



United Nations  
Educational, Scientific and  
Cultural Organization

**Report on the**  
**Seminar “Strengthening Judiciary Systems and African Courts to protect Safety of Journalists and End Impunity”**

**Advance meeting to mark the International Day to End Impunity for Crimes against Journalists**

**10 September 2016**

**African Court on Human and Peoples’ Rights**

**Arusha, Tanzania**

**I. Executive summary**

This report aims to give an overview of the main outcomes of the seminar “*Strengthening Judiciary Systems and African Courts to protect Safety of Journalists and End Impunity*”, which was held on 10 September 2016 in Arusha, Tanzania.<sup>1</sup> The seminar was jointly organized by UNESCO and the African Court on Human and Peoples’ Rights and served as the main commemoration of the 2 November International Day to End Impunity for Crimes Against Journalists. This inter-regional dialogue provided an opportunity to discuss African jurisprudence and international standards on safety of journalists, and to seek strategies to reinforce the role of the African Court and to increase the number of African countries that join the African Court.<sup>2</sup> It brought together more than 100 participants from 36 different countries. The President, Vice President and two former Presidents of the African Court, as well as the Commissioner of the African Commission on Human and Peoples’ Rights and the Vice President of the Court of Justice of ECOWAS were present along judicial officials and representatives from ministries from Madagascar, Senegal, Democratic Republic of Congo, Algeria, Guinea-Conakry and Somalia. A range of civil society and legal representatives participated, including delegates from the Pan-African Lawyers Union; Platform for Law, Justice and Society; Centre for Democracy and Governance; Article 19; Organisation internationale de la Francophonie; Media Legal Defence Initiative; PEN International; Reporters Without Borders and the Centre for Freedom of the Media and Committee to Protect Journalists. Also 42 journalists from 20 African countries, who received a training on the African Court, sponsored by GIZ, attended the seminar.

The first session gave an overview of the existing international laws on freedom of expression, access to information and decriminalization of defamation. Representatives of judicial systems in Africa gave

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<sup>1</sup> The programme of the seminar is online here:

[http://en.unesco.org/sites/default/files/idei2016\\_arusha\\_programme\\_en\\_0.pdf](http://en.unesco.org/sites/default/files/idei2016_arusha_programme_en_0.pdf)

<sup>2</sup> The concept note of the seminar is online here:

[https://en.unesco.org/sites/default/files/concept\\_note\\_judges\\_and\\_idei\\_africa\\_eng\\_short\\_0.pdf](https://en.unesco.org/sites/default/files/concept_note_judges_and_idei_africa_eng_short_0.pdf)

examples of the national judicial framework on freedom of expression and its limitations in their country. The landmark decisions on freedom of expression, such as the [Lohé Issa Konaté v Burkina Faso](#) and [Norbert Zongo v Burkina Faso](#) cases, referred to as positive precedents that helped shape the legal framework for the protection of journalists, were also discussed. Nevertheless, the participants agreed that the main issue remains the lack of implementation of the international jurisprudence and the Courts' judgements. Notably, the decisions of the African Courts on freedom of expression, despite the fact that they are binding, have not been (completely) executed. This is for example the case of the ECOWAS Court's judgements in the [Hydara, Chief Manneh](#) and [Saidykhan](#) cases against The Gambia. Furthermore, the speakers recognized the fact that there is a lack of knowledge about the rule and mandate of the African Court. The panelists also called for more accessibility on the main decisions regarding freedom of expression, and suggested that a general online database on this issue should be introduced along with the already existing databases, such as the [ACtHPR](#) monitor, the [African Human Rights Case law Analyser](#) - Ihrda and [EACJ](#) database. Besides, databases of national jurisprudence of supreme courts have to be introduced or further developed. Platforms monitoring attacks on freedom of expression, such as the Council of Europe's [Platform for the safety of journalists](#), the UN Human Rights Council's [Universal Periodic Review process](#) and [State reporting to the African Commission](#) could be meaningful strategies as well to help to create a free and safe environment for journalists. Finally, an important point was made by the judges that, as they are protecting freedom of expression, they themselves should also be protected against arbitrary sanctions and reprisals from state and non-state actors.

The second session focused on how to strengthen the capacity of the judiciary systems in Africa on freedom of expression issues. Everyone agreed that sharing and raising awareness about the international and regional standards and mechanisms on freedom of expression among the judicial actors is necessary. Judges and prosecutors should receive trainings on freedom of expression and media freedom standards, and if possible, already from the initial training of their law education. In addition, lawyers should also benefit from these trainings. Some speakers, like Senegal, prefer targeted trainings specially designed for specific group of judges. The African Court and African commission expressed their interest to participate to these courses, which could be adapted from previous online training courses (MOOC), which UNESCO organized in Latin America. In total, since 2013 UNESCO trained 3200 judicial operators, including 800 judges from 22 countries in Latin America and Caribbean. One speaker stated that other accusations, such as disseminating of false information, insulting the Head of State, threatening the country's security, are often used to falsely prosecute journalists. Finally, the participants agreed on the necessity to review defamation laws, as they are considered one of the biggest obstacles to freedom of expression.

The third session underlined the importance of increasing the amount of countries ratifying the Protocol and depositing the Declaration to the African Charter on Human and Peoples' rights on the establishment of an African Court on Human and Peoples' Rights. The panelists mentioned the lack of political will as the main obstacle. However, they underlined the importance of increasing the number of ratifications for the promotion of rule of law and freedom of expression in Africa. Sessions of raising awareness involving the judges of the African Court in specific countries have been proven successful in different African countries (e.g. recently in Chad). Speakers mentioned Rwanda's withdrawal of the Protocol as not being a positive development and emphasized the necessity to also implement a proper follow-up in the countries after

ratification of the Protocol. Furthermore, the recently revived [African Peer Review Mechanism](#) was mentioned as another important instrument for advocating States to join the Court. Several representatives from countries such as Somalia and Guinea-Conakry showed great eagerness to advocate for their country to join the African Court on Human and Peoples' Rights. Also the representative from Algeria mentioned that he will advocate for depositing the Declaration 34(6) allowing direct access to the African Court for all citizens.

Following the successful cooperation between the African Court and UNESCO, both parties are now exploring a Memorandum of Understanding to extend the collaboration on issues related to safety of journalists, ending impunity and decriminalization of defamation.

## **II. Context**

### **Opening statement**

Former President of the African Court on Human and Peoples' Rights and co-initiator of the seminar, Augustino Ramadhani opened the deliberations:

“Not only are we commemorating the [International Day to End Impunity for Crimes Against Journalists](#), but we are also celebrating the [African Year of Human Rights](#) with Special Emphasis on Women's Rights as the African Union has declared this year to be. And this is also the tenth anniversary since the African Court began its operations in November 2006.”

He referred to the several instruments on the African scene which guarantee freedom of expression, such as Article 9 of the [African Charter on Human and Peoples' Rights](#). Mr. Ramadhani set the tone by emphasizing that the existing instruments can guarantee freedom of expression, as well as help to guarantee the safety of journalists themselves in the performance of their work.

### **Session 1 – African Jurisprudence and International Standards**

Speakers in the first session were: Justice Ben Kioko, Vice-President of the African Court on Human and Peoples' Rights; Faith Pansy Tlakula, Commissioner, Chairperson and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights; Micah Wilkins Wright, Vice President of the Community Court of Justice ECOWAS; William Horsley, International Director of the Centre for Freedom of Media at the University of Sheffield; Lucy Freeman, Chief Executive Director of Media Legal Defence Initiative and Dominique Delpuech, Deputy Director Political Affairs and Democratic Governance of Organisation internationale de la Francophonie, France. The moderator of the first session was Ms Sarah Clarke, International Policy and Advocacy Manager of PEN International.

The first panelists provided an [overview](#) of treaties, resolutions, national laws and international instruments, that protect the freedom of expression. The right to freedom of expression is enshrined in many international instruments such as the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the European Convention for the

Protection of Human Rights and Fundamental Freedoms (Article 10), the American Convention on Human Rights (Article 13), and the African Charter on Human and Peoples' Rights (Article 9).

Though, the main challenge remains the proper implementation of these laws, as was stated by Justice Kioko: “There is a need for States to respect the freedom of expression, in action and not just in words, as commitments at the international level have to translate to action at the national level.”

William Horsley set out various European precedents which could be of interest for the African judicial system. He emphasized the importance of proactive measures of state protection for threatened journalists. He referred to the [Dink v Turkey](#) case in 2010, in which the European Court on Human Rights ruled that: ‘States are obliged to put in an effective system of protection for authors and journalists as part of their broader obligation to create a favorable environment for participation in public debate by everyone...’. Justice Micah Wilkins Wright supported this by urging Member States to establish a normative framework for the protection of journalists, namely to create and maintain a free and safe environment for journalists to exercise their job, and secondly to introduce or reinforce the institutional framework for the fight against impunity for crimes against journalists.

Furthermore, the [Lohé Issa Konaté v Burkina Faso](#) and [Norbert Zongo v Burkina Faso](#) cases were discussed and consistently referred to as crucial steps in the reinforcement of journalists’ rights and protection mechanisms for human rights in general. In the *Konaté* case, the African Court delivered a landmark judgment – ruling that imprisonment for defamation violates the right to freedom of expression while criminal defamation laws should only be used in restricted circumstances. Burkina Faso has removed imprisonment as a penalty for defamation from its law and the judgment has been used in multiple criminal defamation cases on the continent. Though the *Konaté v Burkina Faso* and *Norbert Zongo v Burkina Faso* cases were great victories for the press, the enforcement of the ECOWAS Court’s judgments in the cases against The Gambia, including [Hydara](#), [Chief Manneh](#), and [Saidykhan](#) cases had been fully absent. The issue of enforcement is mainly a political process, as was expressed by the African Court and ECOWAS judges on the panel: “A Regional Court has to walk a very fine line”, stated Justice Wilkins Wright. Enforcement of judgements can cause conflicts, as States tend to guard their sovereignties. The Court must thus clearly define the areas in which it has concurrent jurisdiction with national courts and the areas that are exclusively for the national courts, in which it must not interfere.

Moreover, judges expressed their concerns about their personal safety as well. They raised the question: “Who is going to protect us?”. When judges are protecting freedom of expression, they themselves face retaliations and should also be protected against state and non-state actors. Civil society should advocate for judges to be protected from administrative sanction and reprisal when they are giving decisions protection freedom of expression or prosecuting those responsible for attack against journalists. They can, for instance, intervene in cases as Interest Party or Amicus Curiae. They can advocate for the reinforcement of the courts’ judgements at both the national and international level.

Special Rapporteur Faith Pansy Tlakula pledged to reinforce the work of the Court, including monitoring the implementation of its decisions and creating better access to the courts’ jurisprudence. Databases such as the [ActHPR](#) monitor and [EACJ](#) database are quite accessible, but the database of the [ECOWAS](#)

Court and the [IHRDA](#) case law analyzer have to be further completed. Other strategies to reinforce implementation of judgments were the proposition to introduce sanctions for not implementing decisions and “naming and shaming” during Summits of Head of States.

With regard to monitoring attacks on Freedom of Expression, the support of the civil society is again crucial. William Horsley spoke about the '[Platform for the safety of journalists](#)', a website launched by the Council of Europe, on which leading press freedom organisations are authorised to submit regular Alerts about serious threats to press freedom and journalists' safety. But also fora such as the UN Human Rights Council's [Universal Periodic Review process](#) and [State reporting to the African Commission](#) were mentioned as meaningful strategies to continue the monitoring and documenting of attacks on journalists.

### ***Session 2 – The capacity of judicial actors at a national level***

Keynote speakers included Maureen Kondowe, Vice President of the Pan African Lawyers Union (PALU) for Southern Africa; Henry Omusundi Maina, Regional Director of ARTICLE 19 Eastern Africa; Laiza Maharo Rakotoarison, Head of Service for judicial professions of the Ministry of Justice of Madagascar; Mehdi Benchelah, Senior Project Officer at the Division Freedom of Expression and Media Support at UNESCO; Cheikh Tidiane Lam, Deputy Inspector-General of the Administration of Justice of the Ministry of Justice of Senegal; Mama Cheikh Sidiya, Counsellor to the Indictment Chamber of the Court of Appeal of Nouakchott of Mauritania.

Kenyan lawyer and Publisher of Platform for Law, Justice and Society, Gitobu Imanyara moderated this session, during which the participants discussed ways to strengthen the capacity of judiciary systems, as there is a lack of both knowledge and proper use of freedom of expression standards amongst judicial actors.

Maureen Kondowe pointed out the main challenges for judicial bodies in Africa dealing with cases on freedom of expression, taking Malawi as an example. Firstly, there is an inadequate domestic legal framework dealing with the safety of journalists. Most of the resolutions on freedom of expression do not specifically deal with the issues of protection of journalists and ending impunity. Secondly, there is a limited advocacy on the promotion of the right to freedom of expression, the protection of journalists and the end of impunity for crimes committed against them, also due to the lack of knowledge about freedom of expression standards. Thirdly, there is a lack of training for judicial officers in matters relating to the above mentioned issues. All participants agreed that the sharing and raising awareness about international jurisprudence and in particular the international standards on freedom of expression among the judicial actors is essential.

Therefore, it is necessary to develop a specific Plan of Action that aims at improving the capacity of judicial officers and that focuses on the different aspects - Freedom of Expression, Access to Information and Media Freedom standards - of specialized trainings of judicial actors. As several Regional Courts and Human Rights commissions have already a framework for such a Plan of Action, it could be incorporated and further developed at national level. A further point that was made, is that the trainings should not only include judges, but also lawyers and prosecutors. One of the panelists commented: “If lawyers don't

make the right freedom of expression arguments, the judges' hands are tied." Moreover, a multi stakeholder approach is required. Collaborations are essential between all levels; between judiciary and media, between judiciary and NGOs, between governments and media, and between regional courts and local courts. Mehdi Benchelah, senior project officer at UNESCO, also suggested that training on freedom of expression should already be incorporated in law schools' curriculum as graduates could be confronted with such cases in their career.

Laiza Maharo Raharison acknowledged the fact that the Ministry of Justice in Madagascar does not have any experience with capacity reinforcement of judicial actors in promoting freedom of expression and safety of journalists, but that Madagascar's participation in the seminar can be considered as the first step in reinforcing judiciary systems in Madagascar. Mohamed Diawara, investigative judge in Guinea-Conakry, and Mr Cheikh Tidiane Lam from the Ministry of Justice of Senegal showed interest for trainings on Freedom of Expression in partnership with UNESCO. Though they would prefer live trainings instead of online trainings, as internet literacy could be a potential obstacle for the trainings.

Newly appointed President of the African Court, Justice Sylvain Oré, and Chairperson of the African Commission on Human and Peoples' Rights, Faith Pansy Tlakula, are interested to participate in developing a training course for African judges to build their capacity to deal with freedom of expression cases in line with international and regional standards. Mehdi Benchelah explained that UNESCO has executed a number of training activities including several [MOOC](#) (massive open online courses) for judicial operators throughout Latin America and the Caribbean. In total, since 2013 UNESCO has trained 3200 judicial operators, including 800 judges from 22 countries in Latin America and Caribbean. Following the seminar, UNESCO is now exploring the possibility of developing a MOOC for judicial officers in Africa.

Furthermore, there was a general consensus amongst all participants that defamation should be decriminalized. "Defamation laws are used to protect public officials from scrutiny and not to protect reputations", stated Gitobu Imanyara.

Criminal defamation laws are still one of the biggest obstacles to freedom of expression. They should be applied only with principles of proportionality and necessity. Even civil defamation can entail serious risks, leading to bankruptcy of an individual or news outlet. A review of these defamation laws, carried out by independent national human rights bodies, was mentioned as a potential project.

### ***Session 3 – The Protocol and Declaration of the African Court***

The third panel included: Gerard Niyungeko, Former President of the African Court on Human and Peoples' Rights; Joan Obiero, Associate Legal Officer of the African Union; Abdirahman Omar Osman, Senior Media and Strategic Communications Advisor for the Federal Government of Somalia; Alphonsine Kalume Asengo, Counselor to the Supreme Court of Justice of the Democratic Republic of Congo; Mouhoub Mohamed El Mahdi, Counselor to the Supreme Court of Justice of Algeria and Mohamed Diawara, Investigative Judge of justice of peace at Kérouané in Guinea-Conakry.

Onyango Kakoba, Executive Chairman of the African Parliamentary Alliance for UN Reforms, Director of the Centre for Democracy and Governance and former Chairperson of the PAP Committee on Justice and

Human Rights was the moderator. The participants sought to identify and strengthen strategies to increase the number of African countries ratifying the Protocol and depositing the Declaration, which allows NGOs and citizens to present directly their cases to the African Court.

Though the participants acknowledged the solid jurisprudence and impact of the judgments on freedom of expression made by the African Court, the participants agreed that there is still some way to go towards universal [ratification](#) of the Protocol. As of September 2016, 24 of the 54 countries are yet to ratify the Protocol. During the discussion, several reasons were mentioned for the non-universal ratification of the Protocol.

“The low number of ratifications to join the African Court comes from lack of political will or ignorance of the importance of the Protocol”, stated Gerard Niyungeko.

But also the institutional framework in countries remains an obstacle. The lack of functioning institutions and resources impede the ratification of the Protocol, explained Advisor for the Somalian Federal Government, Abdirahman Omar Osman. Mohamed Diawara, as representative of Guinea-Conakry, referred to the administrative slowness and bureaucracy in his country. He further pointed out that the Court should emphasize more its role and its way of working, as there is a lack of knowledge about the Court’s jurisdiction in a considerable amount of African countries. The shortage of technical skills and judicial capacity in Government Ministries were cited by Joan Obiero.

The participants agreed that the more countries that will ratify the Protocol and deposit the Declaration, the more the rule of law in those countries will be guaranteed, and freedom of expression will be protected in those countries. It was considered therefore essential to emphasize the relevance and the impact of the African Court regarding the rule of law in general and the protection of freedom of expression and journalists in particular. Also a proper follow-up after the ratification is important, considering a lot of countries ratified the Protocol in the early 2000s, but the amount of countries that have deposited the Declaration since then has been limited. Mr Niyungeko suggested focal points to be set up in each state to deal with ratification and follow-up regarding ratification and declaration. But he also pointed out that the challenges are shared responsibilities. States, NGOs, civil society and other inter-governmental organizations, such as the UN and its treaty bodies all need to advocate for ratification and declaration to join the African Court by including the promotion of the Court in their programs. Ms Tlakula referred to the recently revived [African Peer Review Mechanism](#), which is another instrument for advocating states to join the Court. Also capacity-building trainings for lawyers and relevant members of the judiciary, as was mentioned before, could be a meaningful tool to advocate for ratification. Sessions of raising awareness involving the judges of the African Court in specific countries have also been proven successful.

Several representatives of the countries that attended the seminar showed eagerness to advocate for their country to join the African Court on Human and Peoples’ Rights. Both Mr Omar Osman and Mr Diawara said that they would advocate for their respective countries, Somalia and Guinea-Conakry, to ratify the Protocol. Also Mouhoub Mohamed El Mahdi from Algeria and Justice Ben Achour from Tunisia, mentioned that they will advocate for depositing the Declaration.

Rwanda's withdrawal of the Declaration was also discussed and it was acknowledged that it is not a positive development, though the impact of it is still unknown. Gerard Niyungeko explained that the withdrawal would not stop pending cases presented to the African Court and also that citizens could still present directly their cases until for a year after the withdrawal.

Nevertheless, it could certainly motivate the African Court and all concerned to install a follow-up mechanism after a country ratified the Protocol or deposited the Declaration.

### **Closing remarks**

Fiona Mbabazi, news anchor and reporter for Rwanda Broadcasting Agency, moderated the final session. The goal of the seminar was to assess the jurisprudence regarding freedom of expression in Africa and the challenges that come along with it.

Representatives of various African States gave accounts of the difficulties in their countries with ratification. It is important to encourage States to ratify the Protocol and sign the Declaration, but also to support national authorities in reinforcing their judicial system and protection mechanism of human rights. Trainings of judges would be a great step forward to strengthen the judicial capacity in Africa. Nani Jansen, human rights lawyer of the Netherlands and rapporteur of the final session, emphasized the importance of capacity-building trainings of judicial actors. She supported the idea to already start education on freedom of expression at the law schools, as there is still little education on Human Rights, especially on freedom of expression in Africa.

There is definitively an eagerness from the different actors to promote the importance of the African Court and to advocate for ratification of the Protocol to join the Court. Though, as was highlighted during every session, the dissemination of laws and jurisprudence regarding freedom of expression and the implementation of the right to freedom of expression is a shared responsibility. Everyone agreed on more sensitization, more documentation and more accessibility.

The President of the African Court, Justice Sylvain Oré, closed the event and asked all actors involved for a greater commitment which could help both regional and national courts to bring an end to impunity for attacks on journalists. Member States once again were encouraged to uphold their obligations under the African Charter and other international instruments.

Considering the successful cooperation on the seminar, the African Court and UNESCO are now exploring signing a Memorandum of Understanding to extend the collaboration regarding issues on safety of journalists, ending impunity and decriminalization of defamation. Member States once again were encouraged to uphold their obligations under the African Charter and other international instruments.

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