some evidence that this is the case in at least some of the African countries listed above as giving 'no sign', and we return to this point below.

In this chapter we examine the realities of freedom of information behaviours in five countries, four of which were involved in armed struggle for independence and democracy, and in two cases, prolonged post-independence conflict as well. As a result, these countries have had mixed levels of success in breaking free of a political discourse in which opposition is construed as enmity, and in which the dominant metaphor is one of violence rather than persuasion. The case studies presented here do not pretend to contribute to the building of a representative picture, if such a thing were possible, of the African situation. No Arabic-speaking countries are examined, nor for obvious reasons are there any French-speaking examples, while two of the five Lusophone African nations are described in detail. The regional distribution is skewed, with four of the chosen countries located in southern Africa, and one in West Africa: there is no study of an eastern or North African nation. This is consistent with our contention that the most important – and indeed, the most definitive – factors in any struggle over access to information are local rather than universal. A selection of case studies that attempted linguistic or regional balance by systematically representing simple groupings would implicitly endorse the idea that it was offering some sort of typology. If a typology is to be found in these five studies, or in some different set, then it is likely to be discernible in layered, complex and unexpected sets of local characteristics rather than in the obvious and conventional ones.

In Zimbabwe, legislation with the phrase 'access to information' in its title is used in practice only to stifle the free press and independent journalism. Nigeria is the one country analysed here that experienced peaceful decolonisation. Nonetheless, the near break-up of the post-colonial state during the Biafra war in the 1960s has left enduring political and social scars. A civil society coalition has waged a lengthy and

[8] African Commission on Human and People's Rights (41st Ordinary Session, Accra, Ghana), Report of the Special Interest Group on the Right to Freedom of Expression (13 May 2007) (Declaration 1).

Mugabe's land distribution and pension policies, has been catastrophic. Ongoing hyperinflation has been accompanied by spreading hunger and poverty, and by the disappearance of the rule of law.[15] This prolonged disaster has been widely and continuously reported in the world – and especially the British – press.

The ruling clique's blank refusal to release the results of the legislative and presidential elections of 29 March 2008 for over five weeks demonstrated in an extraordinarily unequivocal and ruthless manner their clear understanding of the direct relationship between knowledge and power.[16] Even though it was widely understood – indeed 'known' – that Mugabe had lost the presidential election, it was unclear if his opponent, Morgan Tsvangirai of the Movement for Democratic Change (MDC) had won the necessary absolute majority. By simply behaving as if there were no requirement to publish the result, the government was able to relegate this question to irrelevance, to gain enough time to organise the repression that it believed would win a second round, and by then 'winning' the second round, to begin negotiating with the exhausted opposition from a position of power.

> [I]nfluential hardliners in the party and military [would] not simply hand over power to the MDC. They and Mugabe likely manipulated the presidential results to show a run-off was necessary and [. . .] put in place a strategy to retain power through force.[17]

Given this history, it is not surprising that the World Bank and UNDP indicators cited in Chapter 2 rank Zimbabwe low on a scale to measure political freedom. The irony is that Zimbabwe does nominally have freedom of information legislation in place. The Access to Information and Privacy Protection Act (hereafter AIPPA) became law in early 2002. The inclusion of Zimbabwe in any list of countries with freedom of information legislation would be highly ironic, as Banisar notes, since the law has been used to stifle the free press rather than to encourage any kind of information access right.[18] AIPPA is only one of a battery of laws

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[15] In an extensive literature on the crisis, see especially P. Bond and M. Manyanya, Zimbabwe's Plunge: Exhausted Nationalism, Neo-Liberalism and the Search for Social Justice, 2nd ed. (London: Merlin, 2003).

[16] International Crisis Group, Negotiating Zimbabwe's Transition (Pretoria/Brussels, 2008), p. 1 (Africa Briefing no. 51).

[17] International Crisis Group, Negotiating Zimbabwe's Transition, p. 1.

[18] Banisar, Freedom of Information around the World 2006, p. 20.

adopted by the Zimbabwean government for the control of information and the suppression of criticism.

AIPPA has the expressions 'access to information' and 'protection of privacy' in its title, and recognises those rights in an extremely limited way in its provisions. Section 5 grants a nominal access right to state information, as well as requiring the state to limit the uses that it can make of personal information collected about citizens. But the list of exceptions is both extensive and broad. Access can be refused if the requested information consists of

> records containing teaching materials or research information of employees of a post-secondary educational body, any record that is protected in terms of the Privileges, Immunities and Powers of Parliament Act and material placed in the National Archives or the archives of a national body by or for a person or agency other than a public body [. . .] public bodies do not have to provide information where granting access 'is not in the public interest' [. . .] exceptions from the duty to disclose information [. . .] include all cabinet documents, including draft legislation, advice or recommendations provided to public bodies [. . .] information whose disclosure would affect relations between different levels of government or [. . .] result in harm to the economic interest of the public body [. . .] non-citizens and any mass media outlet which is not registered do not have the right to request information [. . .][19]

This is a very wide-ranging list indeed. The use of the catchall term 'public

mechanism for appeals against refusals is manifestly inadequate, as it relies on judgements by a state body, the Media and Information Commission. Even without these defects, any possibility that AIPPA might be usable as a weapon against the state can be discounted: as of 2006, 'there [had] only been one reported instance of the access to information provision being used by the opposition party'.[21]

The real purpose and actual use of AIPPA is the control of mass media, including the activities of journalists and newspapers. AIPPA's provisions serve to

> give the government extensive powers to control the media and suppress free speech by requiring the registration of journalists and prohibiting the 'abuse of free expression'.[22]

Some of AIPPA's provisions are harshly punitive, such as the constitutionally dubious section 80 which criminalises what it terms the 'abuse of journalistic privilege' with sentences of up to two years' imprisonment and massive fines for publishing 'falsehoods'.[23] Because of the difficulties in defining what a false statement consists of, this provision has had a stifling effect.

rights, but rather in an exclusionary politics that is paramilitary in character – a deformed nationalism that elevates the virtues of discipline and obedience above those of independent analysis. Yet, historically, Zimbabwe has been one of the few African countries with the material conditions to realise genuine access rights. Into the 1990s, it continued to take the training of registry clerks and other records management staff in the public sector seriously. The Records, Archives and Information Management Association of Zimbabwe (RAIMAZ) still had around 50 members in 1998. Training in records management was available within the Public Service Commission, at Harare Polytechnic, and from private consultancy companies.[26] This tradition may well be in the process of disappearing. This rare capacity co-exists with a total absence of government willingness to comply even minimally with freedom of information practices and behaviours.

A prolonged struggle: secrecy and corruption in Nigeria

Nigeria is a very different case, but like Zimbabwe, it is an African country that is often seen in the world press as near collapse. In the words of Karl Maier, 'the very name Nigeria conjures up images of chaos and confusion, military coups, repression, drug trafficking and business fraud'.[27] Of course, this is a parody of a more complex truth: Nigeria is a country in a permanent and chronic state of crisis, constantly afflicted both politically and socially by a combination of corruption, criminality and incompetence, all leading to serious and ongoing human rights violations. The battle – in the 'specific conditions of competition for political power'[28] – to implement meaningful access to information measures has a particular sharpness, since so much depends upon a successful outcome. The story is one of frustration and prolonged struggle that is still incomplete.

The post-independence political history of this huge and multifaceted country has been turbulent, marked by a fierce civil war over the attempted secession of Biafra from 1967 to 1970, and with brief interludes of usually weak and ineffective democratic civilian government alternating

[26] P. Mazikana, 'Records management training in sub-Saharan Africa', Records Management Journal vol. 8, no. 3 (December 1998), pp. 78–80.
[27] K. Maier, This House has Fallen: Nigeria in Crisis (London: Penguin, 2000), p. xviii.
[28] Blanton at the Japan-United States Symposium, Tokyo, Japan (Paragraph 12).

with much longer periods of brutal military rule.[29] The last of these military autocracies, which lasted for 14 years, came to an end on 29 May 1999. Subsequently, the Nigerian government has conspicuously failed to deal effectively or decisively with such abuses as the apparent impunity of the police, or violence between religious or ethnic communities over sharia law which is in force in 12 of the country's 36 states. Other ongoing crises involve the status of so-called non-indigenes, and armed conflict in the Niger River Delta, where impoverished communities live next to or even on top of huge oil resources with no benefit to themselves.

At the same time, Nigeria is far from being a basket case. The giant of Africa, it is a major trading nation, especially as an oil producer, and is a significant trading partner of the United States. It is the most populous country in Africa, with close to 140 million people. It is culturally vibrant, counting such eminent writers as the Nobel laureate Wole Soyinka (1934–) and Buchi Emecheta (1944–), and distinguished musicians such as the late Fela Anikulapo Kuti (1938–1997) among its famous sons and daughters. Nigeria under President Olusegun Obasanjo (1937–) has also been a major international player in such issues as the Darfur crisis.

The human rights records of various Nigerian military regimes have been extremely poor, and civilian governments have not been much better. Over the years Nigerian citizens have been denied political, economic and social rights as successive military regimes systematically looted state resources, condemning the vast majority of people to a life of poverty.[30] Unhappily, the government gains credibility from trade and diplomacy, combined with Nigeria's importance as an oil producer. The United Kingdom and the United States, as well as the African Union and the Commonwealth, are seen as reluctant to censure Nigerian administrations for human rights abuses that are well documented externally as well as internally. For its part, the Nigerian government does little to address such questions.[31]

Corruption and impunity are major economic as well as political issues. For example, a significant segment of the unaccountable ruling elite, unable even to agree effectively on the division of spoils, routinely resorts to the massively under-reported practice of illegal oil bunkering, which

accounts for the theft of up to 10 per cent of Nigeria's crude oil production. Crude oil is simply siphoned off by armed gangs into private ships for subsequent resale in what amounts to the country's most profitable private sector business activity, in an example of a completely unregulated 'free market'. Such large scale crime can only rely on the tacit agreement of the powerful, as well as – importantly for our purposes – the silence of the media, for its continuation.[32]

Given this context of widespread, ongoing and largely unaddressed human rights abuses, international and local freedom of information activists – again, the 'conventional doctrinalists' – argue powerfully that Nigeria is a country that urgently needs to enact freedom of information legislation.[33] This must go further than merely passing a law, and should involve implanting the roots of freedom of information behaviour and creating a freedom of information culture, in order to remove the barriers of secrecy and opacity that corrupt politicians and civil servants hide behind. Freedom of cians beh

information legislation. They were the Media Rights Agenda (MRA), Civil Liberties Organisation (CLO) and the Nigeria Union of Journalis (NUJ), all based in Ikeja, Lagos. This was a year of crisis even by Nigeria's own exciting political standards. On 12 June, free elections had been held to choose a civilian president to take over from the military. Unfortunately, when it became clear that the people's choice was Chief Mashood Abiola, who was unacceptable to the generals, Ibrahim Babangida annulled the elections, and after a brief struggle within the soldiers' ranks General Sani Abacha emerged as the country's new and possibly most brutal dictator. Abiola was arrested and died in prison in mid-1998.

The three Nigerian civic organisations quickly agreed to cooperate with each other in a joint drive for freedom of information legislation. This kind of organised approach was still relatively new in the early 1990s, although the tradition of individual struggle for human and civil rights stretched back for decades. As in other African countries, what was innovative at this time was

> the emergence [. . .] of open and self-professed human rights organizations. Especially since the late 1980s, these voluntary associations of citizens have taken on the task of monitoring abuse of human rights, educating the people about their rights under national and international law, and making recommendations to governments about how to improve their protection of human rights.[35]

In Nigeria especially, these organisations were well-informed and able to work with international counterparts around the development of normative human rights standards. They possessed appropriate institutional and staff structures with clear plans and well-defined mandates and were among the best in West Africa at what they did:

> While there are still growing pains within many of these groups, this type of planning process has resulted in the Nigerian human rights community's being far ahead of its anglophone neighbors in putting human rights institutions into place.[36]

What was the campaign up against, and who were its likely allies? On

mute refusal.[41] Only two requests, or less than 1.5 per cent, resulted in access to the requested information.[42]

There is little constitutional basis for the assertion of a right of access to information. Article 39 (1) of the Federal Constitution of 1999 guarantees freedom of expression in general terms, but avoids any explicit mention of an access right:

> Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.[43]

This provision appears to descend from the original sense of the Universal Declaration's article 19, dealing with the publication and reception of ideas and opinions. The other sections of article 39 deal with ownership of the mass media, and it concludes with a provision, no. 39 (3) (a), regarding the prevention of 'the disclosure of information received in confidence'. There is, therefore, only the weakest of guarantees in the Nigerian constitutional framework upon which an access law might rely. Partly as a result, and partly because of delaying tactics from sections of the political class, progress towards the adoption of freedom of information legislation in Nigeria has been agonisingly slow. A draft bill inched its way towards approval for several years from 1999, and in September 2006 was still under consideration in the Nigerian Federal Senate. At one stage it had been held up because President Obasanjo regarded the fact that access rights were recognised for both Nigerian citizens and non-citizens alike as 'unrealistic', and wanted rather a 'home-grown' piece of legislation.[44]

In April 2008, after a nine-year struggle, Nigeria's Federal House of Representatives rejected the Freedom of Information Bill, despite the fact that it was itself engaged in investigating past abuses and corruption by previous administrations.[45] It seems likely that struggles for access to state

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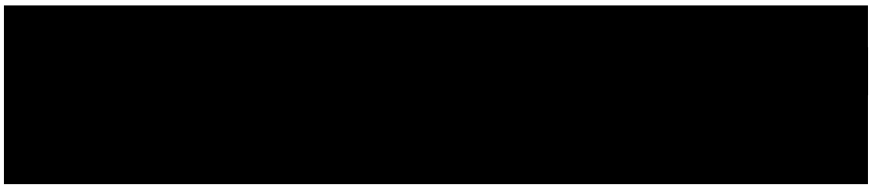
41 Open Society Justice Initiative, Transparency and Silence, p. 43 (Figure 1).
42 Open Society Justice Initiative, Transparency and Silence, p. 71.
43 Federal Republic of Nigeria, Constitution of the Federal Republic of Nigeria, 1999.
44 O. Odemwingie, 'Obasanjo and the Freedom of Information Bill', The Guardian (Lagos) (14 December 2003), p. 17.
45 I. Anaba, 'Freedom of Information Bill: what the nation will lose', Vanguard (Lagos) (15 May 2008).



to have even raised concern in multilateral financial institutions such as the IMF. According to reports, up to US$8.45 billion of oil revenues were simply not accounted for, over the five years between 1997 and 2001.[50]

In such an environment, unsurprisingly, 'fraud [has] occurred at the highest levels'.[51] Angolan newspaper reports claimed in 2003 that 20 senior government figures, including President Eduardo dos Santos, had allegedly amassed personal fortunes of over US$100 million each, while twice as many were allegedly worth over US$50 million each.[52]

After the death of Jonas Savimbi in 2002 had opened the way for a negotiated peace, concern about the opacity of the Angolan state accounts began to grow rapidly among multilateral financial institutions, civil society organisations and international corporations, and pressure has been exerted on the Angolan regime to behave in a more accountable way.[53] Because Angola does not need concessionary lending, the situation has been described as 'delicate'. According to one Western point of view, the Angolan government was unable to decide whether accepting an international responsibility to account for its own behaviour constituted a 'loss of sovereignty' or was rather, in fact, 'the only way toward international prestige and a normal country integrated into the global economy'.[54]

The international community exerted pressure on Angola to accept an IMF programme that included a component for monitoring oil revenues, known by the technical name of the Oil Diagnostic. This programme, first mooted in April 2000, was to be

> a forward-looking agreement to monitor oil revenues; to help the Angolan government develop an effective mechanism for determining how much revenue the central bank should receive from oil production; and to encourage good governance.[55]

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[50] Global Witness, Time for Transparency: Coming Clean on Oil, Mining and Gas Revenues (London, March 2004), p. 47.

[51] J. McMillan, 'The Main Institution in the Country is Corruption': Creating Transparency in Angola (Stanford, CA: Center on Democracy, Development, and the Rule of Law, Stanford Institute on International Studies, 7 February 2005), p. 1 (CDDRL Working Paper no. 36).

[52] Angolense (Luanda), 'Riqueza muda de cor: os nossos milionários [Wealth has changed its colour: our millionaires]'(11 January 2003).

[53] Human Rights Watch, Some Transparency, No Accountability: The Use of Oil Revenue in Angola and its Impact on Human Rights (Washington, DC, January 2004) provides a detailed narrative account.

[54] J. Reed, 'Angola to join corruption fight after IMF deal', Financial Times (London) (26 October 2005).

[55] Human Rights Watch, The Oil Diagnostic in Angola, p. 1.

Progress has been slow. In March 2006 there were still many questions unresolved from the most recent Oil Diagnostic study which had been issued in May 2004, and 'to which the government ha[d] not yet made a comprehensive response'.[56] The Angolan government has also shown cautious interest in the Extractive Industries Transparency Initiative, or EITI, which other African oil producers such as São Tomé e Príncipe and Nigeria already support, as well as some of the major multinationals such as Chevron, BP and Total.[57]

All these initiatives have been mainly driven by the international financial organisations, the oil companies and foreign governments, with Angolan civil society playing a relatively minor role. In general, Angolan NGOs have been weak, and often intimidated by government. Writing in 2003, Simão Cacumba Morais Faria commented on the general frailty of Angolan civil society organisations, especially with regard to human rights issues, such as freedom of information:

> Angolan civil society has been weak to publicize or lobby on human rights abuses [. . .] many Angolan NGOs are careful about

> Despite the significant upsurge in civil society organizations in the last decade, civil society itself is still grappling with defining its role and identity. This process is accentuated by the [. . .] shift in activities from emergency to development [. . .][59]

In such circumstances, it is hardly surprising that Angola's record regarding freedom of the press – and indeed other human rights issues too – is poor. From the notorious 'Baton da ditadura' incident of 1999, to numerous other cases of harassment of and violence towards journalists, it is clear that the government has a low threshold of tolerance towards those who expose its misdeeds.[60] But what is surprising is the fact that Angola does actually have freedom of information legislation in place. The story of how it came to be adopted is far from clear, as is its subsequent social and legal impact.[61] The Lei de Acesso aos Documentos Administrativos [Law on Access to Administrative Documents], law no. 11/02, is closely modelled on the Portuguese legislation of the same name, and entered into force on 16 August 2002. It rests on the extremely broad provisions of article 89 (b) of the 'constitutional law' of 25 August 1992. This simply states that 'the Assembleia Nacional shall have full and sole legislative powers on

Mozambique: the development of 'informal' access rights

From a freedom of information point of view, the case of Mozambique, one of the poorest countries in Africa, is interesting because it is a country with a weak tradition of individual human rights, and an apparently strong culture of government secrecy, having moved directly

availability in fact exceeds demand, especially as much of the use made of documentation is by organised pressure groups and some journalists and researchers.[71] Reports can often be obtained simply by asking for them, and government websites include increasing quantities of important documents, despite gaps in such key areas as election data. Concrete examples are census data, and the series of increasingly detailed annual reports by the Procurador-Geral da República (attorney general). Of course, this is true mainly for residents of Maputo who know the ropes, and those with internet access, who constitute only a small minority of the total citizenry. In addition, scattered and disorganised availability of this kind does not really satisfy the core demand of freedom of information, that the state must support the citizen by facilitating access in a systematic manner.

Within the by now familiar framework of freedom of information diffusion, however, a couple of meetings on the concept of access to information organised by activist groups were held in Maputo from 2000 onwards, but with little in the way of concrete outcomes.[72] The campaign for freedom of information access rights in Mozambique was finally properly launched at a conference of local and international

> [I]n countries where an [Access to Information] law was passed without any civil society involvement or impulse, the law has tended to fail, atrophying for lack of usage and legitimacy [. . .] The wider the call for a law [. . .] the more likely it is that a critical mass on the 'demand' side will be built and sustained [. . .] activists are increasingly recognizing an important paradigm shift in the collective understanding of the conceptual community value of the right to know [. . .][74]

The apparent failure of the MISA initiative in Mozambique is an interesting example of the potential weakness of freedom of information initiatives led by 'conventional doctrinalists'. There was no preparatory evaluation of potential obstacles to freedom of information behaviours and practices. There was no effective lobbying of parliamentarians to muster support for the draft law before it was entered into the Assembleia da República. Last, it was a strategic error for MISA-Mozambique to sponsor the draft law, since the organisation is merely the local chapter of a Southern African regional body with strong international links, and the initiative appeared to be a foreign one. To what extent these kinds of mistakes have been committed by freedom of information activists in other national contexts remains a largely unexplored area of research.

The idea that the material conditions for successful implementation of freedom of information legislation may not exist in Mozambique was strongly argued in the Shenga and Mattes study.[76] Relying heavily on survey data, the authors reported that one fifth of Mozambican respondents agreed that the state should have the power to close down newspapers and media outlets that publish 'false information'.[77] Although this was hardly an indication of strong support for the idea

Some Mozambican journalists, like their colleagues elsewhere, have from time to time taken stands on matters of principle. Examined closely, these issues of principle are not, in an unproblematic, linear or positivist way, identifiable with the normative and ideologically-constructed

> it was necessary [. . .] to create a structure that would guarantee the transmission of information from the headquarters of the Department of Information and Propaganda and its dissemination in the provinces and abroad.[84]

'The enemy' was the subject of speeches, newspaper reports, radio broadcasts and pamphlets with titles such as 'How the enemy acts' and 'We must know who the enemy is'.[85] Even academic research was treated with extreme caution as far as its dissemination was concerned. In the late 1970s and early 1980s, the mimeographed research reports of the Centro de Estudos Africanos (Centre of African Studies or CEA) at Eduardo Mondlane University on such topics as migrant labour, the cotton industry or containerisation at Maputo port were not handed out freely to anybody:

> Most of these reports, produced in small print-runs, are unfortunately not for sale, and a good number are even 'restricted' which is to say that their distribution is carefully limited and controlled for political reasons. [86]

Even a figure such as Carlos Cardoso – who was in conflict with Frelimo virtually from independence onwards, and was regarded by the ruling party as an 'ultra-leftist' – was committed to the revolution, and applied unsuccessfully in 1976–1977 to join the party.[87] Cardoso was jailed briefly in 1982 for a failure to follow guidelines in reporting on Angola and Mozambique. In November 2000, he was gunned down in the street for his relentless pursuit of the story of how US$14 million was stolen

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[84] Machiana, A revista 'Tempo' e a revolução moçambicana, p. 87, authors' translation.

[85] Como age o inimigo: análise política da situação económica e social do país; um comunicado do Conselho de Ministros (Maputo: DTI, 1977); Devemos saber quem é o nosso inimigo: luta da classe operária contra o capitalismo (Maputo: Imprensa Nacional, 1975).

[86] 'La plupart de ces rapports, tirés à un faible nombre d'exemplaires, ne sont malheureusement pas en vente, et une bonne partie d'entre eux est même «restrita» c'est-à-dire de diffusion très limitée et contrôlée, pour des raisons politiques'. M. Cahen, 'Publications du Centro de Estudos Africanos de l'Université Eduardo Mondlane, Maputo, Mozambique', Politique Africaine no. 5 (March 1982), p. 113. Full disclosure: Colin Darch worked at the Centro de Estudos Africanos from 1979 to 1987.

[87] Fauvet and Mosse, Carlos Cardoso: Telling the Truth in Mozambique, pp. 47, 49.

during Mozambique's bank privatisation process. The story of his approach to journalism, within a critically-oriented and emancipatory epistemology, is not the story of somebody fighting for a 'free press' in the sense criticised by Schiller. His career has rather been characterised by one of his biographers as being 'against all orthodoxies'.[88]

If the depiction of Mozambique as a low-information society in which 'uncritical' citizens remain largely incurious about the activities of government has any merit, it may well be that a legislated access right, should such a law be adopted, would have little immediate impact. The tradition of independent investigative journalism in Mozambique was embodied most famously by Carlos Cardoso, but may well have died with him. On the other hand, there is some hope in the fact that the state is making information increasingly available (if not easily accessible), even though newspapers, broadsheets and other media are not systematically using access to information to hold the political class accountable in new ways. It is to be hoped that a critical citizenry will both demand and help to create a high-information society in which real democratic practices become, if not inevitable, at least possible.

South Africa: an incomplete transformation

In some parts of the global south, where the bureaucratic structures of the state are weak and where the record-keeping function is inadequate, the paper trails can be hard to follow, and forgetfulness and silence overtake public consciousness quickly. South Africa is a special case, since it was run under apartheid by a moderately efficient if unimaginative bureaucracy, which was needed to administer the absurdly detailed and pseudo-scientific system of racial classification and separation. Indeed, from 1950 onwards, under the leadership of Hendrick Verwoerd, the Department of Native Affairs was transformed into a 'great super-ministry whose tentacles extended into every aspect of government policy' with an army of functionaries to accompany it.[89] 'Surveillance' in Foucault's sense of the term underpinned every aspect of the functioning of the apartheid state, since all the subjects of the state

[88] Fauvet and Mosse, Carlos Cardoso: Telling the Truth in Mozambique. The phrase is the title of the first section of the book, by Fauvet.

[89] D. O'Meara, Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948–1994 (Johannesburg: Ravan Press, 1996), p. 68.

had to be assigned racial identities on which in turn depended rules that governed the most private aspects of their personal and professional lives, rules about where they could live and work, whom they could marry, and even with whom they could have sex.

At a superficial level the publication of government information and disinformation in the apartheid period was reasonably well systematised, with printed gazettes and other documents produced by the Government Printer and available for sale to the public. But much if not all of the material was overtly intended not to inform but to reinforce policy, and as the country was gradually splintered into various self-governing homelands or 'Bantustans' – some of which were nominally independent of Pretoria – government publishing proliferated out of control. After 1980, the various departments were permitted to decide for themselves what the print runs of their published documents would be, and what distribution channels to use.[90] Behind this system, the state bureaucracy was apparently all too conscious of the need to pre-emptively destroy potentially incriminating documents. A whole chapter of the Truth and Reconciliation Commission (TRC) report (Volume 1, Chapter 8) is devoted to the 'Destruction of Records', pointing out that this process amounted to nothing less than the silencing of the voices of the oppressed:

> The story of apartheid is, amongst other things, the story of the systematic elimination of thousands of voices that should have been part of the nation's memory [. . .] the former government deliberately and systematically destroyed a huge body of state records and documentation in an attempt to remove incriminating evidence and thereby sanitise the history of oppressive rule [. . .] the urge to destroy gained momentum in the 1980s and widened into a co-ordinated endeavour, sanctioned by the Cabinet and designed to deny the new democratic government access to the secrets of the former state.[91]

The most extraordinary aspect of this story is not that records were destroyed, but that meta-records were kept that documented the process. The cover-up was not itself covered up. According to the account in the

final report of the TRC, early guidelines were drawn up as far back as 1978, in the aftermath of the 1976 Soweto uprising. These procedures were signed by the then Prime Minister and circulated to all government departments, and authorised heads of department to destroy documentation. As the TRC comments, the new rules 'did not explicitly challenge the authority of the Archives Act; they simply authorised destruction without mentioning the Archives Act at all'.[92]

But the destruction of records is not in and of itself evidence of malicious intent and good governments destroy records as do bad ones. Professional archivists know -86 th -86 ordsinan -27060overnments 60ove 60ovthe-28 60ovshredd 60

By the time Mandela was released and the African National Congress (ANC) and other banned political organisations were legalised in February 1990, it had become clear that a new 'human rights' approach to the political system as a whole was likely. One of the earliest indications that the ANC was committed to legislate for freedom of information appeared in October 1991, ironically in a report complaining that the ANC had covered up a poisoning:

> Albie Sachs [. . .] is now engaged in composing an entrenched provision for the constitution on the lines of the [US] Freedom of Information Act, protecting the right of the public to have full knowledge of matters which fall within the public interest.[97]

In August 1993 newspaper stories began to appear reporting that government departments had been instructed – yet again – to destroy large quantities of classified information. The written order, itself a classified document, mandated the destruction of 'everything that did not have immediate value for administrative purposes'.[98] But the ANC-led and democratically-elected government that took power in South Africa in 1994 was committed to a constitutional regime, with a bill of rights embedded in the constitution and a programme of enabling legislation to follow. As promised in 1991, Section 32 of the South African Constitution of 1996 did indeed guarantee information access in quite explicit terms:

1. Everyone has the right of access to
   (a) any information held by the state; and
   (b) any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.[99]

The implementing legislation that translated this into a justiciable right, a right that could be asserted and enforced in the law courts, was the

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[97] Albie Sachs later became a Constitutional Court judge. See Editorial: 'Freedom of information', Weekly Mail no. 41 (18–24 October 1991), p. 20.
[98] G. Davis, 'Civil servants told to destroy secret files', Weekly Mail and Guardian (13–19 August 1993), p. 3.
[99] Republic of South Africa, Constitution of the Republic of South Africa, no. 108 of 1996, Section 32.

Promotion of Access to Information Act, no. 2 of 2000.[100] This law was intended to

(a) to give effect to the constitutional right of access to
    (i) any information held by the State; and
    (ii) any information that is held by another person and that is required for the exercise or protection of any rights.
(b) to give effect to that right

Commission has fully grasped the nature of its legal obligation', describes the appointment of commissioners as a 'shambles' and, with regard to freedom of information rights, recommends the appointment of a special Information Commissioner within the organisation.[103] The report calls attention to the 'urgent need for the Commission to pay particular attention to its functions and obligations in terms of the Promotion of Access to Information Act'.[104]

In the five years (2003/2004 to 2007/2008) since the SAHRC started publishing Section 32 reports, compliance with the reporting requirement has been consistently poor, and the body of data available

section 32 in this sector therefore raises grave concern when monitoring implementation.[107]

Even the data that are available in the five SAHRC reports published so far are highly problematic and difficult to analyse.[108] The instrument used to gather data has itself been subjected to criticism on the grounds that it lacks clarity in places and that the relationship between various categories is often unclear. For example, the requirement to report on 'the number of times each provision of this Act was relied on to refuse access in full or partially' is interpreted by the SAHRC, and apparently by all the bodies submitting reports, to mean simply the total number of refusals that relied on this or that provision of the Act. It has been argued that a more probable interpretation is that the intention was to collect statistics for each type of exemption as defined in Sections 34–45 of the Promotion of Access to Information Act.[109]

There are other problems. To pursue a point made previously, in the 12th annual report, the SAHRC for the first time lists bodies that have not complied with Section 32. But non-compliance with Section 32 does not mean that the non-reporting body did not receive any requests, and tells us nothing about whether such requests were granted or refused. It can easily be established from other sources that such requests were made by various NGOs and other groups.[110] The data tell us nothing about the kind of information requested, and nothing about the level of mute refusals. Above all, they tell us little by themselves about the level of transparency in the country. For the sake of argument, if the state were pro-actively compliant, placing significant amounts of appropriate and useful government information on websites, or making information easily and freely available through non-adversarial procedures outside the framework of the Promotion of Access to Information Act, then request and complaint figures would presumably fall. In such a case 'low' levels of demand would not be an indication of opacity.

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[107] South African Human Rights Commission, 12th Annual Report, April 2007-March 2008, Annexure, p. 140.

[108] The SAHRC has published 12 reports. The 8th to 12th of these contain analysis and tabulation of the Section 32 reports.

[109] Sorensen, 'Statistics with respect to Promotion of Access to Information Act', pp. 6–8.

[110] Sorensen, 'Statistics with respect to Promotion of Access to Information Act', pp. 6–8.

Most requests for politically sensitive information appear to originate from a small group of activist NGOs. Dale McKinley complained in 2004 that in two years of operation of the Promotion of Access to Information legislation,

> the vast majority of requests for access to both the [Truth and Reconciliation Commission] archive and related information on human rights violations have been submitted by one organisation [. . .][111]

namely the South African History Archive (SAHA) in Johannesburg, while the remainder came mainly from the Centre for the Study of Violence and Reconciliation (CSVR) in Johannesburg with an office in Cape Town, the Freedom of Expression Institute (FXI) in Johannesburg, the Khulumani network, and the Open Democracy Advice Centre (ODAC) in Cape Town.

SAHA is 'an independent human rights archive dedicated to documenting and providing access to archival holdings that relate to past and contemporary struggles for justice in South Africa'.[112] SAHA runs a Freedom of Information Programme that is specifically intended to exploit the Promotion of Access to Information Act, and thus 'extend the boundaries of freedom of information'.[113] Since 2001, the programme has advised and assisted people or organisations wanting to submit requests and has also built up an archive of materials on several topics including the Truth and Reconciliation Commission, gay people in the South African armed forces, attempts to develop nuclear weapons capacity, HIV and / i10 0 0 10 142.0005 415.860 1AT Bsion.415.860 In415.860 -18(a

submitting 17 of its requests.[118] In late 2004, as a result of the study, ODAC complained formally to the Public Protector about mute refusal.

> [A]n illiterate woman was given the run-around and was harassed by officials with questions such as why she wanted this information [. . .] the motivation for a request is completely immaterial, and its consideration is illegal [. . .][119]

It remains to be seen whether those forces within the state working in favour of the principles of openness and transparency – and they clearly

reports does not logically mean that there is no interest or activity. In Botswana, for instance, listed by Vleugels as a country with 'no sign' of impending legislation, the government had already indicated by 2003 that freedom of information was 'not a priority'.[123] But a 2006 doctoral

Colloquium on 'Os países de língua portuguesa e a liberdade de informação' (Portuguese-speaking countries and freedom of information) in Lisbon.[130] In Cameroon, a workshop on information access rights was held in October 2008.[131] In Sierra Leone, the Society for Democratic Initiative (SDI) organised a workshop in June 2008 to raise awareness among members of parliament.[132] In Rwanda, where from 1993 onwards the radio station Radio Télévision Libre des Milles Collines actively encouraged the perpetrators of the mass genocide in the name of 'Hutu power', experience has led to a more nuanced general awareness of the dangers of untrammelled freedom of mass media.[133]

[130] Republic of Portugal, Alta Autoridade para a Comunicação Social, 'Colóquio "Os Países de Língua Portuguesa e a Liberdade de Informação" [Colloquium on "Portuguese-speaking countries and freedom of information"]' (Lisbon, 25–26 June 1999), programme available at http://www.aacs.pt/bd/documentos/col 25_06_99.htm (accessed 22 June 2009).

[131] V. B. Yongka, 'Cameroon: gov'ts information hoarding thwarts nation building', Postnewsline.com (10 October 2008), available at http://allafrica.com/ stories/200810101057.html (accessed 2 July 2009).

[132] I. Tarawallie, 'Sierra Leone: SDI looks at freedom of information', Concord Times (Freetown) (10 June 2008).

[133] Ligue des Droits de la Personne dans la Région des Grands Lacs, La problématique de la liberté d'expression au Rwanda: cas de la presse. Étude réalisée par l'Association pour la Promotion et la Protection de la Liberté d'Expression au Burundi (APPLE) sur demande et pour le compte de la LDGL (Kigali, 2002), pp. 28–30.

The citizen, the state and models of openness

Chandos Publishing
TBAC Business Centre
Avenue 4
Station Lane
Witney
Oxford OX28 4BN
UK
Tel: +44 (0) 1993 848726
Email: info@chandospublishing.com
www.chandospublishing.com

Chandos Publishing is an imprint of Woodhead Publishing Limited

Woodhead Publishing Limited
Abington Hall
Granta Park
Great Abington
Cambridge CB21 6AH
UK
www.woodheadpublishing.com

First published in 2009

ISBN:
978 1 84334 147 5

British Library Cataloguing-in-Publication Data.
A catalogue record for this book is available from the British Library.

Typeset by Domex e-Data Pvt. Ltd.
Printed in the UK and USA.

INTROD

the process of being adopted comply with regional and international human rights standards. The research will also provide guidelines for States Parties on the formulation of Access to Information legislation.

II. PLANNED ACTIVITY

8. In commemoration of World Press Freedom Day which is celebrated worldwide on 3 May every year, the Special Rapporteur intends to introduce the African Commission on Human and Peoples' Rights Human Journalist/Media Practitioner of the Year Award

independent television and radio stations and of the murder, kidnapping, harassment and thre

23. The Special Rapporteur restates her concern about the continued retention of criminal defamation laws in the statute books of some States Parties and reiterates her call for these States Parties to repeal or amend laws relating to criminal defamation and to ensure

necessary to ensure that these efforts are concretised into laws which conform to applicable regional and international standards.

28. She calls on States Parties that have adopted Access to Information legislation to ensure that the necessary institutional machinery for their effective application are put in place and where necessary, amend their legislations to conform with relevant international human and regional standards and in particular, Principle IV of the Declaration of Principles on Freedom of Expression in Africa which provides:

    1. 1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

       2. The right to information shall be guaranteed by law in accordance with the following principles:
       - everyone has the right to access information held by public bodies;
       - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
       - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
       - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
       - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
       - secrecy laws shall be amended as necessary to comply with freedom of information principles.

       3. Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies."

29. The Special Rapporteur reiterates her call for States Parties to sign and ratify the African Charter on Democracy, Elections and Governance (the Charter). She notes that since the adoption of the said Charter on 30 January 2007, only 28 State Parties have signed and 2 i.e. Ethiopia and Mauritania have ratified the instrument. She therefore urges States Parties who have not signed and in particular those that have signed but not ratified the Charter, to do so, to ensure the coming into force of the instrument without further delay.

30. She further calls on States Parties scheduled to hold elections during the rest of the year like Namibia, Cote d'ivoire, Tunisia, and Botswana, to ensure that journalists and media practitioners are allowed to freely disseminate information on the elections and are not subjected to any form of harassment, intimidation or violence in the course of the exercise of their duties.

31. She urges States Parties who have signed the Charter to take steps to implement provisions of Article 17 which obliges States to : Establish and strengthen indigh445 0 Td (s)Tj 6.0715 0 T98

media during elections and also to ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections, which should include a commitment by stakeholders to accept the results of the election or challenge them through exclusively legal channels.

32. The Special Rapporteur is concerned that the Kenya Communications (Amendment) Act 2009 (the Kenya Media Law), signed into law by the President of the Republic of Kenya in January 2009 does not comply with regional and international human rights standards. In particular, she is concerned that the Act: does not sufficiently guarantee the independence of members of the regulatory body ; confers wide scope of powers on the Ministers of Internal Security and Informati

ACTIVITY REPORT

OF

THE SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

BY

ADV. PANSY TLAKULA

Presented to the 46th Ordinary Session of the African Commission on Human and Peoples' Rights

11 – 25 November 2009
Banjul, The Gambia

Ordinary Session, which took place in Banjul, The Gambia, in October 2002. This Declaration supplements the provisions of Article 9 of the African Charter.

Appeals

16. Attacks on Media Practitioners and journalists, including prosecution, kidnapping, imprisonment, harassment and intimidation is in contravention of Principle XI(1)of the Declaration which provides as follows:

> “Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independs

Gabon

24. On 29 May 2009, the Special Rapporteur forwarded an Appeal letter to the Republic of Gabon regarding the deteriorating situation of freedom of expression in the country, with particular reference to allegations of the alleged ill-treatment, arrest and detention of journalists, denial of access to legal and medical assistance for detained journalists.

25. Principle XII(1) of the Declaration provides that States should ensure that their laws relating to defamation conform to the following standards:

- no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
- public figures shall be required to tolerate a greater degree of criticism; and
- sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

26. A number of States Parties to the African Charter still use criminal defamation laws to arrest, prosecute and imprison journalists who publish articles that are critical to the government or other influential persons. In this regard, the Special Rapporteur sent letters of appeal to the following countries.

Niger

27. On 29 May 2009, the Special Rapporteur forwarded an Appeal letter to the Republic of Niger regarding the conviction of Nigerien journalists; Mr. Moussa Aksar and Mr. Aboubacar Sani of the weekly L'Evènement who were reportedly convicted of criminal libel and sentenced to three months in prison, and ordered a fine of 500,000 CFA francs [illegible]

29. In the Appeal letter, the Special Rapporteur reiterated her Appeal to Member States to bring their laws in line with Fr

The Gambia

38. Three letters of Appeal and one letter of appreciation was sent to the Republic of The Gambia during the inter session.

Letters of Appeal

39. On 22 June 2009, the Special Rapporteur forwarded an Appeal letter to the Republic of The Gambia, addressing the deterioration of Freedom of Expression in the country.

40. She made reference to the alleged warning made by His Excellency Yahya A.J.J Jammeh, President of the Republic of The Gambia, to Imam Baba Leigh, the Imam of Kanifing on 22 May 2009, while addressing a rally in the region to desist from publicly criticisin [illegible]

44. The Appeal stated that Sections 368, 51(1) (a), read together with 52(1) (c), and 178 of the Criminal Code Cap 10 Vol.II Laws of The Republic of The Gambia, which deal with criminal libel and defamation, and which the High Court Judge relied on in sentencing the journalists were incompatible with and contravened international and regional guarantees of freedom of expression.

45. The Special Rapporteur called on the Government of The Gambia to repeal these laws to bring them in line with international and regional standards, and also for the President of The Gambia to use his power to pardon the journalists that were imprisoned and release them from jail.

46. Further to this Appeal, the journalists were released by virtue of a Presidential Pardon.

Letter of Appreciation

47. On 9 September 2009, a joint letter of appreciation was forwarded to the Republic of The Gambia by the Special Rapporteurs after the release of the journalists.

48. In the letter of appreciation, the Special Rapporteurs affirmed that, "the release of the journalists is a demonstration of the Republic of The Gambia's desire to engage with relevant human rights stakeholders on the continent and beyond, as well as its commitment to the promotion of human rights in general and freedom of expression, as well as the rights of women and children in particular."

49. The Special Rapporteur also conveyed her gratitude to the President of The Gambia, for accepting her request to undertake a promotion Mission in the country.

Response of the Government of The Gambia

50. On 13 July 2009, the Special Rapporteur received a response from the Government of The Gambia with regard to the allegations concerning the Imam of Kanifing, and the incommunicado detention of journalists. The Government refuted all the allegations stating that "the Gambian Press has always carried stories on diverse issues, including publication made by Imam Baba Leigh."

51. With regard to the arrest of the journalists, the Government of The Gambia submitted that the journalists did not plead to the charges because they had no counsel to represent them. On the issue of bail, the Government stated that 'the Director of Public Prosecutions objected to their bail on grounds that they were likely to commit a similar offence, but the Magistrate granted Sara Jabbi Dibba bail.'[1]

Eritrea

52. In her Activity Report of the 45th Ordinary Session, the Special Rapporteur expressed her concern about reports of the continued deterioration of freedom of expression in Eritrea. She was particularly concerned about the continued incommunicado detention of the 18

[1] Ms. Sarata Jabbi Dibba was a nursing mother at the time of the arrest

journalists arrested during the 18 September 2001 crackdown on the press by the Eritrean Government, despite the ‘decision’ of the African Commission in Article 19/ Eritrea, in this regard.[2]

53. r

form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy."

59. The Declaration also imposes an obligation on States Parties to the African Charter. to promote diversity, including among other things;

- A

Namibia

60. In this regard, on 11 October 2009, the Special Rapporteur forwarded a letter of Appeal to the Republic of Namibia, in respect of a ban imposed by a Cabinet Resolution 38/05/12/00/001, to The Namibian newspaper since 5 December 2001. This Resolution compels Government ministries, offices and agencies to refrain from advertising in The Namibian newspaper, because it was allegedly reporting on government leadership and the ruling party negatively.

61. She urged the Government of Namibia to immediately lift the ban, especially due to the upcoming elections in Namibia to ensure freedom of expression, access to information and opinion which form the basis of free and fair elections.

Analysis of National Media Laws

62. The Special Rapporteur also analysed the media laws of certain countries in the continent during the inter session.

Kenya

63. On 19 May 2009, the Special Rapporteur forwarded a letter of Appeal to the Republic of Kenya, expressing her concerns about the recently adopted Kenya Communications (Amendment) Act 2009, in line with her mandate to "analyse national media legislation, policies and practice within Member States, monitor their compliance with freedom of expression and access to information standards in general and the Declaration of Principles on Freedom of Expression in Africa in particular and advice Member States accordingly."

64. She urged the Government of the Republic of Kenya to inform her of steps it intends to take to address the concerns expressed in the Appeal and to ensure that the Act complies fully with applicable regional standards on Freedom of Expression and Access to Information.

65. On 22 June 2009, pursuant to reports that the Government of the Republic of Kenya had introduced the Statute (Miscellaneous Amendments) Bill, to amend some provisions of

72. The Special Rapporteur urged the Government of the Republic of Zimbabwe, to take necessary steps to address her concerns, in order to ensure that the establishment of the Zimbabwe Media Commission complies fully with applicable regional standards on Freedom of Expression.

Part IV

Issues brought to the attention of the Special Rapporteur

73. The Special Rapporteur has received a request from the Media Institute for Southern Africa (MISA) to undertake a fact finding mission in Tanzania this year to amongst other things, ascertain the state of freedom of expression, in particular the media in the country.

74. The invitation was prompted by events that have been taking place in Tanzania since 2008 when Mr. Saed Kubenea, a journalist was allegedly attacked with acid by unknown assailants and was left almost blind. It was also alleged that his newspaper, Mwanahalisi, was raided by the police and some materials confiscated. The newspaper was allegedly banned for three months for allegedly publishing a false story about the Head of State.MISA stated in the letter of request for a fact finding mission that, it is particularly concerned about the situation of freedom of expression in the run up to the 2010 elections and wishes that the situation of the media in Tanzania should be addressed as soon as possible, before it deteriorates.

75. The Special Rapporteu

that effective measures should be adopted to prevent any harassment or intimidation of journalists and human rights defenders exercising the right to freedom of opinion and expression in such circumstances. The Special Rapporteur therefore brings to the attention of the States Parties concerned, Principle XI (3) of the Declaration which states that 'In times of conflict, States shall respect the status of media practioners as non-combatants'.

87. She urges States Parties to revoke any existing bans on newspapers, television stations or channels to guarantee the rights to freedom of expression and information to its citizens.

88. The Special Rapporteur calls on Journalists and Media Practitioners to uphold highest standards of professionalism and ethics in carrying out their activities.

89. She also calls on States Parties to the African Charter to promote professionalism amongst Media Practitioners in accordance with principle X (1) of the Declaration. Principle X (1) provides that; "Media practitioners shall be free to organise themselves into unions and associations" .

90. With regard to upcoming elections, the Special Rapporteur notes that some countries in the continent are expected to hold elections in 2010. Elections are expected in Sudan, Ethiopia, Burundi, Comoros, Mauritius, Rwanda, Madagascar, Tanzania, and Central African Republic.Re dmo ros282264 0 Td ( )Tj Td