

PANEL III: JUDICIAL AND NATIONAL COOPERATION TO IMPROVE STANDARDS OF PROTECTION, PREVENTION AND PROSECUTION IN CASES RELATING TO JOURNALISTS AND FREEDOM OF EXPRESSION: CASE STUDIES AND LESSONS FROM THE AFRICAN PERSPECTIVE

PRESENTED BY MAUREEN KONDOWE (MRS.)

Vice President for Southern Africa for Pan African Lawyers Union (PALU)

Senior Partner, Konsewa Law Consulting

Former Honorary Secretary of the Malawi Law Society

Former Vice President of the Malawi Law Society

Former Executive Committee Member of the SADC Lawyers Association

maureenkondowe@yahoo.com

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1. INTRODUCTION

This presentation deals with the following issues, namely:

- (a) It outlines the African instruments that are most relevant and applicable to freedom of expression and attacks on journalists on the African continent. Some constitutions such as those of Malawi and Kenya for example expressly provide for freedom of expression.
- (b) It asks whether or not there are any human rights violations that have been committed against journalists on the African continent and discusses their nature.
- (c) It discusses how some allegations of the violation of journalists' human rights have been dealt with in some selected jurisdictions on the African continent.
- (d) It finally speaks to judicial and national cooperation matters that relate to the key issues that this presentation is intended to deal with.

2. RELEVANT AFRICAN INSTRUMENTS ON FREEDOM OF EXPRESSION

2.1 African Commission on Human and Peoples' Rights Instruments

- 2.1.1 Resolution on the Adoption of a Declaration on Freedom of Expression
- 2.1.2 Declaration of Principles on Freedom of Expression in Africa (23 October 2002, Banjul)

Article XI of this Declaration provides for attacks on media practitioners. These attacks include murder, kidnapping, intimidation, and material destruction of communication facilities. It is categorically stated that these attacks undermine independent journalism, freedom of expression and the free flow of information to the public. States are obliged to take effective measures to investigate such attacks, punish their perpetrators and ensure that victims get effective remedies.

2.2 African Charter on Human and Peoples' Rights ("the Charter")

Article 9(1) guarantees the right to receive information

Article 9(2) guarantees the right to express oneself and disseminate one's opinion within the law.

Article 26 provides for the duty of Member States to the Charter to establish and strengthen national institutions that promote and protect these rights. The independence of the judiciary is also included here.

3. NATURE OF SOME HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST JOURNALISTS IN SOME AFRICAN JURISDICTIONS

3.1. Violation of the Right to Life

(a) **Application No. 013/2011: Claimants of Late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Blaise Lloboudo, Ernest Zongo**

and the Burkinabe Human and Peoples' Rights Movement v. Burkina Faso (accessible on <http://www.african-court.org>).

This matter arose out of the alleged assassination of Norbert Zongo, an investigating journalist and director of a weekly newspaper called *l'Independant* and his three companions on December 13, 1998. It was alleged that their burnt corpses were found in a car in which they had been travelling a few kilometers from a place called Sapouy, on the road to Leo in Southern Burkina Faso.

In their application to the court the Applicants alleged the violation of article 9 of the Charter by Burkina Faso among others. Burkina Faso refuted the Applicants' allegations arguing instead that the Applicants had come to the African Court ("the African Court") on Human and Peoples' Rights without first of all exhausting domestic remedies. They argued that the matter had been given considerable media coverage within the judiciary of Burkina Faso, it had been investigated and witnesses had been heard.

In its ruling the African Court held that Burkina Faso had failed in its obligation to take measures, other than legislative ones, to ensure that the rights of the Applicants to have their case heard by competent national courts were respected. Burkina Faso was held to have violated article 9(2) of the Charter as read with article 66(2) of the Revised Economic Community of West African States ("ECOWAS") Treaty due to its failure to have acted with due diligence in seeking, trying and judging those who had assassinated Norbert Zongo and his companions.

The court's decision on the issue of reparations was deferred for argument. The Applicants and Burkina Faso were directed to draft and present their arguments on this outstanding issue.

(b) Case No. ECW/CCJ/APP/30/11 ***Deyda Hydara Jr., Ismaila Hydara and International Federation of Journalists (Africa Chapter) v. Republic of the Gambia*** (accessible on <http://www.foroyaa.gm>)

This case is mainly concerned with the continued failure by the state authorities of the Gambia to conduct an effective investigation into the killing of Deyda Hydara in Banjul on December 16, 2004 in violation of his right to life, freedom of expression and press freedom as guaranteed by articles 1, 4 and 9 of the Charter and article 66 of the Revised ECOWAS Treaty. The Plaintiffs argued that the Defendant had failed to conduct a thorough, rigorous and independent investigation into the violent death of Deyda Hydara so as to ascertain its circumstances, identify and punish its intellectual and material perpetrators. The Plaintiffs further argued that the Defendant had contributed to this death because it tolerated attacks on journalists and caused a climate of impunity to prevail in the country due to its systematic failure to condemn such attacks, effectively investigate them and secure a conviction. The Plaintiffs finally argued that the death of Deyda Hydara was a violation of freedom of expression. The Defendant was alleged to have also failed to provide redress for this death.

The Plaintiffs sought a declaration that the failure by the Defendant to effectively investigate, and hold accountable those responsible for Deyda

Hydara's death was a violation of his right to life as guaranteed in articles 1 and 4 of the Charter. They also sought a declaration to the effect that the Defendant's failure to effectively investigate this death was a violation of the right to freedom of expression of the deceased and the press as guaranteed by article 9 of the Charter and article 66 of the Revised ECOWAS Treaty. The Plaintiffs sought general and special damages for pecuniary and non-pecuniary loss payable to them and other heirs of the deceased as compensation for the violation of the rights of the deceased to life and freedom of expression to be quantified at a later stage of the proceedings. The Plaintiffs finally sought costs of the proceedings from the Defendant.

In its defence the Defendant averred that it had carried out an effective and diligent investigation. It argued that the deceased had not made any material disclosure to it about any threats to his life let alone sought protection from it. The Defendant denied that it had contributed to the death of Deyda Hydara and argued further that it did not tolerate any culture or climate of impunity as the Plaintiffs alleged. It was further argued that those who killed the deceased were still at large and unknown.

Having considered these all arguments before it the ECOWAS Court of Justice the court stated that the right to life imposes an obligation on states to investigate all criminal acts and bring their perpetrators to book. It emphasized that a state neglects its obligation if it does not carry out an effective investigation into crimes that are committed on its territory. A state was also held to be in breach of treaty obligations if it failed to protect media practitioners including those that criticized the regime.

The court decided that the Plaintiffs had proved their allegations, granted them all reliefs and orders sought except that for special damages on the ground of want of proof. The Plaintiffs were awarded the sum of \$50, 000.00 as compensation for the prejudice they suffered as a result of the Defendant's failure to investigate the alleged assassination of Deyda Hydara. They were also awarded the sum of \$10, 000 in costs.

3.2 Violation of the Right to Liberty, Security of the Person and to a Fair Trial

(a) The case of Peter Greste, Mohamed Fahmy and Baher Fadel Mohamed (The Al Jazeera Three, Egypt) (as reported on <http://www.telegraph.co.uk>) These journalists were charged with and convicted for allegedly publishing false news that had an alleged damaging effect on the national security of Egypt, supporting a terrorist group called Muslim Brotherhood and working without a permit. There were some alleged flaws in the procedure that led to their arrests and inconsistencies between the charges preferred against them and the evidence tendered in court to prove them. It was alleged that the prosecution presented evidence that included videos of a trotting horse, and images retrieved from Al Jazeera hard drives that were in use before these three journalists came to work for the channel. These are some factors that make it clear that the right of these journalists to a fair trial was not respected by the court.

3.3 Violation of the Right to Freedom from Torture

Article 5 of the Charter prohibits torture. Some African countries that have been notorious for the torture of journalists include the following:

- (a) Somalia in the case of the Radio Shabelle owner Abdimalik Yusuf Mohamud, Sky FM director Mohamud Mohamed Dahir and Shabelle deputy news editor Ahmed Abdi Hassan as reported on <http://www.theeastafrican.co.ke>
- (b) Zimbabwe in the case of Ray Choto and Mark Chavunduka as reported on 22 January 1999 by the British Broadcasting Corporation accessible on <http://www.news.bbc.co.uk>
- (c) Egypt in the case of the Al Jazeera journalist Abdullah Elshamy who alleged following his release from prison that he had been tortured by the Egyptian authorities as reported on <http://www.middleeastmonitor.com>.

4. JUDICIAL AND NATIONAL COOPERATION TO IMPROVE STANDARDS OF PROTECTION, PREVENTION AND PROSECUTION

4.1 Judicial Cooperation between France and Ivory Coast in the Case of the Disappearance of Guy Andre Kieffer (as reported on <http://www.cpj.org>)

France opened a judicial inquiry into the disappearance of Guy Andre Kieffer in May 2004 after his wife filed a complaint in a Paris court. A French investigating judge, Patrick Ramael was tasked to carry out a judicial inquiry into this case. He travelled to Ibadjan to begin his probe and questioned Legre the brother-in-law of then Ivorian First Lady Simone Gbagbo and a regular source for Guy Andre Kieffer. Shortly after the launch of this judicial inquiry in France the Ivorian authorities began their own inquiry. They arrested Legre and charged him as an accessory in the kidnapping, confinement and although no remains were produced the murder of Guy Andre Kieffer. The French judge also charged Legre with complicity in the kidnap and confinement of Guy Andre Kieffer.

4.2 Protocol on the Safety and Protection of Journalists (Kenya)

This was launched on August 18, 2014 by the Media Council of Kenya and the Media Owners Association as reported on <http://www.protectioninternational.org>

Its main objectives are as follows:

- (a) To provide guidelines for the development of a training manual for the safety and protection of journalists.

(b) To influence public policy for the safety and protection of journalists.

The development of this protocol was motivated mainly by the inadequate investment in the safety and protection of journalists by media and non-media actors as well as the alleged high degree of impunity that alleged perpetrators of attacks on journalists enjoy.

4.3 Protocol on Judicial Cooperation (The Great Lakes Region) (dated December 1, 2006)

Through article 2 of this Protocol Member States have extended reciprocal judicial assistance to each other with respect to the extradition of fugitives or accused persons.

Article 3 of this Protocol makes any offence that is punishable by a term of imprisonment for six months in the domestic laws of the Member States extraditable. Political refugees are exempted from extradition.

Article 4(3) of this Protocol makes it clear that common law criminal offences such as grievous bodily harm, assassination, murder, poisoning or attempts to commit any of these crimes are not political offences for the purpose of providing immunity from extradition.

Article 5 of this Protocol states that with regard to an accused person extradition is granted if the commission of the concerned offence is such that the laws of the Member State in which the accused is found would justify their arrest or imprisonment as if the offence had been committed in the territory of such a Member State.

Through article 16(1) of the Protocol Member States assist each other by dealing with requests from competent authorities and apply necessary measure to facilitate procedures and formalities relating to investigation and prosecution of offences.

Through article 16(2) of the Protocol Member States cooperate in police investigations carried out in the territory of a Member State.

Through article 16(3) of the Protocol Member States render mutual legal assistance to each other in criminal investigations with a view to strengthening measures necessary to prevent, investigate and prosecute crimes.

5. CONCLUSION

In conclusion, it is clear that there is a lot of ongoing advocacy around the safety and protection of journalists on the African continent. Various attacks that journalists have suffered in some jurisdictions of the African continent in the course of their work and the impunity that the alleged and sometimes identifiable perpetrators of these alleged attacks enjoy have motivated this advocacy.

States are obliged and being called upon to investigate allegations of such attacks better, ensure that their alleged perpetrators are prosecuted and guarantee effective remedies to those who suffer such attacks or their consequences. Various judicial and national initiatives that are being used in this context on the African continent have been highlighted in this presentation.