
Lohé Issa Konaté

Petitioner,

v.

Republic of Burkina Faso

Respondent.

BRIEF OF *AMICI CURIAE* CENTRE FOR HUMAN RIGHTS;
COMMITTEE TO PROTECT JOURNALISTS; MEDIA INSTITUTE OF
SOUTHERN AFRICA; PAN AFRICAN HUMAN RIGHTS DEFENDERS
NETWORK; PAN AFRICAN LAWYERS UNION; PEN INTERNATIONAL
AND MALAWI PEN, PEN ALGERIA, PEN NIGERIA CENTRE, PEN
SIERRA LEONE, AND SOUTH AFRICA PEN CENTRE; SOUTHERN
AFRICA LITIGATION CENTRE; AND WORLD ASSOCIATION OF
NEWSPAPERS AND NEWS PUBLISHERS

Donald Deya and Simon Delaney

Counsels of Record

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I. INTRODUCTION

- 1) *Amici Curiae* non-governmental organisations are international, regional, and national organisations dedicated to advancing human rights, promoting safe legal and working environments for human rights defenders, protecting human rights defenders, safeguarding the freedoms of expression and the press, and the right to access of information. As advocates for these universally accepted rights, we have both an interest in the outcome of this case and specialized expertise in the questions of law before the African Court on Human and People's Rights (the Court). We respectfully submit this brief to bring our experience and expertise to bear on the question of whether, and if so in what limited circumstances, the criminalisation of defamation is compatible with the right to freedom of expression guaranteed under the African Charter on Human and Peoples' Rights (the Charter) and other international legal instruments to which Burkina Faso is party. *Amici* urge this Court to rule that imposing criminal sanctions for defamation, in particular when applied to insulate public officials from criticism, violates the right to freedom of expression and, as such, strike down these provisions of Burkina Faso domestic law.
- 2) The *amici* are as follows: Centre for Human Rights; Committee to Protect Journalists; Media Institute of Southern Africa; Pan African Human Rights Defenders Network; Pan African Lawyers Union; PEN International and the following national PEN centres: Malawi PEN, PEN Algeria, PEN Nigeria Centre, PEN Sierra Leone, and South Africa PEN Centre; Southern Africa Litigation Centre; World Association of Newspapers and News Publishers.¹

II. SUMMARY OF ARGUMENT

- 3) *Amici curiae* submit this brief in support of Petitioner Lohé Issa Konaté's (the Petitioner) request that this Court declare that Burkina Faso's laws on defamation and insult violate the right to freedom of expression as guaranteed by Article 9 of the African Charter on

¹ Please see Annex 1 for additional information about the *amici*.

Human and Peoples' Rights (African Charter). Burkina Faso's criminal defamation laws are a relic of colonialism and incompatible with an independent, democratic Africa because they violate a core civil and political right and restrict and deter debate on matters of public interest. In particular, these laws are in total discordance with the Africa Union (AU) Constitutive Act,² the Grand Bay (Mauritius) Declaration and Plan of Action,³ and the Kigali Declaration⁴ and incompatible with the vision of democratic Africa as stated in the African Charter on Democracy, Elections and Good Governance.

- 4) Although the government has the authority to impose certain limitations on freedom of expression, exercise of this authority must be strictly circumscribed. In order for state interference with the right to be legitimate, it must be "prescribed by law," pursue one or more legitimate state interests, and be "necessary in a democratic society" in order to achieve that legitimate aim(s). A key criterion for assessing whether or not a measure is "necessary in a democratic society" is whether or not it is proportionate to the interest to be protected. Criminalisation of the offence of defamation of the reputation of a public official is a disproportionate sanction to the State's interest in protecting the reputation of a public official and is therefore a violation of the freedom of expression. In addition to disproportionately penalising the alleged offender, criminalisation of the offence also has an impermissible chilling effect on public discourse regarding governance and other matters of public interest.

² Organisation of African Unity, Constitutive Act of the African Union, art. 3(g)-(h), *adopted on 11 July 2000* (the objectives of the African Union include to promote "democratic principles" and to "promote and protect human rights guaranteed by the African Charter on Human and Peoples Rights.")

³ Organisation of African Unity, Grand Bay (Mauritius) Declaration and Plan of Action, ¶ 8, *adopted on 16 April 1999* (recognizing that "violations of Human Rights in Africa are caused among others by . . . (m) lack of freedom of the press and association")

⁴ African Union, Kigali Declaration, ¶ 29, *adopted on 8 May 2003* ["Kigali Declaration"] (recognizing "the media as important vehicles for the realization of the right to information and, therefore, urg[ing] Member States to guarantee, through appropriate legislative and policy measures, a free and independent press.").

5) Further, the African Commission on Human and Peoples' Rights (The African Commission), which is this Court's complementary mandate holder under the African Charter on Human and Peoples' Rights, has recognized the serious abuses perpetrated under the colour of these laws and called for their repeal, concluding that criminal defamation laws are an affront to the right to freedom of expression. The African Commission's position is consistent with international jurisprudence and reflects the growing recognition that laws imposing criminal penalties for defaming or insulting public figures reflect the policy of governments aimed at stifling opposition and strictly controlling the public debate. Criminal defamation and insult laws not only violate Article 9 of the African Charter but impede the development of open societies and thriving democracies.

III. RELEVANT LAWS

A. National Laws

- 6) The Constitution of Burkina Faso was adopted on 2 June 1991 and promulgated on 11 June 1991. The Preamble, which is “an integral part” of the Constitution itself, states in part:

We, the Sovereign People of Burkina Faso, [...]

Subscribing to the Universal Declaration of Human Rights of 1948 and to the international treaties concerning economic, political, social and cultural issues;

Reaffirming solemnly our commitment *vis-à-vis* the African Charter on Human and Peoples' Rights of 1981;

- 7) Article 8 of the Constitution states:

The freedom of opinion, of the press and the right to information are guaranteed. Every person has the right to express and to disseminate his opinions within the order of the laws and regulations in force.

- 8) The Criminal Code of 1996 of Burkina Faso (*Code Pénal, Loi No. 043/96/ADP* of 13 November 1996) states in part:

Art. 178. When one or more magistrates, jurors or judges, in the course of exercising their duties or otherwise related to their work, are subject to any contempt by means of words, texts or drawings which were not made public, which tend, in those cases, to damage their honour or sensitivity, the person responsible will be punished by a sentence of imprisonment of six months to a year and by a fine between 150.000 and 1.500.000 francs.
[...]

Art. 181. In any case, the offender may be further sentenced to making reparations, either during the first hearing or by written order. The prison term shall only begin on the day that reparation is made. In case contempt has been committed publicly, the maximum sentence shall be applied.

Art. 361. Any allegation or imputation of a fact that impugns the honour or reputation of the person or entity against which the allegation or attribution is made constitutes defamation. [...]

- 9) The Information Law of 1993 of Burkina Faso (*Code de l'information, Loi No. 56/93/ADP* of 30 December 1993) states in part:

Art. 2. Information is transmitted through general or specific publication, by posters, by audio-visual means and by any other medium of mass communication.

Art. 18. No general or specific publication shall contain any image, story, information or inclusion which infringes upon the privacy of citizens, or is contrary to public morals, morality and civic ethics, or promote racism or tribalism.

Art. 89. The publication or dissemination, by the means listed in Article 2 above, of any information, photograph or film which is contrary to decency and morality, and any violation of Article 18 above, are punishable by penalties under the Criminal Code. [...]

Art. 104. Any use of the methods referred to in Article 2 above of a nature so as to jeopardize the armed forces, including the incitement to refusal of obedience shall, subject to Article 167 of the Constitution of 11 June 1991, be punished by imprisonment of one year to five years and a fine of 100,000 to 1,000,000 francs, without prejudice to the penalties provided by the laws punishing insults to the interests of national defence. This punishment shall apply equally to any incitement to disobedience of those who are subjected to the National Service.

Art. 105. Offense to the person of the Head of State or the head of government by the means referred to in Article 2 above shall be punished by imprisonment of six months to one year and a fine of 1,000,000 FCFA or one of these penalties only.

Art. 109. Any allegation or imputation of a fact which undermines the honour or consideration of the person or entity towards which the fact is directed constitutes defamation. The direct publication or reproduction of this allegation or imputation is punishable, even if it is made in tentative form or if the person or entity is not explicitly named, but the identification of that person or entity is made possible by the terminology used in speech, exclamation, threats, writing or publication. Any offensive expression, term of contempt or taunting language that does not contain an allegation of fact, constitutes an insult.

Art. 111. Defamation committed with the same means shall be punishable with the same sentence, due to their purpose or nature if directed towards one or more members of Parliament or government; one or more members of the Superior Council of the Judiciary; a civil servant with a temporary or permanent public mandate; a judge; a juror or a witness pursuant to his or her testimony.

Art. 113. An insult committed with the same means towards the entities or persons cited in articles 104 and 105 above shall be punishable with a sentence of imprisonment between six days and three months and a fine between 5.000 and 300.000 FCFA or with only one of these sentences.
[...]

An insult committed in the same way towards private persons, if not preceded by provocation, shall be punishable with a sentence of imprisonment between five days and two months and a fine between 5.000 and 300.000 FCFA or with only one of these sentences. The maximum period of imprisonment shall be six days and the maximum

amount of the fine 500.000 FCFA, if the insult is committed against persons that can be defined as a group by their origin, race, ethnicity, region of origin, religion or political party, and if the goal is to incite hatred between citizens and inhabitants.

B. International Law

- 10) Burkina Faso ratified the African Charter on Human and People's Rights ("African Charter") on 6 July 1984. The African Charter states in part:

Art. 1. The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

Art. 2. Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

Art. 9.

(1) Every individual shall have the right to receive information.

(2) Every individual shall have the right to express and disseminate his opinions within the law.

- 11) The International Covenant on Civil and Political Rights ("ICCPR"), was adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of December 16, 1966 and entered into force on March 23, 1976. Burkina Faso acceded to the instrument on 4 January 1999.

Art. 19.

1. Everyone shall have the right to hold opinions without interference.

2. 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.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.”

IV. ARGUMENT

A. Criminal penalties for defamation or insult to a public figure violate the right to freedom of expression under international law

- 12) Freedom of expression is enshrined in the Constitution of Burkina Faso as well as the international legal instruments to which it is a party (including the African Charter and ICCPR), and under which it has solemn and binding obligations. Under these treaties, restrictions on the right to freedom of expression must be prescribed by law, necessary to meet a legitimate state interest, and proportionate to meet that interest.⁵ Criminal

⁵ See, e.g., *Kim v. Republic of Korea*, U.N. Human Rights Comm’n, CCPR/C/64/D/574/1994, ¶ 12.2, 64th Sess. (4 Jan. 1999) (noting that “[a]ny restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19 (respect of the rights and reputation of others; protection of national security or of public order, or of public health or morals), and it must be necessary to achieve a legitimate purpose.”); see also *Media Rights Agenda v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/94, 152/96, 12th Afr. Comm’n H.P.R. AAR Annex V (1998-1999).

penalties are the most severe restriction that may be imposed by law and necessarily have a greater chilling effect than civil penalties. Consequently, Burkina Faso's criminal defamation and insult laws are a severely disproportionate response to the government's purported objective of protecting the reputations of others. These laws are especially disproportionate when applied to protect public officials from criticism on matters of public interest, such as potential governmental corruption or inefficiency.

1. Criminal penalties for defaming or insulting a public official are a disproportionate restriction on the right to freedom of expression.

- 13) Article 9 of the African Charter guarantees the right to express and disseminate one's opinion within the law and to receive information.⁶ In interpreting this Article, the African Commission has set a high standard for what constitutes legitimate state interference with the right to freedom of expression, particularly where the subject matter is an issue of public concern.⁷ The African Commission has adopted a stringent three-part test whereby limitations on the right to freedom of expression must be "founded in a legitimate state interest," be "strictly proportionate with and absolutely necessary for the advantages which are to be obtained," and "never have as a consequence that the right itself becomes illusory."⁸

⁶ See *supra*, Section III, Relevant Laws.

⁷ The African Commission has noted that while the grounds of limitation to freedom of expression are not expressly provided for by the African Charter, as they are in the other international and regional human rights treaties, "the phrase 'within the law' under Article 9(2) provides a leeway to cautiously fit in legitimate and justifiable individual, collective and national interests as grounds of limitation." *Kenneth Good v. Botswana*, Comm. Comm. No.313/05, ¶ 188, 28th ACHPR AAR Annex (Nov 2009 - May 2010). The African Commission has also held that the phrase "within the law" must be interpreted with reference to international norms. See *Malawi African Ass'n v. Mauritania*, Comm. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98, ¶ 102, 13th ACHPR AAR Annex V (1999-2000).

⁸ *Media Rights Agenda v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/94, 152/96, 12th Afr. Comm'n H.P.R. AAR Annex V (1998-1999)

- 14) Regarding defamation laws specifically, the African Commission has limited criminal penalties for defamation to the state interest in protection of security and public order. In *Media Rights Agenda and Others v Nigeria*, the African Commission made clear that “[i]t is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security” rather than “merely an insult towards [the government] or the Head of State.” The African Commission explained its decision in part by explaining that “[p]eople who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens, otherwise public debate may be stifled altogether.”⁹ More recently, the African Commission found that “[a] higher degree of tolerance is expected when it is a political speech and an even higher threshold is required when it is directed towards the government and government officials.”¹⁰
- 15) The African Commission reiterated this position in its 2002 Declaration of Principles on Freedom of Expression in Africa (“2002 Declaration”), where it again stated that “[a]ny restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.”¹¹ The Declaration went on to explain, *inter alia*, that “no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances,” “public figures shall be required to tolerate a greater degree of criticism,” and “sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.”¹² Because criminal sanction is the severest restriction

⁹ *Media Rights Agenda v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/94, 152/96, 12th Afr. Comm’n H.P.R. AAR Annex V (1998-1999).

¹⁰ *Kenneth Good v. Botswana*, Comm. No. 313/05, ¶ 198. 28th ACHPR AAR Annex (Nov 2009 - May 2010). In *Kenneth Good v. Botswana*, the Commission found that “the expulsion of a non-national legally resident in a country, for simply expressing their views, especially within the course of their profession, is a flagrant violation of Article 9(2) of the Charter.” *Id.*, ¶ 200.

¹¹ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa of 2002, ACHPR/Res.62 (XXXII) 02.

¹² African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa of 2002, ACHPR/Res.62 (XXXII) 02.

imposed upon forms of expression afforded the highest level of protection, it is a per se disproportionate restriction on the right.

- 16) Article 19 of the ICCPR, to which Burkina Faso is a party, also guarantees the right to freedom of expression.¹³ Similarly, the United Nations Human Rights Committee (HRC), which is charged with the interpretation and enforcement of the ICCPR, has emphasised that States should avoid “excessively punitive measures and penalties” for defamation, simultaneously urging states to consider the complete decriminalisation of defamation and noting that “imprisonment is never an appropriate penalty.”¹⁴ The HRC has also made clear that speech about public figures and political issues receives more protection than speech about private individuals.¹⁵
- 17) Applying these principles, criminal punishment for defamation cannot be considered a proportionate measure appropriate in a democratic society, particularly where the State’s sole interest is in protecting the reputation of a public official. *Amici* are aware of *no* international body that has upheld a prison sentence under these circumstances. To the contrary, international courts have recognised the threat to democracy by using criminal laws to chill reporting on matters of public interest, and have emphasised that, to the extent criminal punishment for defamation can ever be appropriate, it must be

¹³ See, *supra*, Section III, Relevant Laws.

¹⁴ U.N. Human Rights Comm., General Comment No. 34, Article 19: Freedoms of opinion and expression, ¶ 34, CCPR/C/GC/34 (21 July 2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (internal citations omitted) [hereinafter UNHRC, General Comment No. 34].

¹⁵ *Id.* (the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.); see *also* *Bodrozic v. Serbia and Montenegro*, U.N. Human Rights Comm’n, Comm. 1180/2003, ¶ 7.2, U.N. Doc. A/61/40, Vol. II, at 288 (HRC 2005), *available at* http://www.worldcourts.com/hrc/eng/decisions/2005.10.31_Bodrozic_v_Serbia_and_Montenegro.htm (“The Committee observes, moreover, that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high.”).

reserved for truly “exceptional” cases. Moreover, a growing international consensus, across Africa and the broader global community, flatly rejects criminal defamation as fundamentally inconsistent with the freedom of expression. For all of these reasons, this Court should make clear that Burkina Faso’s use of criminal defamation to punish a journalist for writing about a public official’s use of his office is disproportionate and inconsistent with the State’s international obligations.

2. Criminal defamation and libel laws have an impermissible chilling effect on the press

- 18) The international community has made clear that freedom of expression requires and encompasses the freedom of the press. Together they encompass the freedom to receive information and opinions and disseminate information and opinions. Exercise of and respect for these freedoms are essential to the ideals of democracy. As the African Commission stated in the 2002 “respect for freedom of expression, as well as the right of access to information held by public bodies and companies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy.” In that same Declaration, the African Commission noted that the media plays a “key role [...] in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy.” The Declaration unequivocally states that “[f]reedom of expression and information, including the right to seek, receive and impart information and ideas [...] is a fundamental and inalienable human right and an indispensable component of democracy.”¹⁶ This principle was further affirmed at the

¹⁶ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa of 2002, ACHPR/Res.62 (XXXII) 02. Similarly, the U.N. Human Rights Committee, interpreting Article 19 of the ICCPR, explained this principle as follows:

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication

first African Union Ministerial Conference on Human Rights in Africa, held in Kigali, Rwanda in 2003. That conference concluded with the Kigali Declaration, wherein the Conference declared that it:

“Recognizes the media as important vehicles for the realization of the right to information, and, therefore, urges Member States to guarantee, through appropriate legislative and policy measures, a free and independent press.”¹⁷

Unfortunately, where, as here, criminal sanctions for defamation may be imposed, the result is a “chilling effect” on the press as a whole that impedes its ability to operate freely and independently.

- 19) Indeed, in calling for the repeal of criminal defamation laws, the African Commission has noted that the laws, *inter alia*, “impede[] on the role of the media as a watchdog, preventing journalists and media practitioners to practice their profession without fear and in good faith.”¹⁸ The European Court of Human Rights (“the European Court”) has similarly found that “[t]he chilling effect that the fear of criminal sanctions has on the exercise of journalistic freedom of expression is evident. This effect, which works to the detriment of society as a whole, is likewise a factor which goes to the proportionality, and thus the justification, of the sanctions imposed on media professionals.”¹⁹

of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output. UNHRC, General Comment No. 34, ¶ 13.

¹⁷ Kigali Declaration, *supra* note 4, ¶ 29.

¹⁸ African Commission on Human and Peoples’ Rights, Resolution on Repealing Criminal Defamation Laws in Africa, ACHPR/Res. 169 (XLVIII) 2010, *available at* <http://www.achpr.org/sessions/48th/resolutions/169/>

¹⁹ *Id*; see also, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, ¶ 113, ECHR 2004-XI (noting that, with the possibility of a prison sentence looming, [i]nvestigative journalists are liable to be inhibited from reporting on matters of general public interest – such as suspected irregularities in the award of public contracts to commercial entities – if they run the risk, as one

20) The chilling effect that criminalization creates is particularly pronounced in the case of journalists who rely on freedom of expression for their livelihood and whose expression receives wide dissemination. Chilling the speech of journalists is also particularly problematic because it interferes not just with the journalists' right to expression, but also with the right of the public "to receive information," which is also guaranteed by the Burkina Faso's Constitution and international treaties.²⁰ Indeed, "[t]he most careful scrutiny [...] is called for when [...] the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern."²¹ Given the breadth of impact and harm to the public debate posed by such criminal penalties, they are necessarily disproportionate to the State's interest in protecting the reputations of public officials.

3. Burkina Faso's criminal defamation laws fail to meet the standards for restrictions on expression set by this Court's sister regional Human Rights Courts

21) As Africa's criminal defamation laws are colonial and thus European in origin, it is useful to examine analogous jurisprudence from that region's human rights court. The decisions of the European Court are particularly instructive in light of that body's well-developed jurisprudence and extensive experience interpreting the compatibility of domestic laws with the Convention for the Protection of Human Rights and Fundamental Freedoms, whose freedom of expression provisions are functionally similar to that of the African Commission.²² In particular, the European Court has issued

of the standard sanctions imposable for unjustified attacks on the reputation of private individuals, of being sentenced to imprisonment or to a prohibition on the exercise of their profession.").

²⁰ African Charter, art. 9.

²¹ *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, ¶ 64, ECHR 1999-III.

²² Article 10 of the European Convention states, "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This

several decisions on cases brought against France and, as recognized by the Government of Burkina Faso, “the provisions of the Penal Code and the Information Code relating to freedom of expression and of the press were crafted more or less in the same wording as those of the French law of 29 July 1881 on press freedom.”²³ It is noteworthy and troubling that the Government of Burkina Faso points out the close similarity between its criminal defamation laws and those of 19th century France while neglecting to inform the Court that, with the Presumption of Innocence and Victims (Reinforcement of Rights) Act of 15 June 2000, France amended its Press Act to remove its power to impose a custodial sentence for the offence of defamation of a public official.²⁴

- 22) In general, the European Court has held that state interference with the right to freedom of expression must be “prescribed by law,” pursue one or more of the legitimate aims listed in the European Convention, and be “necessary in a democratic society” in order

Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10, Nov. 4, 1950, 213 U.N.T.S. 222.

²² Universal Declaration of Human Rights, art. 19, G.A. Res. 217 (III) A, U.N. Doc. A/810 (10 Dec. 1948) (“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.”).

²³ Response of Government of Burkina Faso dated 17 September 2013, ¶ 111

²⁴ Amélie Blocman, France: Act Strengthening Presumption of Innocence and Victims’ Rights, IRIS 2000-7:12/27, available at <http://merlin.obs.coe.int/iris/2000/7/article27.en.html>; Loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d’innocence et les droits des victimes, JO du 16 juillet 2000, p. 9038.

to achieve that legitimate aim(s). The Court has paid particular attention to the third prong -- “necessary in a democratic society.” The Court has stated that freedom of expression “is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.” Under this reasoning, it has explained that the adjective ‘necessary’ [...] implies the existence of a ‘pressing social need.’”²⁵ Furthermore, it is for the Court to assess the state interference “and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient.’”²⁶

- 23) In evaluating States Parties’ domestic defamation and libel laws, the European Court has explained that it must “exercise caution when the measures taken or sanctions imposed by the national authorities are such as to dissuade the press from taking part in the discussion of matters of legitimate public concern.”²⁷ Further, the Court has found that, in light of the press’s “possible recourse to a degree of exaggeration, or even provocation,” when evaluating freedom of the press *vis-à-vis* a public official’s right to protection of his/her reputation,

“the limits of acceptable criticism [...] are wider with regard to a politician acting in his public capacity than in relation to a private individual. A politician inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism. He is certainly entitled to have his reputation protected, even when he is not acting in his private capacity, but the requirements of that protection have to be weighed against the interests of open discussion of political issues, since exceptions to freedom of expression must be interpreted narrowly.”²⁸

²⁵ *Radio France and Others v. France*, no. 53984/00, § 32, ECHR 2004-II.

²⁶ *Id.*

²⁷ *Wizerkaniuk v. Poland*, no. 18990/05, §§ 68-69, 5 July 2011 (internal citations omitted).

²⁸ *Colombani and Others v. France*, no. 51279/99, § 56, ECHR 2002-V.

24) Although the European Court has not struck down criminal defamation *per se*, it has warned that States may only exercise this authority “in their capacity as guarantors of public order,” such as in a situation of armed rebellion where alleged defamatory statements threaten “national security.”²⁹ In the particular context of the imposition of a custodial sentence for a press offence, the European Court has stated that “the imposition of a prison sentence for a press offence will be compatible with journalists’ freedom of expression as guaranteed by Article 10 of the Convention *only in exceptional circumstances*, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.”³⁰ The European Court’s wariness of allowing penal sanctions for press offences is rooted in the understanding that

“freedom of the press...affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. Use of criminal laws to restrict speech, on the other hand, shields public officials from scrutiny. Such laws deny the public the opportunity to form opinion.”³¹

25) With such a high standard, it is unsurprising that the Court has never upheld a prison sentence applied under a State’s criminal defamation law.³² It is worth noting that a series of decisions by the Inter-American Court of Human Rights has also rejected imprisonment for criminal defamation as disproportionate and a violation of the freedom of expression.³³

²⁹ *Castells v. Spain*, 23 April 1992, ¶¶ 39, 46, Series A no. 236.

³⁰ *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI (emphasis added).

³¹ *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103.

³² ARTICLE 19, *Criminal defamation*, available at <http://www.article19.org/pages/en/criminal-defamation.html>.

³³ See *Herrera-Ulloa v. Costa Rica*, 2 July 2004, Inter. Am. Ct. Hum. Rts., Ser. C No. 107, ¶¶ 124-35 (finding that criminal conviction of journalist for publishing stories “having to do with a

26) Furthermore, even when the European Court has allowed for the possible availability of criminal defamation, it has paid close attention to the proportionality and necessity of criminal measures, especially when there are “other means of intervention and rebuttal, particularly through civil remedies.”³⁴ Notably, not one of the cases relied on by the Government of Burkina Faso even suggests that imprisonment for defamation could be a proportionate measure.³⁵ The clear thrust of the European Court’s jurisprudence is that imprisonment of a journalist for criminal defamation is disproportionate to the

public official’s conduct abroad” violated the freedom of expression); *Canese v. Paraguay*, 2004 Inter-Am. Ct. H.R. (ser. C) No. 111, P 104 (Aug. 31, 2004); *Palamara Iribarne v. Chile*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 135, P 63(73) (Nov. 22, 2005). *Amici* note that the Inter-American Court of Human Rights recently upheld a short sentence of imprisonment for the offence of defamation. *Memoli v. Argentina*, 22 August 2013, Ser. C No. 265. However, that limited decision does not aid Respondent here. First, the Court found it necessary to balance the right of freedom of expression against the American Convention on Human Rights’ specific guarantee of a right to one’s “honor” and “reputation” (Article 11), a right not found in the African Charter. *Id.* ¶¶ 125-26. Second, unlike this case, the Court emphasized that the case involved “a dispute between private individuals,” the defamatory statements “did not involve public figures or officials,” and “did not relate to the functioning of State institutions.” *Id.* ¶ 146.

³⁴ *Lehideux and Isorni v. France*, 23 September 1998, § 57, Reports of Judgments and Decisions 1998-VII; *Radio France and Others v. France*, no. 53984/00, § 40, ECHR 2004-II (“However, in view of the margin of appreciation left to Contracting States by Article 10 of the Convention, a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued. That being so, the Court notes that the amount of the fine imposed on the second and third applicants was moderate [...].”)

³⁵ See *Radio France and Others v. France*, no. 53984/00, ¶ 40, ECHR 2004-II (emphasising the “moderate” fine imposed in conducting proportionality analysis); *Brunet-Lecomte and Others v. France*, no. 42117/04, ¶ 51, ECHR 2009-V (noting, as a factor in the proportionality analysis, that the State had granted amnesty for the criminal charges, leaving only the civil action and imposing only a symbolic award of 1 Euro); *Taffin and Contriubles Associes v. France*, no. 42396/04, ¶¶ 63, 65-67, ECHR 2010-V (relying on the fact that defamation against civil servant concerned a private dispute and not official functions, and finding the relatively small fine proportionate).

State's purported interest in protecting the "honour and reputation" of a public official – the sole interest asserted by the Government of Burkina Faso here.

- 27) Thus, even if there is room for criminal defamation under international law, exercise of that authority must be tied to pursuit of the state interest in protection of security and public order. That interest cannot justify a penalty of imprisonment for the offence of defamation simply for the purpose of protecting the reputation of a public official from criticism. Therefore, the laws at issue in this case violate Article 9 the African Charter and fail to comply with international human rights legal standards for permissible restrictions on freedom of expression.

B. Criminal defamation laws are a relic of colonialism, incompatible with an independent and democratic Africa, and impede efforts to ensure accountability and transparency in government

- 28) As noted above, criminal defamation laws in Africa are an unfortunate relic of colonialism and, as such, are incompatible with an independent, democratic Africa. As explained by then-Attorney General and Minister of Justice of Ghana in support of the 2001 Ghanaian legislation which repealed the country's criminal libel and seditious laws,

“the passage of the laws was in response to the development of the nationalist movement and the heightening of nationalist consciousness, for the intent and purpose of these laws were clear. They were meant to be weapons in the armoury of British imperialism in its attempt to stifle and suppress the growth of Ghanaian nationalism.

[...]

The laws have come to symbolise authoritarian, anti-democratic, anti-media impulses within our body politic.

[...]

The time has come to repeal these laws and expand the boundaries of freedom in the State. Designed to frustrate our freedom and perpetuate our servitude, these laws should have been repealed at independence. [...] The dangers implicit in the retention of these laws for an open, free society are now plain for all to see. The laws are unworthy of a society seeking to develop on democratic principles, on the basis of transparency and accountability in public life.”³⁶

- 29) In light of the history and purpose of criminal defamation laws, it is unsurprising that, in the words of the African Union’s Special Rapporteur on Freedom of Expression and Access to Information, the laws are “nearly always used to punish legitimate criticism of powerful people, rather than protect the right to a reputation.”³⁷ *Amici* agree. In our extensive experience, criminal defamation laws give rise to serious abuses that threaten democracy and human rights, especially when the State wields its custodial authority to punish and chill criticism of public officials.
- 30) These laws are too easily used to stifle publication of news and information about mismanagement, corruption and abuse of power.³⁸ Allegations of corruption and illegal

³⁶ Memorandum to the Ghana Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Bill which culminated in The Criminal Code (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act 2001, Act 602.

³⁷ Tom Rhodes, “A bid to rid Africa of criminal defamation, sedition laws,” 12 July 2013, available at <http://www.cpj.org/blog/2013/07/a-bid-to-rid-africa-of-criminal-defamation-seditio.php>

³⁸ See, e.g., Human Rights Watch, Letter to AU Special Rapporteurs Regarding Prosecution of Rafael Marques, 12 Aug., 2013, available at <http://www.hrw.org/news/2013/08/12/angola-letter-au-special-rapporteurs-regarding-angolas-prosecution-rafael-marques> (urging the AU Special Rapporteurs to intervene where the Government of Angola was pursuing criminal defamation proceedings against a well-known human rights advocate and journalists over his work documenting human rights abuses within Angola in his book “Blood Diamonds: Corruption and Torture in Angola”, which was published in Portugal in 2011 and described how Angolan military officials and private security companies committed human rights abuses against Angolan villagers in the course of diamond mining operations.).

activity and criticism of government actions and proposals, among other forms of political expression, have been labelled seditious, contemptuous, defamatory and insulting by government officials and, therefore, subject to prosecution.³⁹ In the course of these investigations and prosecutions, journalists have been assaulted and imprisoned, radio stations closed and newspapers banned.⁴⁰ Advocates are forced to focus on defending themselves in costly legal proceedings, limiting their ability to focus on their human rights work and depleting NGOs' and other civil society actors' already limited resources. Even in cases where the accused persons are not imprisoned, if convicted they are saddled with criminal records that may prevent them from practising their professions or from seeking public office. In addition to the severity of criminal convictions, criminal defamation and libel laws often impose fines that are large enough to bankrupt the accused.⁴¹ It is not hard to recognize how the lengthy criminal court

³⁹ See, e.g., Amnesty International, Algerian blogger held over sharing photos on Facebook, 13 Oct. 2013, available at <http://www.amnesty.org.au/news/comments/33008/> (discussing the crackdown on Algerian activists accused of “insulting the President and public institutions” ahead of elections); Frontline Defenders, Chad: arrest and arbitrary detention of human rights defender Eric Topona, 8 May 2013, available at <http://www.frontlinedefenders.org/node/22604> (issuing an urgent appeal in the case of a human rights advocate charged and detained in Chad for allegedly “threatening the constitutional order” in online articles); Frontline Defenders, Gabon: Defamation case lodged against human rights defender Marc Ona Essangui, 18 Jan. 2013, available at <http://www.frontlinedefenders.org/node/21307> (issuing an urgent appeal in the case of Marc Ona Essangui, an award-winning environmental advocate charged with criminal defamation for allegedly questioning the role of corruption in the awarding of business contracts to foreign corporations in Gabon).

⁴⁰ See, e.g., Togo: Newspaper Banned Indefinitely, Fined for Defaming President’s Brother, Reporter Assaulted in Court, All Africa, 25 Aug. 2010, available at <http://allafrica.com/stories/201008260003.html>

⁴¹ See, e.g., Open Letter to President Sirleaf, President of the Republic of Liberia, urging reform of libel laws, Committee to Protect Journalists, 2 Sept. 2013, available at <http://cpj.org/2013/09/sirleaf-urged-to-reform-libel-laws-free-rodney-sie.php> (urging the reform of Liberia’s libel laws after fines levied on a leading independent newspaper following its conviction for libel led to its closing).

processes, adverse publicity and humiliation that go with criminal prosecution regardless of ultimate conviction deter journalists from engaging in critical reporting, and private individuals from expressing their views openly. As a result, a pervasive atmosphere of self-censorship marks societies that police the right to freedom of expression in this way, which in turn fuels bad and unaccountable governance.

- 31) Therefore, criminal defamation laws, particularly where the subject of the defamation is a public official or matter of public interest, are inherently in tension with on-going efforts to promote and strengthen democracy and good governance practices throughout the African Union.⁴² These are not hypothetical problems, but rather serious harms that *amici* have witnessed throughout Africa.

C. Burkina Faso’s criminal defamation and insult laws exemplify the repression of freedom of expression the African Commission is committed to reforming across the region

- 32) The Protocol to the African Charter, which is the establishing instrument for this Court, states that the Court was established to “complement and reinforce” the African Commission and therefore shall “complement the protective mandate” of the African Commission.⁴³ The African Commission’s position on criminal defamation laws is clear and persuasive. In its 2010 “Resolution on Repealing Criminal Defamation Laws in Africa,” the African Commission called the laws “a serious interference with freedom of expression” and “[called] on State Parties to repeal criminal defamation laws or insult laws.”⁴⁴ The African Commission’s Special Rapporteur on Freedom of Expression and

⁴² See, e.g., the African Charter on Democracy, Elections, and Governance, *adopted on* 30 Jan. 2007, *entered into force* 12 Feb. 2012 (aimed at the promotion of democracy and human rights throughout the African Union).

⁴³ Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights at Pmb. and Art. 2

⁴⁴ Afr. Comm. on Human and Peoples’ Rights, Res. 169, 169: Resolution on Repealing Criminal Defamation Laws in Africa, (24 Nov 2010), *available at* <http://www.achpr.org/sessions/48th/resolutions/169/>

Access to Information in Africa, who also is a Member of the African Commission, has worked tirelessly to implement the African Commission's repeal directive.⁴⁵ She has launched a project to decriminalise expression in Africa. These laws include, but are not limited to, criminal defamation, criminal libel, insult laws, sedition laws and laws that prohibit the publication of false news as they exist in many parts of the African Continent. The Special Rapporteur has already convened regional meetings in the East and Horn of African and Southern Africa with government and civil society representatives to deliberate on how to repeal these laws.⁴⁶ The Special Rapporteur plans to launch similar initiatives across the rest of the continent. To date, a number of State Parties to the African Charter -- including Ghana, Kenya, Liberia, Niger, and Uganda -- have repealed or committed to repealing their criminal defamation laws while in Côte d'Ivoire and Togo, imprisonment for press offences has been removed from the criminal code.

- 33) The African Commission is not the only African institution to declare that criminal defamation and insult laws are not compatible with States Parties' Charter obligations. The Pan African Parliament has expressly called upon African leaders to sign onto the "Declaration of Table Mountain." Issued in 2007 by the World Association of Newspapers and News Publishers and the World Editors forum, the "Declaration of Table Mountain" states the need to repeal criminal defamation laws across Africa. The Parliament also has launched a campaign on "Press Freedom for Development and Governance: Need For Reform" in all five regions of Africa.

⁴⁵ See, e.g., Activity Report of Adv. Pansy Tlakula as The Special Rapporteur on Freedom of Expression and Access to Information in Africa and Member of the African Commission on Human and Peoples' Rights, Presented during the 54th Ordinary Session of the African Commission Human and Peoples' Rights, 22 October - 5 November 2013, *available at* <http://www.achpr.org/sessions/54th/intersession-activity-reports/freedom-of-expression/>

⁴⁶ Activity Report of Adv. Pansy Tlakula as the Special Rapporteur on Freedom of Expression and Access to Information in Africa and Member of the African Commission, April 2013 through October 2013, presented during the 54th Ordinary Session of the African Commission on Human and Peoples' Rights, 22 October – 5 November 2013, *available at* <http://www.achpr.org/sessions/54th/intersession-activity-reports/freedom-of-expression/>.

- 34) The position of the African Commission and the work of the Special Rapporteur are in line with that of other international experts with official mandates to protect freedom of expression. International and regional special rapporteurs on freedom of expression have called for the repeal of criminal defamation laws and identified the continued existence of these laws as one of the top challenges to freedom of expression. In 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression jointly declared that “[c]riminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”⁴⁷ The UN Special Rapporteur has consistently stated that “defamation should be decriminalized and not be applied in cases of criticism of public officials.”⁴⁸
- 35) For the Court to declare Burkina Faso’s criminal defamation laws in line with the provisions of the African Charter would require it to stand in direct opposition not only to the African Commission, its complementary body under the African Charter, but also regional and international trends away from criminal defamation. Such a position would set back the cause of press freedom in Africa; the realization of the right to freedom of expression guaranteed in the African Charter; the cause of governmental accountability, transparency and responsiveness; the process of deepening democratisation through the development of informed electorates; and the economic and social development that accompanies a robust free press and public discourse in a society.

⁴⁷ Joint Declaration of the U.N. Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, International Mechanisms for Promoting Freedom of Expression, (10 Dec. 2002), available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&IID=1>

⁴⁸ Declaration of the U.N. Special Rapporteur on Freedom of Opinion and Expression, Promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357, (7 Sept. 2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/501/25/PDF/N1250125.pdf?OpenElement>

V. CONCLUSION

- 36) The Information Law of 1993 of Burkina Faso imposes criminal penalties on expression that is protected under Burkina Faso's international treaty obligations and in contravention of its commitment to human rights and democracy. Article 9 of the African Charter guarantees the right to freedom of expression and the decisions and publications of the African Commission have made clear that criminal penalties for defaming or insulting a public official are an impermissible infringement of this right. In doing so, the African Commission is a part of a global consensus that criminal penalties for defaming or insulting public officials are in conflict with the right to freedom of expression and to the functioning of open societies. The practical effect and colonial origin of criminal defamation laws make clear not only that such laws restrict democratic debate and insulate authoritarian rule, but that this anti-democratic result is at the core of their purpose.
- 37) For the foregoing reasons, *amici* respectfully urge the African Court to find those Articles of Burkina Faso's Information Law which impose criminal penalties for defamation or insult incompatible with Burkina Faso's obligations under Article 9 of the African Charter.

VI. ANNEX 1

Amici curiae are regional and international non-governmental organisations, which are advocates for human rights, the rule of law, and freedom of expression, and therefore have both an interest in the outcome of this case and specialized expertise in the questions of law before the Court. *Amici* include, in alphabetical order:

Centre for Human Rights

The Centre for Human Rights, based at the Faculty of Law, University of Pretoria, South Africa, is both an academic department and a non-governmental organisation. The Centre was established in the Faculty of Law, University of Pretoria, in 1986, as part of domestic efforts against the apartheid system of the time. The Centre for Human Rights works towards human rights education in Africa, a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalised persons or groups across the continent. Over the years, the Centre has positioned itself in an unmatched network of practising and academic lawyers, national and international civil servants and human rights practitioners across the entire continent, with a specific focus on human rights law in Africa, and international development law in general. Today, a wide network of Centre alumni contribute in numerous ways to the advancement and strengthening of human rights and democracy all over the Africa continent, and even further afield. In 2006, the Centre for Human Rights was awarded the UNESCO Prize for Human Rights Education, with particular recognition for the African Human Rights Moot Court Competition and the LLM in Human Rights and Democratisation in Africa. In 2012, the Centre for Human Rights was awarded the 2012 African Union Human Rights Prize.

Committee to Protect Journalists

The Committee to Protect Journalists (CPJ) is an independent, nonprofit organization that works to safeguard press freedom worldwide. CPJ has full-time program coordinators monitoring the press in Africa, the Americas, Asia, Europe and Central

Asia, and the Middle East and North Africa. Since its founding in 1981, it has been CPJ's mandate to take action when journalists are censored, harassed, threatened, jailed, kidnapped, or killed for their work, without regard to political ideology. CPJ's mission involves not only journalists, but anyone who cherishes the value of information for a free society. CPJ keeps journalists and all who care about the free flow of information abreast of developments in press freedom through independent research, fact-finding missions, and firsthand contacts in the field, including reports from other journalists.

Media Institute of Southern Africa

The Media Institute of Southern Africa (MISA) is a regional membership-based non-government organization working for free, independent, pluralistic, sustainable media environment. MISA's membership is based in 11 of the Southern Africa Development Community (SADC) countries. Officially launched in September 1992, MISA focuses primarily on the need to promote free, independent and pluralistic media, as envisaged in the 1991 Windhoek Declaration.

Pan Africa Human Rights Defenders Network

The Pan Africa Human Rights Defenders Network (PAHRD-Net) is an umbrella Network made up of five sub regional human rights defenders networks aiming at promoting safe legal and working environment for human rights defenders in the continent: 1. Cairo Institute for Human Rights for Northern Africa human rights defenders network, The PAHRD-Net seeks to enhance the protection of human rights defenders and their rights across the continent by re-enforcing collaboration of sub-regional networks and key interest groups. The main activity of the Secretariat is to provide technical assistance to existing sub-regional networks and create new ones, if necessary, based on the lessons learned of existing ones. Its mandate further includes, but is not limited to, the enhancement of human rights organizations' active use of the regional and international human rights mechanisms, strengthening the sub-regional networks regional and international advocacy, and ensuring that States, intergovernmental organizations, and

non-governmental organizations strengthen their assistance and protection to human rights defenders. The five sub-regional networks are:

Central African HRDs Network - (REDHAC)

REDHAC was launched in 2007 and currently has its headquarters in Douala, Cameroon. REDHAC covers the following countries in Central Africa: Cameroon, Chad, Gabon, Democratic Republic of Congo, Central African Republic, Sao Tome and Principe, Equatorial Guinea and Republic of Congo. REDHAC conducts advocacy for HRDs including urgent actions when HRDs are in danger in Central Africa. The Network provides defenders with financial and legal support in case of emergency.

East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net)

EHAHRD-Net, established in August 2005, comprises of over 75 member organisations working in eleven countries and one special territory in the sub-region. The countries and territories in which the Network focuses its activities are Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Somaliland, South Sudan, Sudan, Tanzania and Uganda. The network's secretariat, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), is based in Kampala, Uganda and its objectives are to strengthen the work of HRDs by reducing their vulnerability to the risk of persecution and by enhancing their capacity for effectively defending human rights. EHAHRDP is currently hosting the Pan-African Human Rights Defenders Network.

West African Human Rights Defenders Network

The West African Human Rights Defenders Network based in Lomé, Togo, was established in May 2005, and covers 14 countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The Network carries out capacity building, training and advocacy to strengthen the capacities of national coalitions in their engagement with human rights protection mechanisms. The network also implements advocacy and lobbying activities in the sub-region and does substantial work in the protection of HRDs in the sub-region.

Southern African Human Rights Defenders Network chaired by the International Commission of Jurist Africa Regional Programme.

The Southern African Human Rights Defenders Network (SAHRDN) chair by the International Commission of Jurist (ICJ)-Africa regional Programme is the formal mechanism designed to provide support to individuals in the sub-region who have been subjected to harassment, intimidation and inhumane treatment in the course of their human rights work. Based in Johannesburg, SAHRDN provides support to HRDs from Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe. The Network provides assistance to HRDs who are under threat, supporting them and where necessary, their families. The ICJ-Africa Regional Programme aims at enhancing the realization of human rights on the African continent through adherence to the rule of law. With its office based in Johannesburg, South Africa, the Africa Regional Programme builds on the organisation's years of experience working with African judges, practicing lawyers, academics, civil society, politicians and government representatives and agencies, to improve the rule of law environment and entrench the respect for human rights in sub-Saharan Africa. The ICJ-Africa Regional Programme priorities are: judicial development and reform project programme, human rights accountability, the rule of law of elections, human rights defenders programme and human rights mechanisms.

Cairo Institute for Human Rights Studies

The Cairo Institute of Human Rights Studies serves as the focal point of North African human rights defenders. The Cairo Institute is an independent regional non-governmental organisation, which aims at promoting respect for the principles of human rights and democracy. The work also includes analysing the difficulties facing the application of international human rights law and disseminating a human rights culture in the Arab Region.

Pan African Lawyers Union

The Pan African Lawyers Union (PALU) is a continental membership forum for African lawyers and lawyers' associations, which reflects the aspirations and concerns of the African people, and promotes shared interest. Its mission is advancing the law and the legal profession, the rule of law, good governance, human and peoples' rights and socio-economic development of the African continent. It brings together the continent's five regional and fifty-four national Lawyers' Associations, as well as individual lawyer-members.

PEN International and Several National PEN Centres

PEN International is the world's leading association of writers that works to promote literature and defend freedom of expression. Founded in 1921 our global community of writers now spans more than 100 countries, with 146 PEN Centres worldwide. Its campaigns, events, publications and programmes aim to connect writers and readers wherever they are in the world. PEN is a strictly non-political, Non-Governmental Organisation with consultative status at the United Nations.

In addition to PEN International, the prospective *amici* include the following national PEN centres: Malawi PEN; PEN Algeria; PEN Nigeria Centre; PEN Sierra Leone; and South Africa PEN Centre.

Southern Africa Litigation Centre

The Southern Africa Litigation Centre (SALC) promotes and advances human rights and the rule of law in southern Africa, primarily through strategic litigation support and capacity building. SALC provides technical and monetary support to local and regional lawyers and organizations in litigating human rights and rule of law cases in the region. SALC also provides training in human rights and rule of law issues and facilitates networks of human rights lawyers and organizations throughout southern Africa. SALC works in the following countries: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia, and Zimbabwe. In

addition, SALC supports litigation in South African courts that advances human rights in the Southern African region.

World Association of Newspapers and News Publishers

The World Association of Newspapers and News Publishers (WAN-IFRA), based in Paris, France, and Darmstadt, Germany, with subsidiaries in Singapore and India, is the global organisation of the world's newspapers and news publishers. It represents more than 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries. Its core mission is to defend and promote press freedom, quality journalism and editorial integrity and the development of prosperous businesses. In 2007, in Cape Town, South Africa, at its annual congress, WAN-IFRA and the World Editors Forum passed The Declaration of Table Mountain, calling on all African states to "Abolish 'Insult Laws' and Criminal Defamation in Africa and Set a Free Press Higher on the Agenda." WAN-IFRA's Declaration of Table Mountain is an earnest appeal to all Africans, particularly those in power, to recognise that political and economic progress flourishes in a climate where the press is free and independent of governmental, political or economic control.