



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the Human Rights Council 4th Session

Reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression¹

Name of Mandate Holder

Ambeyi Ligabo

Mandate

The mandate of the Special Rapporteur involves analysing new policies, practices and measures that impact on the implementation of the right to freedom of opinion and expression.² This analysis is undertaken using information received from Governments; international, regional, national organisations and non-governmental organisations; media professionals and writers' associations; students groups; trade unions and political parties. It also includes examining communications on alleged violations of the right to freedom of opinion and expression, and identifying new trends concerning the implementation of the right to freedom of opinion and expression.

Activities

- Annual Report;
- Participation in workshops and meetings: Celebration of the World Press Freedom Day; Eighth Annual NGO Forum on Human Rights; Thirteenth meeting of the special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights; and Workshop of the 'Berne Process';
- Press releases with other mandate-holders;³
- Visit to Denmark.

Annual Report⁴

Scope

The report summarises the activities of the Special Rapporteur and examines four thematic issues relating to his mandate: internet governance, legislation concerning defamation offences, security of journalists, and defamation of religion and freedom of expression.⁵

Summary and key conclusions

¹ Summary prepared by Betty Yolanda, Intern, ISHR; edited by Hannah Klein, Intern and Gareth Sweeney, Information Program, ISHR.

² Commission *Resolution 1993/45*.

³ Available on http://www.unog.ch/unog/website/news_media.nsf/.

⁴ A/HRC/4/27, 2 January 2007.

⁵ See E/CN.4/2006/55 and E/CN.4/2005/64.

Internet governance and digital democracy

- The Special Rapporteur noted that several Governments closely monitored the web in order to identify and stop various forms of opposition and criticism.
- Arresting of individuals for using the internet was only a component of the limitation to freedom of expression. Other limitations are more subtle, such as putting the media in the hands of powerful media groups and commercial forces.
- Internet consumers' associations urged that the Internet should be used not only for commercial interests, but also to promote free critical debate and dialogue at the local as well as the global level.⁶ With regard to this matter, the Special Rapporteur concluded that the Internet should not depend exclusively on commercial interests.
- The Special Rapporteur concluded that violations against Internet users had increased significantly. Further, he stated that old and new technologies were increasingly being used as tools for political propaganda.

Decriminalization of defamation offences

- In relation to defamation offences, a statement can only be considered as defamatory if it falls within the following conditions: the contents of the statement are totally untrue; it is injurious; and it is done with actual malice.
- The concept that States should intervene in cases of such violations should progressively be abandoned in favour of mechanisms regulated by independent authorities.
- The Special Rapporteur notes that a number of countries, while reforming or abolishing legislation on defamation, have introduced norms on "disinformation", which would often be applied to cases formerly treated as defamation cases.
- Detention of journalists on defamation charges, or imprisonment following convictions for defamation, were still common due to certain countries' use of legislation that imposed harsh sanctions on press freedom.
- There was another trend to replace defamation of individuals with the concept of defamation of common values, to be treated within the sphere of criminal law.
- The Special Rapporteur concluded that a constant trend towards the decriminalisation of defamation offences does exist.

Security and protection of media professionals

- The Special Rapporteur noted that the number of killings and other forms of violence against media workers were increasing. Based on the data from the International Federation of Journalists, more than 1,100 journalists and media staff have been killed in the line of duty in the past 12 years.⁷
- The Rapporteur proposed an endorsement of the resolution adopted by the International Press Institute and by the International News Safety Institute on the responsibility of Governments concerning appropriate action to bring to justice perpetrators of human rights violations against journalists and media workers.
- The Rapporteur highlighted the importance of the establishment of a relief fund for relatives of media professionals killed while on duty and because of their professional activities.
- The Rapporteur concluded that the lack of action, negligence or collusion with criminal entities is considered as a pattern of human rights violation. Further, he reiterated that the current international situation has had a negative effect on freedom of expression and freedom of movement.

⁶ See a decision of the United States of America Supreme Court on Internet and free speech (26 June 1997), available at <http://www.cdt.org/speech/cda/>. See also Declaration on Digital Democracy, available at <http://www.democraticmedia.org/issues/decDigitalDemocracy.html>.

⁷ See www.ifj.org.

Key recommendations:

Governments should:

- Assess, and if necessary, reform existing national legislations and judicial practices related to all forms of freedom of opinion and expression and commence reform processes in order to guarantee conformity with international human rights norms and regulations.
- Take measures to decriminalise defamation and similar offences and refrain from introducing new norms under different terminology that will pursue the same results as defamation laws.
- Guarantee freedom of opinion and expression on the Internet. In particular, any new intergovernmental body that administrates Internet governance must always apply a human rights approach.
- Consider the establishment of an independent authority on communications.
- Envisage the creation of *ad hoc* protection schemes for journalists.

Other relevant actors:

- Media authorities and media associations should be vigilant about the use of forms of expression characterised as defamation of religions and discriminatory connotations of ethnic and other vulnerable groups.
- The Human Rights Council should address the Special Rapporteur's recommendations in an open debate. It should also pay attention on the issue of the security and protection of journalists, in particular in armed conflict situations.
- The UN and the international community should prioritise the creation of an international organisation to govern the Internet with a human rights approach.

Visit to Denmark

- In September 2005, the publication of a series of cartoons depicting Prophet Muhammad as a terrorist by the newspaper *Jylland Posten* provoked anger within the Muslim community in Denmark. This followed shortly after *Radio Holger* broadcast hate speech calling for the deportation of all Muslims back to their countries of origin.
- At the invitation of the Danish Human Rights Institute, the Special Rapporteur went to Denmark in April 2006 to participate in a number of meetings, including with Government officials, in which he gathered relevant information.
- The Special Rapporteur noted that Article 77 of the Danish Constitution prohibits censorship and preventive measures affecting the press and media.
- The Danish Press Council, an independent public body entrusted to verify conditions between media publication and media ethics, rejected two complaints it received on the basis that they were submitted after the four-week deadline.
- The Danish Broadcasting Corporation endorses 'total editorial freedom' within the respect of other fundamental human rights. Its philosophy is that a journalist should have a strong case to infringe other rights, acting for investigative purposes and on subjects of public interest.
- As reported by the Union of Journalists, the press is satisfied with the present level of freedom of expression and it is not favourable to the introduction of new rules and laws, especially international mechanisms that could jeopardise their freedom. However, there was still ongoing debate concerning concepts of self-censorship and self-criticism. It emphasised that drawings and cartoons are a significant part of the iconic culture in Denmark, used to criticise personalities and lobbies. While, it also acknowledged that some parts of the press are quick to support discriminatory views, it stressed that there was no plot or conspiracy behind the publication of the drawings.

- According to Muslim sources, the ‘cartoons’ were part of incessant provocations against them and their religion.
- The Special Rapporteur noted that the ‘cartoons’ phenomenon has increased the Danes’ sense of unity around the constituent values of the nation and freedom of expression.