



International  
Press  
Institute

# THE FOUNDATIONS OF PRESS FREEDOM IN AFRICA

**A resource toolkit of laws,  
commitments, and mechanisms  
protecting press freedom in Africa**





## ABOUT THIS TOOLKIT

This toolkit is a compilation of key international, regional, and sub-regional treaties, protocols, mechanisms, and commitments that comprise the frameworks for media freedom, the right to access information, and the safety of journalists in Africa.

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### Who is this toolkit for?

This resource can be used by domestic and international advocacy groups and other stakeholders working to support and improve the environment for press freedom and journalists' safety in Africa.

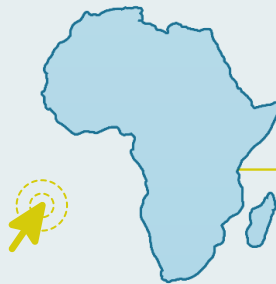
This document includes references to key regional and international commitments and obligations on the part of states to protect and respect media freedom and the safety of journalists.





## ABOUT THE INTERNATIONAL PRESS INSTITUTE (IPI)

IPI is a global network of editors, media executives, and leading journalists. Our mission is to defend media freedom and support independent journalism wherever they are threatened.



## IPI Africa Programme

DEFENDING PRESS FREEDOM AND  
THE SAFETY OF JOURNALISTS

The IPI Africa Programme supports and advances press freedom and independent journalism in Africa. Through this programme, we monitor and collect data on press freedom threats and violations across the continent, including threats to journalists' safety as well as gendered attacks against journalists both online and offline. We use this data to carry out evidence-based advocacy to hold states and other duty bearers accountable for their responsibilities to protect press freedom and ensure that journalists are able to carry out their work freely, independently, and safely.



[http://bit.ly/IPI\\_Africa](http://bit.ly/IPI_Africa)



# ACKNOWLEDGEMENTS

## Contributions to this toolkit



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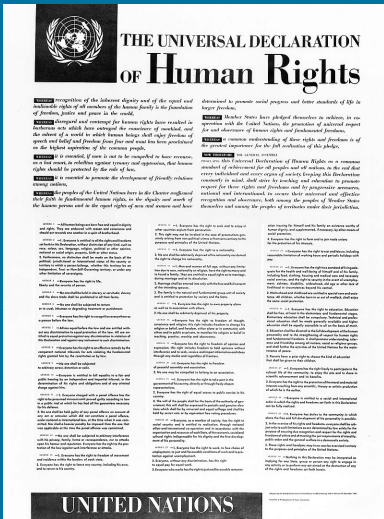
# 01 • INTERNATIONAL STANDARDS AND TREATIES

## Universal Declaration of Human Rights - UDHR (1948)



Commitment by member states of the United Nations General Assembly to protect the rights and freedoms of all human beings.

Key provisions related to press freedom and the safety of journalists



### Article 19:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."



## International Covenant on Civil and Political Rights - ICCPR (1966)



A multilateral, legally binding treaty that commits state parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.



Key provisions related to press freedom and the safety of journalists

### Article 19:

- ➔ Everyone shall have the right to hold opinions without interference.
- ➔ Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

According to **Article 19(3)**, freedom of expression may be subject to certain restrictions, including for the respect of the rights or reputations of others, and for the protection of national security, public order, public health, or morals. But these restrictions must be clearly prescribed by law, necessary to achieve a defined goal, and proportionate.

The ICCPR represents an important evolution in global protections for freedom of expression, which includes press freedom.

It expands on the right to freedom of expression, in particular setting out the acceptable limitations under which this freedom can be restricted.

And in contrast to the UDHR, which articulates freedom of expression as a human right but is not legally binding, the ICCPR is **binding** on states that have signed and ratified it.



### 52 out of 54 countries in Africa have ratified the ICCPR.

South Sudan has neither signed nor ratified the ICCPR while Comoros has signed but not ratified.



## Enforcement of the ICCPR

The United Nations Human Rights Committee established under Article 28 of the ICCPR monitors the implementation of the ICCPR. All state parties that have ratified or acceded to the Covenant undertake to submit reports on the measures adopted to give effect to the rights under the treaty.



## Universal Periodic Review



The Universal Periodic Review is another mechanism that is utilized to assess the human rights record of every country, through a peer review process that is facilitated by the UN Human Rights Council. Reviews are done every 4.5 years.

## How to Use the UPR Process

Various stakeholders including civil society organizations can utilize the UPR mechanism to advocate for press freedom and freedom of expression through the following ways:

- Participating in national consultations to influence the country under review's report
- Making written submissions to the OHCHR
- Advocating with other countries that are interested in press freedom issues
- Urging the country under review to accept, ahead of the next Human Rights Council session, "noted" recommendations, which are recommendations that the state has neither accepted nor rejected
- Following up on the implementation of the accepted recommendations
- Producing a mid-term report

## International Convention on the Protection of All Persons from Enforced Disappearances



The Convention places obligations on states to criminalize, investigate, and prosecute acts of enforced disappearances.



**Article 2** defines an enforced disappearance as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

## The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment



**Article 2** states are expected to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

A state of war or a threat of war, internal political instability or any other public emergency, cannot be invoked as a justification of torture.



## 02 • SNAPSHOT OF REGIONAL MECHANISMS

In Africa, media freedom and the right to access information are formally guaranteed through international, regional, and sub-regional commitments and treaties.



### African Charter on Human and Peoples' Rights

The human rights system in Africa is anchored by the African Charter on Human and Peoples' Rights. Article 9 of the Charter guarantees the right to freedom of expression, which includes media freedom. The African Charter reaffirms principles of human rights and freedoms contained in declarations, conventions, and other instruments adopted by the African Union and the United Nations.



### African Commission on Human and Peoples' Rights

The Charter is enforced through the African Commission, which is a quasi-judicial body established by Article 30 of the Charter to promote and protect human rights.



**ACHPR**  
African Commission on  
Human and Peoples' Rights

A mandate is placed on the **Special Rapporteur on Freedom of Expression and Access to Information** to monitor and make interventions in the case of violations of the rights to freedom of expression and access to information.



## The African Court on Human and Peoples' Rights

The African Court complements the mandate of the African Commission and has the authority to consider cases of human rights violations filed before it, including by individuals and non-governmental organizations. The African Court was established by the Protocol to the African Charter on Human and People's Rights and 33 African states have ratified the Protocol. However, only eight of these states recognize the competence of the court to receive cases directly from NGOs and individuals.



## Regional Economic Communities

The African Union has eight Regional Economic Communities (RECs) which are sub-regional groupings of African states that support the economic integration and development of the African continent. In recent years, some of the RECs have assumed greater roles in human rights protection and have amended the mandates of their community courts and tribunals to adjudicate claims of human rights violations, including those affecting freedom of expression and media freedom.



## 03 • REGIONAL HUMAN RIGHTS FRAMEWORKS (in detail)

### African Charter on Human and Peoples' Rights

Legally binding human rights instrument intended to promote and protect human rights and basic freedoms on the African continent.

Ratified by 54 of the 55 African Union (AU) Member States

 **54**  **1**

Morocco is the only country that is yet to ratify the Charter

Key provisions related to press freedom

 **Article 9:**

**Every individual shall have the right to receive information**

**Every individual shall have the right to express and disseminate his opinions within the law**

### Enforcement of the Charter

The African Charter is enforced through:

The African Commission on Human and People's Rights

and

The African Court on Human and Peoples' Rights

# The African Commission on Human and Peoples' Rights (ACHPR)

The ACHPR has three basic functions:

- The protection of human and peoples' rights;
- The promotion of human and peoples' rights;
- The interpretation of the African Charter on Human and Peoples' Rights.



Three procedures are used to fulfill these functions:



## 1.

### **State reporting procedure:**

States submit reports to the ACHPR on measures taken to ensure that the rights enshrined in the Charter are implemented. The state party report is published by the African Commission prior to the session to give civil society an opportunity to comment (through shadow reports) on the state report. Rule 74 of the Rules of Procedure of the African Commission states that, "any interested party wishing to contribute to the examination of the Report and the human rights situation in the country concerned" can send in a contribution.

## 2.

### **Communication procedure (Article 55 of the African Charter):**

The ACHPR can make decisions on complaints, known as communications, from anyone on compliance by states to the rights guaranteed in the Charter. The African Commission's decisions or recommendations on these communications are critical to the continued development of human rights law in Africa. Though the recommendations are not strictly legally binding, states are expected to comply with the decisions of the African Commission.

## 3.

### **Special Mechanism**

### **The Special Rapporteur on Freedom of Expression and Access to Information in Africa:**

Established by Resolution 71 (2004), the Special Rapporteur monitors compliance with the Charter's free expression guarantees. The Special Rapporteur can issue assessments on media legislation, policy, and practice; undertake missions to countries of concern; and make public statements on violations of the right to free expression and access to information.

# African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights is established by the **Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights**. The Court, based in Arusha, Tanzania, complements the functions of the African Commission on Human and Peoples' Rights and has jurisdiction to deal with all cases and disputes submitted to it regarding the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the concerned States (See also [resource by Amnesty International](#)).

The Court also has an advisory function by which it may, at the request of a member state of the African Union, any of the organs of the African Union, or any African organization recognized by the African Union, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments.

## 34

Thirty-four African states have ratified the Protocol. According to Article 34(6), states that have done so should then make a declaration accepting the competence of the Court to receive cases directly from individuals and NGOs.

## 8/34

As of July 2023, only eight of the 34 countries have deposited a declaration allowing NGOs and individuals to bring cases directly before the Court.

These eight countries are Burkina Faso, The Gambia, Ghana, Guinea-Bissau, Mali, Malawi, Niger and Tunisia. In the other 26 states, individuals or NGOs would first need to submit an application to the African Commission, which may decide to refer the state to the Court.





## 04 • ADDITIONAL REGIONAL PROTOCOLS, DECLARATIONS, COMMITMENTS

### Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019)

*Soft law establishing the principles for the rights to freedom of expression and access to information in conformity with Article 9 of the African Charter*

The 2019 declaration, which replaces the Declaration of Principles on Freedom of Expression (2002), reconfirms the African Charter's provisions on ensuring press freedom and protection of journalists and includes principles on access to information, including to information online.

Key provisions related to press freedom



**Sets principles on:**

- ▶ Freedom of expression including safety of journalists and other media practitioners, self-regulation and co-regulation and protection of sources and other journalistic materials
- ▶ Right of access to information including maximum disclosure, proactive disclosure and the duty to create, keep, organise and maintain information
- ▶ Freedom of expression and access to information on the internet including access to the internet, privacy and the protection of personal information



## African Declaration on Internet Rights and Freedoms (2014)

*A civil society-led initiative to promote human rights standards and principles for a free and open internet in Africa.*



Key principles include:

- **Principle 3:**  
Everyone has the right to hold opinions without interference.
- **Principle 11:**  
Everyone has the right to due process in relation to any legal claims or violations of the law regarding the Internet.

## Model Law on Access to Information for Africa (2013)

*A model framework for access to information laws in Africa*

The right to information is guaranteed in accordance with the following principles:

- Every person has the right to access information of public bodies and relevant private bodies expeditiously and
- Every person has the right to access information of private bodies that may assist in the exercise or protection of any right expeditiously and inexpensively.

## African Union Convention on Preventing and Combating Corruption

*Acknowledges that access to information is critical to fighting corruption.*

### ➤ **Article 9**

Each state shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.

### ➤ **Article 12 (2)**

State parties shall undertake to create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.

## The African Charter on Democracy, Elections and Governance (2012)

*The African Union's principal binding treaty that sets standards to "deepen and consolidate the rule of law, peace, security and development" across the African Union.*

*Freedom of the press and access to information are explicitly referenced as fundamental human rights and essential components of credible elections and accountable democracies.*

### ➤ **Article 2(10)**

The objectives of this Charter are to:  
Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs

### ➤ **Article 27(8)**

In order to advance political, economic and social governance, states shall commit themselves to:  
Promoting freedom of expression, in particular freedom of the press and fostering a professional media.

## Guidelines on Access to Information and Elections in Africa (2017)

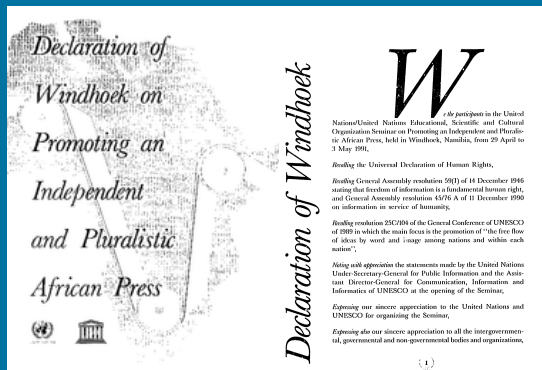
*These guidelines were adopted at the 61st Ordinary Session of the African Commission to provide direction on access to information in the electoral process as a means of strengthening democratic governance in Africa.*

- Proactive disclosure by various stakeholders including election management bodies, law enforcement authorities and political parties
- Protection of whistleblowers from administrative, social, legal or employment related sanctions
- The duty to create, keep and maintain information

## The Windhoek Declaration (1991)

*This is a statement of principles on press freedom by African journalists, editors and media professionals.*

The declaration is founded on the principle that the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.



## African Union Convention on Cybersecurity and Personal Data Protection (2014)

*Sets out principles for the establishment of a credible digital space for electronic transactions, personal data protection, and combating cybercrime.*



### ➤ **Article 8**

Each state party shall commit itself to the establishment of a legal framework aimed at strengthening fundamental rights and public freedoms and punishing any violation of privacy without prejudice to the principle of the free flow of personal data

### ➤ **Articles 16 -19**

The rights of data subjects shall include the right to information, right to access, right to object and the right of rectification or erasure

### ➤ **Article 25(3)**

In adopting legal measures in the area of cyber security and establishing the framework for its implementation, states shall ensure that such measures will not infringe on the rights of citizens guaranteed under the National Constitution and internal laws and protected by international conventions.

## Resolution on the Protection of Women Against Digital Violence in Africa (2022)

- Resolution calls on states to undertake measures to safeguard women journalists from digital violence including gender-sensitive media literacy and digital security training

States are also called on to repeal vague and overly wide laws on surveillance as they contribute to the existing vulnerability of female journalists



## 05 • SUBREGIONAL PROTECTIONS FOR PRESS FREEDOM AND THE SAFETY OF JOURNALISTS

The African Union has eight Regional Economic Communities (RECs), which are subregional groupings of African states that support the economic integration and development of the African continent.

In recent years, some RECs have assumed a greater role in the protection of human rights and have amended the mandates of their community courts and tribunals to adjudicate claims of human rights violations.

- **COMESA: The Common Market for Eastern and Southern Africa**
- **EAC: East African Community**
- **ECOWAS: Economic Community of West African States**
- **SADC: Southern African Development Community**

## COMESA: The Common Market for Eastern and Southern Africa

Geographical scope	Key provisions pertaining to press freedom	Court, competencies
<p>Made up of 21 countries in Southern and East Africa</p> <p>Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe</p>	<p>The COMESA Treaty commits to protecting human rights as established in the African Charter on Human and Peoples' Rights</p> <p>Article 6(e) of the COMESA Treaty requires states to: recognize, promote and protect human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights</p>	<p>Cases may be filed by member states, the Secretary-General, and legal and natural persons, which allows individuals to pursue human rights cases. According to Article 26 of the COMESA Treaty, residents in a member state may approach the Court to determine the legality of any act, regulation, directive, or decision of the Council or of a member state on the grounds of an infringement of the COMESA Treaty. Before referring a matter to the Court, local remedies in the national courts or tribunals of the member state concerned must be exhausted</p>



## EAC: East African Community

Geographical scope	Key provisions pertaining to press freedom	Court, competencies
<p>Made up of 6 countries in East Africa</p> <ul style="list-style-type: none"> <li>● Kenya</li> <li>● Uganda</li> <li>● Rwanda</li> <li>● Tanzania</li> <li>● Burundi</li> <li>● South Sudan</li> </ul>	<p>The treaty establishing the East African Community commits to protecting human rights as provided for in the African Charter on Human and Peoples' Rights</p> <p>Article 6(d) of the EAC states: "The fundamental principles that shall govern the achievement of the objectives of the community by Partner States shall include: d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with provisions of the African Charter on Human and People's Rights"</p>	<p>The East African Court of Justice hears and rules on cases related to human rights, including freedom of expression</p> <p>For example, the East African Court of Justice declared several sections of the Tanzania Media Services Act, 2016 to be in violation of the EAC Treaty for infringing on freedom of expression</p>



**East African Community**

One People, One Destiny

# ECOWAS: Economic Community of West African States

Geographical scope	Key provisions pertaining to press freedom	Court, competencies
<p>Made up of 15 countries in West Africa</p> <ul style="list-style-type: none"> <li>● Benin</li> <li>● Burkina Faso</li> <li>● Cabo Verde</li> <li>● Côte d'Ivoire</li> <li>● Gambia</li> <li>● Ghana</li> <li>● Guinea</li> <li>● Guinea Bissau</li> <li>● Liberia</li> <li>● Mali</li> <li>● Niger</li> <li>● Nigeria</li> <li>● Senegal</li> <li>● Sierra Leone</li> <li>● Togo</li> </ul>	<p>The Treaty of ECOWAS makes specific provisions on media freedom and access to information by journalists</p> <p>Article 66 of ECOWAS:</p> <p>Member States agree to:</p> <p>(a) to maintain within their borders, and between one another, freedom of access for professionals of the communication industry and for information sources;</p> <p>(b) to facilitate exchange of information between their press organs; to promote and foster effective dissemination of information within the Community;</p> <p>(c) to ensure respect for the rights of journalists;</p> <p>(d) to take measures to encourage investment capital, both public and private, in the communication industries in Member States</p>	<p>The Community Court of Justice of the Economic Community of West African States has made numerous determinations on freedom of expression in the region</p> <p>See case law section</p> <div data-bbox="851 1228 1079 1446" style="text-align: right;"> </div>



# SADC: Southern African Development Community

Geographical scope	Key provisions pertaining to press freedom	Court, competencies
<p>Made up of 16 countries in Southern Africa</p> <ul style="list-style-type: none"> <li>● Angola</li> <li>● Botswana</li> <li>● Comoros</li> <li>● Dem. Rep. of Congo</li> <li>● Eswatini</li> <li>● Lesotho</li> <li>● Madagascar</li> <li>● Malawi</li> <li>● Mauritius</li> <li>● Mozambique</li> <li>● Namibia</li> <li>● Seychelles</li> <li>● South Africa</li> <li>● Tanzania</li> <li>● Zambia</li> <li>● Zimbabwe</li> </ul>	<p>The SADC Protocol on Culture, Information and Sport has provisions on freedom of expression and the media.</p> <p>Article 19 of the Protocol on Culture, Information and Sport states: State Parties agree to cooperate in improving the free flow of information within the Region.</p> <p>Article 20 on Freedom of the Media states: State Parties shall take necessary measures to ensure the development of media that are editorially independent and conscious of their obligations to the public and greater society</p>	<p>The SADC Tribunal was disbanded in 2012</p>



**SOUTHERN AFRICAN  
DEVELOPMENT COMMUNITY**  
TOWARDS A COMMON FUTURE



## 06 • KEY CASE LAW

Important decisions have been handed down by the African Court, the African Commission and the subregional courts. These decisions further specify AU Member states' obligations regarding freedom of the press and safety of journalists.



This snapshot of key case law is drawn from: "Press freedom in Africa: How can States achieve compliance with standards set by the African courts and African Union, online and offline," Nani Jansen Reventlow (2016), 4 November 2016, Columbia Law School, New York. Some key resources are also available from [Global Freedom of Expression, Columbia University](#).

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## Attacks and crimes against journalists

### **Nobert Zongo v. Burkina Faso (African Court, 2011)**

The African Court highlighted that a State's failure to investigate, prosecute and convict those responsible for the murder of a journalist inhibits other journalists' freedom of expression. This is because it invokes fear in members of the media, hinders confidence in government institutions and paralyzes the free flow of information.

# Criminal defamation

## **Agnes Uwimana-Nkusi and Saiditi Mukakibibi v. Rwanda (ACHPR, 2014)**

These journalists had been sentenced following the publication of three articles critical of the Rwanda government's shortcomings, alleged corruption among high-ranking officials, and ethnic division occurring at the time. The African Commission held that criminal defamation laws impose a disproportionate and unnecessary burden on journalists, preventing them from exercising their careers without censorship.

## **Lohé Issa Konaté v. Burkina Faso (African Court, 2014)**

The African Court decided that imprisonment for defamation is not an acceptable penalty and that penalties for exercising the right to free speech should be proportionate. The court also highlighted that laws that criminalize and stipulate prison sentences for defamation and insults are in violation of the right to freedom of expression as protected by the African Charter.

## **Deyda Hydera Jr. and Others v. The Gambia (ECOWAS CoJ, 2014)**

The ECOWAS court held that the offenses of sedition, false news and criminal defamation in The Gambia Criminal Code violated the right to freedom of expression under international law as they had "a chilling effect that may unduly restrict the exercise of freedom of expression of journalists". The court ordered The Gambia to amend its laws to bring them into conformity with international law.

## Freedom of the press, content regulation and indirect censorship

### Open Society Initiative v. Cameroon (ACHPR, 2019)

This case dealt with the state monopoly, lack of fair procedures and lack of independence of the authority responsible for issuing broadcasting licences. The African Commission held that authorities responsible for issuing broadcasting licenses should be independent from political interference.

### Scanlen and Holderness v. Zimbabwe (ACHPR, 2009)

The case challenged provisions of the Zimbabwe Access to Information and Protection of Personal Information Act on the accreditation of journalists. The African Commission held that registration procedures are not in themselves a violation of the right to freedom of expression, provided they are purely technical and administrative in nature and do not involve prohibitive fees or impose onerous conditions.

## Legitimate limitations to freedom of expression

### Liesbeth Zegveld v. Eritrea (ACHPR, 2003)

This case concerned 11 former government officials who were openly critical of the government and were illegally detained; no charges were properly brought against them and the officials had not been presented before the court. The African Commission found that the government had interfered with their right to freedom of expression. In addition, the Commission that any law restricting the right to freedom of expression must conform to the Charter and other relevant human rights standards and that unlike other international instruments, the Charter does not allow derogations in emergencies or exceptional circumstances. The Commission also highlighted that restrictions to freedom of expression “have to be provided by the law” as stated in Principle 2 of the Declaration of Principles in Freedom of Expression in Africa and even if individuals express their opinions in infringement of national legal restrictions, due process and fair trials must still be exhausted.

## Political speech and relationship between freedom of expression and right to receive information

### Egyptian Initiative for Personal Rights v. Egypt (ACHPR, 2013)

This case related to protests that occurred in 2005 resulting in the assault of people by riot police. It was concluded that these people were targeted because of their female gender, profession as journalists, and their political opinions. The African Commission decided that Government officials and political leaders are often required to tolerate a higher degree of criticism given their capacity as public figures. The Commission also took into account that the victims were journalists, who attended the demonstration to disseminate their views on the constitutional amendments and record the event, and hence by facilitating their assault, the State infringed their right to freedom of expression. Further, the Commission also emphasized that this act also violated the public's right to receive valuable information.

### Media Rights Agenda v Nigeria (ACHPR, 2000)

The case concerned the unlawful incarceration of a journalist on allegations of being involved in a coup.

The Commission found that the journalist had been targeted for his publications and hence his right to freedom of expression had been violated.