

Freedom of expression

The African Commission has held that freedom of expression is “a basic human right, vital to an individual’s personal development and political consciousness, and to his participation in the conduct of public affairs in his country”.¹⁴⁹ Individuals cannot participate fully and fairly in the functioning of societies, if they must live in fear of being persecuted by state authorities for exercising their right to freedom of expression. The state must be required to uphold, protect and guarantee this right if it wants to engage in an honest and sincere commitment to democracy and good governance. For this reason, the right of freedom of expression must be reviewed when looking at human security and human rights by NEPAD member states.

The specific commitment to guaranteeing freedom of expression is article 9(2) of the African Charter which states that “[e]very individual shall have the right to express and disseminate his opinions within the law.” The general commitments include the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, which states that members agree to ensure “responsible” freedom of expression, including freedom of the press. The Grand Bay and Kigali Declarations call for a free and independent press in member states. The CSSDCA Solemn Declaration specifically mentions the rights to freedom of expression and assembly, when calling for the promotion and protection of human rights. The CSSDCA Memorandum of Understanding calls for adherence to the “fundamental tenets of a plural democratic society”, including a free press and freedom of expression and assembly.

In 2002, the African Commission adopted a Declaration on Principles of Freedom of Expression, which allows for significant interpretation of article 9 of the African Charter. The Declaration sets out state obligations in

149 Communication 140/94, 141/94, 145/94 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda/Nigeria, 13th annual activity report of the OAU, 1999–2000, para. 36.

150 Declaration on Principles of Freedom of Expression in Africa, African Commission on Human and Peoples Rights, 2002, para. III.

respect of this right.¹⁵⁰ It elaborates on the right to information,¹⁵¹ as well as issues pertaining to private and public broadcasting and print media.¹⁵² The Declaration also sets out standards for libel and defamation and other criminal measures.¹⁵³

The indicators used in reviewing the countries in this study were as follows:

- Do the countries under review have a free and independent press as stipulated under paragraphs 21 and 29 of the Grand Bay and Kigali Declarations respectively, and paragraph 15 of the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance?
- Does any national legislation restrict the right to freedom of expression?
- Is there media repression in the country?
- Are individuals, primarily those most vocal against the state (i.e. politicians, journalists and activists), free to express opinions, disseminate information and carry out their work without fear of state reprisals?
- How does the state react to political demonstrations, marches and protests?

Among the countries under review, the governments of Algeria and Ethiopia are the most repressive when it comes to freedom of expression. Nigeria, Kenya and Uganda have made improvements, but continue to have problems in this area. In Ghana, South African and Senegal, there is very little government interference with this right.

5.1 Free and independent press

If taken at face value, all of the countries under review, with the exception of Algeria and Ethiopia, guarantee a free and independent press. In Algeria, all radio and television are government-

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¹⁵¹ *Ibid*, para. IV.

¹⁵² *Ibid*, paras. V, VI and VII.

¹⁵³ *Ibid*, paras. XII and XIII.

owned. There are approximately 40 independent newspapers in Algeria, but each has to rely on the government for printing presses and newsprint. The government also owns the advertising company that decides which newspapers will receive advertisements from state-owned companies.

In Ethiopia, the government controls all radio and broadcast media and there are no independent radio stations. There is only one television station that is government-owned and which puts tight controls on the news.

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Governments did not restrict internet access in any of the countries under review. However, in Ethiopia, the government is the only internet service provider which could create cause for concern. In Nigeria, the Nigerian Communications Commission has complete discretion to grant or deny licences. Section 12(2) of Decree no 75 of 1992 states that the Commission can “defer consideration of any application for as long as it deems fit”.

5.2 National legislation

The African Commission has stated that derogations are not permitted under this provision, “no matter what the subject of the information or opinions and no matter the political situation of the country.”¹⁵⁴ While all of the countries under review guarantee the right to freedom of expression in their constitutions, many of the states under review, notably Algeria, Ethiopia and Kenya, have imposed laws which greatly infringe on the right to freedom of expression.

In particular, states have criminally sanctioned journalists who are critical of the government and its officials, often using libel and defamation laws to punish them. The Declaration of Principles on Freedom of Expression states that persons will not be found liable “for true statements, opinions, or statements regarding public figures”, and that public figures must tolerate a greater degree of criticism. To avoid

¹⁵⁴ Communication 140/94, 141/94, 145/95, Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda/Nigeria, 13th annual OAU activity report, 1999–2000, para. 38.

punishing journalists, specifically for their criticism of government and its members, many states cloak what really amounts to unjust defamation laws, into national security arguments.

The 1992 state of emergency in Algeria, which is still in effect, gives the government broad powers. The law states that freedom of expression must respect “individual dignity, the imperatives of foreign policy, and national defence”. Under the state of emergency, the state can take action where there is considered to be a threat to the state or to public order. This often takes its form in the curtailment of the right to freedom of expression. Despite article 39 of the Algerian Constitution providing individuals with both freedom of expression and association, the government reserves the right to fine media outlets said to be insulting to the state and to restrict public meetings. Article 296 of the Penal Code defines defamation as “any allegation or imputation likely to be prejudicial to the honour of an individual or a body”. While article 297 of the same code defines insult as “any offensive expression, term of contempt or invective”.¹⁵⁵ In 2001, the government refined its Penal Code, article 44, strengthening punishment for persons using expressions considered to be “offensive, insulting or defamatory” to the president. Harsh fines and imprisonment also apply to persons who defame the parliament, or one of its two houses, the National Popular Army, and “any other institution or constituent body”. These laws clearly surpass the limitations that the African Commission would find acceptable in its interpretations of article 9.

Ethiopian constitutional law guarantees freedom of expression, including freedom of the press. However, penal law punishes those publishing false information, inciting ethnic hatred, libel, as well as writing anything deemed offensive to public morality. There have been incidences of reporters or publishers being arrested and charged with violating article 10 of the 1992 Press Law for printing “offensive” or “false” information that could have “negative effects” on society. Article 15(3) of the Press Law gives prosecutors the authority to ban any “illegal press product”, although there is no clear definition of what is to be deemed illegal.¹⁵⁶ The penal code does, however, state clearly that defamation is a

¹⁵⁵ Periodic state report of Algeria to the ICCPR Committee, 1998, para. 165.

¹⁵⁶ Art. 19, Ethiopia, 2000.

criminal offence. Article 480 of the penal code prohibits “false rumours and incitements in breach of the peace”, and articles 256 and 278 provide for the offences criticising the government, national emblems, and inter-state institutions. A 1999 proclamation on broadcasting services sets out many sanctions for breaches of its provisions on content restrictions.¹⁵⁷ Content restrictions are so wide-ranging that they generally prohibit anyone from broadcasting programmes which may be seen to be controversial. Sanctions include license revocation or suspension and imprisonment for minor infractions, such as prohibited advertisement or forgetting to announce the name of the station or producer at the beginning and end of each programme. A draft press law would give the government more authority to censor the press and sanction dissidents.¹⁵⁸ In order to obtain publishing licenses, newspapers are required to show a bank balance of US \$1,500 with the Ministry of Information during their annual registration. In addition, proof of permanent residency is required, an obligation that is not stipulated for other businesses. Police could also shut down printing presses, without a court order.

In Kenya, libel laws are used to attack publications that are critical of actions taken by government officials. Under these same libel laws and related legislation, vendors selling these publications can also be found liable.

5.3 Media repression

In Algeria, at least six different prosecutions occurred in 2002 under the harsh 2001 penal law, including the prosecution of the editors of three large independent newspapers.¹⁵⁹ Journalists are subject to threats, harassment and violence by the police.

In Ethiopia, journalists continue to undergo harassment, threats, detention or arrest by state authorities. The penal laws are often used to arrest journalists accused of writing articles deemed offensive or defamatory towards public officials or any government body. According to

¹⁵⁷ Art. 19, Ethiopia, 2000.

¹⁵⁸ Overview of human rights – Ethiopia, *op cit*, 2004,

¹⁵⁹ Country reports on human rights practices – Algeria, *op cit*, 2003.

the Ethiopian Free Press Journalists Association, approximately 35 journalists were awaiting trial at the end of 2003.

In Kenya, harassment and arrests of members of the media continue under the new administration, albeit on a smaller scale than occurred under Arap Moi's regime. A penal code provision, criminalising the publication of information that is likely to cause fear or alarm, is used in selective prosecutions against journalists. Furthermore, a controversial media bill was passed in May 2002, which doubled the price of the bond publishers are required to purchase before printing any materials. The bill requires publishers to deposit copies of their material with a registrar two weeks before expected distribution. There is a penalty of the equivalent of US \$256 for those who sold, or distributed, any materials that are not registered or bonded. Public debate on political issues in Kenya is restricted by a constitutional provision and by a ruling of the Speaker of the House against parliamentary debate on aspects of presidential conduct.

In Uganda, journalists have been harassed, threatened, arrested and detained by police. The government has cited national security arguments to suppress news related to its ongoing battle with the LRA. In particular, the government suppresses news related to the LRA killings of government forces.

In Nigeria and Senegal, there have been reports of journalists being harassed and assaulted by police because of criticism of the government.

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5.4 Suppression of political protests, demonstrations and marches

Freedom of assembly, addressed in article 11 of the African Charter, is a manifestation of one's right to express and impart one's views within a

group setting, and is thus closely tied to freedom of expression. However, the use of “claw back clauses” in article 11 provide for limitations on the right to freedom of assembly. The article states that the right will be subject to “necessary restrictions provided for by law, in particular those enacted in the interest of national security, [that is] the safety, health, ethics and rights and freedoms of others”. Yet, while many of the states might impose restrictions which seem to fit into one of these limitations, there have to be curbs on these restrictions or this right would be illusory.

The countries under review with the harshest practices as regards to the suppression of protests, demonstrations and marches are Algeria, Ethiopia, Uganda and Nigeria.

In Algeria, a 2001 decree prohibits demonstrations in the capital of Algiers. While demonstrations, marches and protests have been allowed in other parts of the country, it has been reported that state authorities use excessive force and violence to disperse demonstrators.

In Ethiopia, more than 200 peaceful protestors were killed by police in 2002.¹⁶⁰ Student demonstrations have also been heavily repressed. Because of government repression, students now resist engaging in any sort of politically related activity on university campuses. In 2003, the student newspaper, as well as the student union, were banned. Teachers are repressed in their academic work and in their lectures.

In Nigeria, state authorities have been very harsh against demonstrators. The law allows authorities to ban gatherings where the political, ethnic or religious content might lead to unrest. Authorities often use these provisions to stop gatherings. Excessive force and the deaths of protestors have also been reported. For example, during public protests in 2003, against the rising prices of fuel, police shot dead up to 20 protestors.¹⁶¹

In Uganda, activities that interfere with the Movement system are prohibited. Opposition groups are often denied permission to hold public meetings. When opposition groups do hold meetings or events, police often disrupt or disperse them.

In Kenya, organisers of public meetings must give advance notice to

160 Amnesty International report 2003 – Ethiopia, *op cit*.

161 Overview of human rights issues in Nigeria, *op cit*.

local police about planned gatherings. Nevertheless, police have arrested individuals and dispersed events for which prior permission had been obtained. Reports have cited the use of excessive force by state authorities to disperse strikes and demonstrations.

Ghana, Senegal and South Africa show more tolerance for public gatherings and events. Ghana has imposed a ban on university campus demonstrations, but this ban has never been enforced.

5.5 Political parties, non-governmental organisations and other groups

Similar to freedom of assembly, freedom of association, which is guaranteed in article 10 of the African Charter, can be seen as a demonstration of one's opinions through the group or association with which one affiliates oneself. If democratic principles are to be upheld and respected, political parties and civil society must be able to function, particularly to express its views without fear of government restriction and reprisal. While they guarantee freedom of association in their constitutions, some of the countries under review, particularly Algeria, Ethiopia, Uganda, and Nigeria, use very harsh tactics to repress the work of political parties, non-governmental organisations and other civil society groups.

Under Algeria's 1992 Emergency Law, all political parties must obtain approval from the Ministry of the Interior, before they can be established. The same Ministry reserves the right to grant licenses to non-governmental organisations, or to dissolve those deemed to be a threat to state security or public order. Individuals and groups are required to obtain government permits to hold gatherings. While permits are most often granted for indoor events, they are rarely granted to hold outdoor events.

In Ethiopia, the Ethiopian Teachers Association (ETA), which has been critical of the government's education policies, has been the subject of repressive government practices. Many of the union's members and leaders have been arrested and, on occasion, the association's property and bank accounts have been confiscated. In 1997, the ETA leader was

assassinated and shortly thereafter, the government created a new association with the same name, forbidding teachers to associate with the first old union. Hundreds of teachers have been arrested, fired or threatened as a result of being critical of the government. The government also has a reputation for imposing restrictions upon and shutting down non-governmental organisations that are not subordinate to government agencies and government-sponsored programmes. In 2001, the founder of the Ethiopian Human Rights Council and a fellow activist were arrested on the grounds that they incited student protests. The government searched their houses, seized documents and closed the human rights council office. In 2001, 27 members of the Human Rights League were acquitted after being arrested in 1997 on charges of supporting the Oromo Liberation Front. Ultimately, the League was shut down and its members silenced. Monitoring groups that have become inactive due to government harassment include the Ogaden Human Rights Committee, the Solidarity Committee for Ethiopian Political Prisoners, and the Oromo Ex-Prisoners for Human Rights.

In Nigeria, while most group affiliations are respected, government authorities continue to harass members of the Movement for the Actualisation of the Sovereign State of Biafra (MASSAB) and Movement for the Survival of the Ogoni People (MOSOP). In March 2003, seven MASSAB members were killed by anti-riot police during a MASSAB meeting.¹⁶²

In Uganda, the Uganda Law Council prohibits lawyers from participating in radio talk shows, or from making any public statement on legal matters, without prior permission from the Council. Under a 1977 Council regulation, the Council has stated that disciplinary action would be taken against lawyers who violate this provision. In practice, lawyers continue to speak publicly on legal matters; however, the Council's potential powers should be cause for concern.

In Ghana, Kenya, South Africa and Senegal, freedom of association is respected. However, one can speculate that the Suppression of Terrorism Bill in Kenya will have negative repercussions on the exercise of this right.

¹⁶² Country reports on human rights practices – Nigeria, *op cit*, 2004.

5.6 Conclusion

Freedom of expression is considered to be a fundamental right in a society that adheres to democratic principles. Of greatest concern, after conducting this review, is the suppression of peaceful demonstrations, marches and protests. Also of concern is the persecution that journalists undergo, as well as the self-censorship that journalists impose on their own work as a way of avoiding arrest, harassment or threats from governments. Freedom of expression, assembly and association seem to be the freedoms that governments limit most, and where arguments of national and public security are most often used to infringe on those rights. States need to reduce restrictions on these rights and to understand that criticism of government is normal, acceptable and a part of the functioning of a democratic society.

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