

Special Collection of the Case Law on  
Freedom of Expression

**African System of  
Human and Peoples'  
Rights**



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# ● Overview of the African System of Human and Peoples' Rights

The African System of Human and Peoples' Rights encompasses a collection of [human rights treaties](#) and agreements signed between Member States of the [African Union](#). The [African Charter on Human and Peoples' Rights](#) ("the Charter") is one of the main documents of the African System of Human and Peoples' Rights. It has been [ratified by the majority](#) of the members of the African Union and established the [African Commission on Human and Peoples' Rights](#) ("the Commission" or "the African Commission"). This international treaty was adopted on the 28<sup>th</sup> of June 1981 and entered into force on the 21<sup>st</sup> of October 1986. Subsequently, in 1998, the [Protocol to the Charter](#) was adopted, introducing the [African Court on Human and Peoples' Rights](#) ("the Court" or "the African Court").

The African Commission serves as an independent and quasi-judicial body. As it is described on its official webpage, the [Commission's mandate](#) is established in article 45 of the Charter, which charges this organ with protecting and promoting human rights within the African System, interpreting the provisions of the Charter, and any other task assigned by the Assembly of Heads of State and Government. Within its functions of protecting human rights, the Commission receives State reports on human rights situations and can hear individual complaints of possible human rights violations through its communications procedure. Additionally, its interpreting mandate allows for the

Commission to be consulted regarding the interpretation of the Charter by States, organs of the African Union, or individuals.

Another institution of the African System of Human and Peoples' Rights is the African Court on Human and Peoples' Rights, which serves as the "judicial arm" of the African Union. Its [mandate](#) "is to complement and reinforce the functions of the African Commission on Human and Peoples' Rights." According to the Court's official information, it has [jurisdiction](#) to hear individual cases presented by States, the Commission, and African Intergovernmental Organizations. It may also hear cases submitted directly by Non-Governmental Organizations and individuals, provided the respondent State has submitted the Declaration pursuant to article 34(6) of the Protocol to the Charter. Additionally, the Court's webpage indicates it has advisory jurisdiction regarding the interpretation of the Charter and any other relevant human rights instrument. It is important to note that the ratification of the Charter and that of the Protocol are different sovereign acts; therefore, the [list of States](#) who have recognized the Court's jurisdiction is different from those who have ratified the Charter. The same applies to submitting Declarations pursuant to article 34 (6) of the Protocol, which entails that several cases must be submitted before the Commission prior to lodging a complaint to the African Court.

## II. Global Perspective

With respect to the rights to freedom of expression and access to information, the African Court and the African Commission have occasionally built their decisions on the jurisprudence of other regional courts and international bodies, such as the European Court of Human Rights (“ECtHR”), the Inter-American Court of Human Rights (“IACtHR”), and the United Nations Human Rights Committee (“UNHRC”). The African Court and the Commission have, in many cases, broadened their legal perspectives by analyzing and using foreign precedents, enriching their own jurisprudence. This section provides a brief overview of the jurisprudential dialogue between the African System and the international and other regional human rights systems. It will highlight the global perspective that is part of Global Freedom of Expression’s case law database.

In the case of *Lohé Issa Konaté v. Burkina Faso*, the African Court referred to jurisprudence of the UNHRC, the ECtHR and the IACtHR. The Court cited the decision *Keun-Tae Kim v. The Republic of Korea*<sup>1</sup> of the UNHRC when analyzing legitimate limitations to article 19 of the ICCPR. It argued that freedom of expression may be legitimately limited only for the purpose of protecting the rights and reputation of others or for the protection of national security, public order, public health, or public morality. Additionally, the Court used the decision to interpret the term “prescribed by law.”

In the same case, the Court echoed several judgments of the ECtHR and the IACtHR in its analysis of two main issues: the exceptional nature of criminal defamation and the imposition of excessive penalties. Regarding the first issue, the Court cited the cases *Gavrilovic v. Moldavia*,<sup>2</sup> *Cumpana and Mazare v. Romania*,<sup>3</sup> *Mahmudov and Agazade v. Azerbaijan*,<sup>4</sup> *Lehideux and Isorni v. France*,<sup>5</sup> *Radio France and all v. France*,<sup>6</sup> *Raichinov v. Bulgaria*,<sup>7</sup> *Kubaszewski v. Poland*,<sup>8</sup> *Lyashko v. Ukraine*,<sup>9</sup> *Fedchanko v. Russia*,<sup>10</sup> *Krutov v.*

*Russia*,<sup>11</sup> and *Lombardo et al. v. Malta*,<sup>12</sup> when arguing the exceptional character of criminal defamation laws. Likewise, the African Court referred to the cases of *Tristan Donoso v. Panamá*,<sup>13</sup> *Herrera Ulloa v. Costa Rica*,<sup>14</sup> *Palamara Iribarne v. Chile*,<sup>15</sup> and *Ricardo Canese v. Paraguay*,<sup>16</sup> in which the IACtHR reiterated the ECtHR’s assessment that States parties must avoid resorting to imprisonment in defamation convictions, notably because such measure would be disproportionate in a democratic society.

On the issue of excessive penalties, the African Court quoted its European counterpart’s judgment on the case of *Tolstoy Miloslavsky v. United Kingdom*.<sup>17</sup> In that case, the ECtHR ruled, *inter alia*, that even if defamation damages are prescribed by law, they must not be deemed necessary in a democratic society when the quantum of the awarded damages is not proportional to the aim pursued. Similarly, the African Court cited again *Tristan Donoso v. Panama*, in which the IACtHR indicated that *prima facie* criminal punishments on the exercise of the right to disseminate one’s opinions are not necessarily incompatible with the American Convention. Nonetheless, the IACtHR further concluded that, before imposing criminal penalties or sanctions, the judge must analyze the seriousness of the conduct of the speaker and the necessity to resort to criminal proceedings as an exception.

Another relevant decision where the African Court looked at the jurisprudence of the ECtHR and the IACtHR was *Ingabire Victoire Umuhoza v. Rwanda*. In this case, the Court cited *Ivcher Bronstein v. Peru*<sup>18</sup> and *Ricardo Canese v. Paraguay* to argue that when assessing the necessity and proportionality of a measure, it must consider that political speech against the government or public figures requires a higher degree of tolerance. In addition, it cited the European cases *Handyside v. United Kingdom*<sup>19</sup> and *Gündüz v. Turkey*<sup>20</sup>

for emphasizing that freedom of speech protects expressions intended to offend, shock or disturb.<sup>21</sup>

In that vein, the African Commission has also relied upon jurisprudence of the ECtHR and the IACtHR on a wide variety of topics and cases. Actually, in the *Kenneth Good v. Botswana*<sup>22</sup> decision, later cited by the Court in the case mentioned above, the Commission also argued that shocking and disturbing speech must be afforded protection while citing the *Handyside v. United Kingdom* decision. Here, the ECtHR emphasized the importance of freedom of expression to achieve progress and development in democratic societies. In this sense, the Commission recalled that freedom of expression is also applicable to speech that intends to offend, shock or disturb the State or any sector of the population. In *Kenneth Good v. Botswana*, the Commission also referred to the case of *Lingens v. Austria*,<sup>23</sup> in which the ECtHR held that political speech directed towards the government requires a higher degree of tolerance.

Likewise, in *Agnes Uwimana-Nkusi v. Rwanda*,<sup>24</sup> the Commission echoed the standard described above regarding the higher degree of tolerance required for political speech as developed in the cases of *Herrera Ulloa v. Costa Rica* and *Lingens v. Austria*. Similarly, in *Law Offices of Ghazi Suleiman v. Sudan*, the Commission quoted once again the case *Lingens v. Austria*, as well as the case of *Thorgeirson v. Iceland*,<sup>25</sup> whereby the ECtHR ruled that democratic societies rely upon political debates.

Another issue where the Commission relied on European jurisprudence was in relation to expressions amounting to “genocide denial” and their lack of protection under international laws. In *Agnes Uwimana-Nkusi v. Rwanda*, the Commission examined if expressions concerning the Rwanda Genocide of 1994 amounted to “genocide denial.” The Commission cited *Garaudy v. France*<sup>26</sup> and *Hans-Jurgen Witzsch v. Germany*,<sup>27</sup> whereby the ECtHR articulated that the denial of the holocaust could amount to an abuse of the right to

freedom of expression; therefore, speeches of such nature are not protected pursuant to Article 10 of the European Convention. Also, in *Agnes Uwimana-Nkusi v. Rwanda*, the Commission indicated that according to *Perincek v. Switzerland*<sup>28</sup> special regard must be given to the State’s historical experience in assessing the legality of a restriction imposed on free speech.

In this last case, *Agnes Uwimana-Nkusi v. Rwanda*, the African Commission also analyzed hate speech and incitement to violence using European and Inter-American jurisprudence. The Commission referred to *Guduz v. Turkey*,<sup>29</sup> whereby the ECtHR concluded that expressions amounting to hate speech or glorification of, or incitement to violence, are contrary to the values established in the Preamble of the Convention. Thus, freedom of expression can be restricted insofar as the restriction is proportionate and serves a legitimate aim, among other requirements. The Commission also referred to the cases of *Jersild v. Denmark*,<sup>30</sup> *Surek v. Turkey*,<sup>31</sup> and *Ergin v. Turkey*,<sup>32</sup> where the ECtHR argued that when assessing if an expression amounts to hate speech or incitement to violence, it would be relevant to determine the intention of the speaker, the content of the expression, the context of its dissemination, and if the speech incited violence or merely exposed a critique. In this case, the Commission also relied upon the jurisprudence of the Inter-American Commission of Human Rights to further indicate that restricting freedom of expression on the grounds of incitement to violence requires an actual demonstration, as well as a clear intention and the possibility of the speaker to achieve his objective.<sup>33</sup>

On the relation between the right to freedom of expression and the right to receive information, the Commission referred to the jurisprudence of the IACtHR in the case *Egyptian Initiative for Personal Rights v. Egypt*. The Commission cited the case of *Claude Reyes et al. v. Chile*<sup>34</sup> in which the IACtHR explained how Article 13 of the American Convention also protects peoples’ right to seek and receive State-held information without having to demonstrate a direct interest

or personal harm, as long as no legitimate constraints apply.

In the decision of *Open Society Justice Initiative v. Cameroon*,<sup>35</sup> regarding the lack of fair procedures and independence of the authority responsible for issuing broadcasting licenses, the Commission looked at several relevant decisions and documents of the UNHRC, the ECtHR, and the Inter-American System. The Commission looked at General Comment No. 34<sup>36</sup> of the UNHRC on the freedoms of opinion and expression, which recommends States establish an independent and public broadcasting licensing authority. It also used General Comment No. 34 to examine whether the standards of prior restraint on publications can be applied in the context of radio broadcasting. In this case, the Commission also cited the *Meltex v. Armenia*<sup>37</sup> case of the ECtHR in the context of legitimate limitations to freedom of expression, which established that to determine a measure is prescribed by law, it must have a basis in domestic legislation and be sufficiently precise to reasonably foresee its consequences. Finally, the Commission referred to *Principle*

*5 of the Inter-American Commission on Human Rights' Declaration of Principles on Freedom of Expression*,<sup>38</sup> which establishes that prior censorship of any means of communications should be prescribed by law.

Finally, in analyzing the concepts of “necessity” and “order” within the legitimate limitation test to freedom of expression, in *Agnes Uwimana-Nkusi v. Rwanda*, the Commission referred to the case of *The Observer and The Guardian v. United Kingdom*.<sup>39</sup> The Commission observed that the ECtHR explained the concept of “necessity,” rather than being analogous to concepts like “indispensable” or “reasonable,” it relates to an issue of social need. In addition, the Commission recalled that in the cited case, the ECtHR explained the term “order” implies a framework in which all people have the same opportunity to exercise their rights freely and without discrimination or fear of censorship or punishment. Thus, when the preservation of national “order” is alleged to restrict a human right, such a term must be interpreted considering the different interests involved.

## Decisions of the African Commission on Human and Peoples' Rights

This section will now address some of the decisions where of the African Commission has interpreted the rights to freedom of expression and to receive information under Article 9 of the Charter. Over a vast number of cases, the Commission has analyzed a several issues related to freedom of expression. The Commission's jurisprudence has provided a very important tool for the development of Article 9 of the Charter. It has not only delivered a robust explanation of the content of Article 9, but it has also analyzed it in conjunction to other rights such as association, protest, and political participation. Additionally, the Commission has clarified how the right to receive information and to freedom

of expression relate within Article 9, as well as the legitimate limitation that may be imposed on such right.

### **A. Right to receive information**

Article 9 of the African Charter recognizes both the right to receive information and the right to express and disseminate opinions. The relation between these two elements of freedom of expression has been explained by the Commission in decisions such as *Scanlen & Holderness v. Zimbabwe* and *Egyptian Initiative for Personal Rights v. Egypt*, where the Commission

held that an infringement of the right to freedom of expression simultaneously engages the public's right to receive information, meaning that restricting an individual's right to disseminate his or her opinions also violates others' right to receive such information. It then further emphasized that public order in a democratic society places a high value on access to information.

### **i. Relation between freedom of expression and the right to receive information**

***Law Offices of Ghazi Suleiman v. Sudan (2003)***. The present case concerned the human rights violations committed between 1998 and 2002 against Mr. Ghazi Suleiman. Mr. Ghazi Suleiman, a human rights advocate based in Sudan, was harassed, persecuted and arrested as a result of his lectures, public speeches, and declarations promoting human rights within the country. In this regard, the Commission noted that freedom of expression holds fundamental significance in promoting and protecting all human rights and freedoms. Consequently, care must be taken to ensure that freedom of expression is not restricted to devoid the right of all legal effect. Likewise, the Commission held that by denying the Applicant's right to express his opinion on the human rights issues in Sudan, the Sudanese community was also prevented from accessing valuable information concerning their human prerogatives, resulting in a violation of Article 9 of the Charter. More info [here](#).

***Sir Dawda K. Jawara v. Gambia (2000)***. The case relates, *inter alia*, to Gambia's failure to undertake necessary and appropriate measures in the face of the illegal arrests, detentions, expulsions, and acts of intimidation perpetrated against journalists as a result of articles they had published. In this sense, the Commission ruled that "The intimidation and arrest or detention of journalists for articles published and questions asked deprive not only the journalists of their rights to freely express and disseminate their opinions, but also the public, of the right to information" [para.

65], resulting in a violation of Article 9 of the Charter. More info [here](#).

The cases *Scanlen & Holderness v. Zimbabwe* (2009), *Media Rights Agenda v. Nigeria* (1998), and *Egyptian Initiative for Personal Rights v. Egypt* (2013) also deal with the relationship between freedom of expression and the right to receive information. However, they were included under other sections of this paper, as they also relate to other issues as well.

### **ii. Right to receive information in deportation proceedings**

***Kenneth Good v. Botswana (2010)***. The case concerned the groundless deportation of Kenneth Good, an Australian professor at the University of Botswana, following the publication of an article criticizing the presidential succession in Botswana. Having found that the Applicant was not informed of the reasons behind his deportation, the Commission held that the "right to receive information, especially where that information is relevant in a trial for the vindication of a right, cannot be withheld for any reason." [para. 194] The Commission further added that deporting a legally admitted individual without any apparent reason hindered credibility and trust in the judiciary. Hence, the Commission ruled that deporting the Applicant constituted a disproportionate and unnecessary interference with his freedom of expression since the Applicant's article was not deemed to have threatened national security and was the kind of expression expected from his academic field. More info [here](#).

## **B. Freedom of expression**

### **i. Violence against journalists**

***Egyptian Initiative for Personal Rights v. Egypt (2013)***. The case concerned the protests that occurred on 25 May 2005 at the Saad Zaghloul Mausoleum and the Press Syndicate in which supporters

of the Egyptian Movement for Change, while promoting a constitutional amendment to allow multi-candidate presidential elections in Egypt, were assaulted by Riot Police officers and followers of the National Democratic Party. In this regard, the Commission held that respecting individuals' right to express and disseminate their opinions is of paramount importance in political matters to promote public debate, personal development, and political consciousness. Likewise, the Commission ruled that government officials and political leaders are often required to tolerate a higher degree of criticism given their capacity as public figures. Therefore, by facilitating the victims' assault based on their careers as journalists, their gender, and their political opinions, the Respondent State infringed their right to freedom of expression under Article 9 of the Charter. More info [here](#).

## ii. Freedom of association/political parties and political participation

***Interights v. Mauritania (2004)***. The present case relates to the dissolution of the political party known as the Union des forces démocratiques-Ere nouvelle based on its declarations delivered during the pre-campaigns for the elections of 2001 criticizing the Mauritanian government. In this vein, the Commission recalled that freedom of expression and association are closely related in that the right to association aims to protect opinions and allow them to be freely expressed, particularly in the context of political debate. These rights can be regulated through national laws to protect the common interest, national security, and others' rights. Such restrictions must also be necessary and proportionate in a democratic society. However, in this case, the Commission ruled that the dissolution order was disproportionate in light of the offenses attributable to the party's leaders since other less intrusive measures could have had the same effect, resulting in a violation of Article 10 of the Charter. The Commission found no further responsibility under Article 9. More info [here](#).

***Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)***. The present case concerned the human rights violations occurring in Zimbabwe from the Constitutional Referendum of 2000 until after the Parliamentary elections celebrated in June 2002 against opponents of the Zimbabwe African National Union-Patriotic Front (ZANU (PF)). In this respect, the Commission recalled that pursuant to Article 1 of the Charter, States parties are required to deploy all available and necessary resources to prevent and punish human rights violations committed within their territories. However, the Commission emphasized that States parties to the Charter do not bear international responsibility for the acts committed by private or natural individuals in their jurisdictions. Thus, considering that ZANU (PF) was a political party and, as such, acted independently of the State, the Commission concluded that non-state actors committed the human rights violations claimed by the Applicant and found no violation of Article 9 of the Charter. More info [here](#).

***Amnesty International v. Zambia (1999)***. The case relates to the irregular and politically motivated deportation of Mr. William Steven Banda and Mr. John Lyson Chinula, two prominent members of the opposition party "United National Independence." In this case, the Commission emphasized that the right to freedom of expression is essential to achieve personal development, civilian participation in political affairs, and political consciousness. Thus, having determined the political motives behind the Applicants' deportation, the Commission held Zambia responsible for breaching, amongst others, Articles 9 and 10 of the Charter. More info [here](#).

***Gabriel Shumba and Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe (2021)***. The case concerned several Zimbabwean citizens who lived and worked in South Africa, who were not permitted to vote in the Constitutional Referendum of March 2013. The applicants argued that such restriction was based on a discriminatory Act, which sets residency requirements

for voters and only permits postal voting for Zimbabwean government officials on duty and their spouses. The Commission argued that States may impose limitations on Charter recognized rights, as long as such restrictions were: provided by law, based on a legitimate aim, and necessary and proportional. The Commission analyzed the Act and concluded the measure was a legitimate restriction on the right to political participation recognized in Article 13 of the Charter. In addition, it argued that voting can be viewed as a formal expression of political opinion and held that limitations to such rights could also be imposed so long as they complied with the elements previously mentioned. Therefore, the Commission, *mutatis mutandis*, determined that such limitations were also legitimate restrictions on the right to freedom of expression. More info [here](#).

### iii. Freedom of association/civil society actors

***Huri-Laws v. Nigeria (2000)***. The case relates to the torture, arbitrary detentions, and constant harassment of the staff of the Civil Liberties Organization by agents of the State Security Services (“SSS”) as a means to prevent them from advocating for human rights within Nigeria. In this vein, the Commission stated that the arbitrary arrests and illegal searches performed by agents of the SSS attempted to undermine and restrict the victims’ right to freedom of expression, association, and movement, resulting in a violation of these human rights. Hence, even though the ability of the SSS to apprehend civilians and conduct searches without a warrant fell within the scope of the State Security (Detention of Persons) Decree No. 2 of 1984, such actions did not conform to the Charter, resulting in a violation of Articles 9, 10(1), and 12(1) of the Charter, among other rights. More info [here](#).

***International Pen v. Nigeria (1998)***. The instant case concerned the conviction and sentence to death of Mr. Ken Saro-Wiwa, an Ogoni activist and writer who presided over the Movement for the

Survival of the Ogoni People (MOSOP). In this respect, the Commission held that freedom of association under Article 10.1 of the Charter was violated due to the unjustified prejudice of the government against the MOSOP. Similarly, the Commission held that Nigeria violated Article 11 on the right to assemble by accusing the Applicant of the murders that occurred at a rally organized by MOSOP, even though government officials stopped Mr. Ken Saro-Wiwa from attending the rally. As a result, the Commission concluded that due to the close relationship between the rights provided in Articles 9.2, 10.1, and 11, in the present case, a violation of the Applicant’s freedom of expression also implied a violation of his rights to freedom of association and to assemble freely. More info [here](#).

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

***Open Society Justice Initiative v. Cameroon (2019)***. The case concerned, *inter alia*, the lack of fair procedures and independence of the authority responsible for issuing broadcasting licenses in Cameroon. This decision also relates to the arbitrary denial of the Applicant’s broadcasting license and the seizure of his radio station equipment. In this sense, the Commission noted that Cameroonian law did not include any substantive criteria for the approval of a broadcasting license nor required the Minister of Communication to follow the recommendations of the Technical Committee, which preliminarily assesses each license application. Also, Cameroon’s law did not require the Minister to justify his license decisions. The Commission further added that the Minister could not be considered an independent regulatory body since, due to his position in the executive branch, his decisions were subject to political interference. Hence, the Commission held that the lack of protection against arbitrariness, the discretionary powers afforded to the Minister, and his practice of issuing informal authorizations constituted a prior restraint; therefore, it resulted in a violation of Article 9 of the Charter. More info [here](#).

***Scanlen & Holderness v. Zimbabwe (2009).***

The case relates to the legality of a national law which prevented journalists from practicing journalism without prior accreditation from the Media and Information Commission (MIC). In this respect, the Commission first noted that “registration procedures are not in themselves a violation of the right to freedom of expression, provided they are purely technical and administrative in nature and do not involve prohibitive fees, or [...] impose onerous conditions.” [para. 90] However, the Commission ruled that the legislative provisions in the present case hindered freedom of expression by facilitating politically motivated interference. Furthermore, the Commission made a distinction between the regulation of journalism for the purpose of identifying journalists, maintaining moral and ethical standards, and investing in the advancement of the profession, and that which intends to control journalism. The Commission concluded that the latter scenario constitutes an illegal limitation of journalism. More info [here](#).

***Zimbabwe Lawyers for Human Rights & Associated Newspaper of Zimbabwe v. Zimbabwe (2009).***

The case concerned, *inter alia*, the constitutional challenge against the Access to Information and Protection of Privacy Act of 2002, which prohibited mass media services from operating unless registered with the Media and Information Commission (MIC). In this regard, the Commission found the Respondent State’s decision to stop the Applicants from publishing their news, closing their premises, and confiscating their equipment groundless. Likewise, the Commission held that even if the Applicant was operating illegally, the Respondent State should have sought a Court order to stop their operations and not resort to force; therefore, the Commission concluded that the facts before it disclosed a violation of Article 9 of the Charter. More info [here](#).

***Media Rights Agenda v. Nigeria (1998).*** In the *sub examine* case, the Commission held Nigeria responsible for violating the rights to receive information

and freedom of expression by issuing a Decree that vested ample discretionary powers to the Newspaper Registration Board to decide whether to register a newspaper or magazine. Similarly, the Commission held that Nigeria violated these rights by seizing 50,000 copies of a magazine and issuing a Decree banning specific newspapers. In this regard, the Commission ruled that newspaper registration fees and pre-registration deposits are not contrary to the freedom of expression insofar as the requested amount is not excessively high and does not pose a severe restriction on the right. However, the Commission expressed its concerns regarding the discretionary powers afforded to the Newspaper Registration Board to prohibit newspapers and magazines, which enabled censorship and threatened the public’s right to receive valuable information, therefore resulting in a violation of Article 9 of the Charter. More info [here](#).

**v. Subsequent liability/criminal defamation**

***Agnes Uwimana-Nkusi v. Rwanda (2021).***

The case concerned the conviction of journalists Agnes Uwimana-Nkusi and Saidati Mukakibibi on the grounds of defamation and threatening national security following the publication of three articles criticizing the government. In this sense, the Commission held that criminal defamation laws impose a disproportionate and unnecessary burden on journalists, preventing them from exercising their careers without fear of censorship. The Commission further recalled the importance of freedom of expression in democratic societies, mainly encouraging political debate and personal development. The Commission also emphasized that holding public officials accountable implies they must tolerate a higher degree of criticism pursuant to Article 9 of the Charter. Hence, the Commission ruled that depriving the victims of their liberty as a means to restrict their right to freedom of expression was not necessary or proportionate in a democratic society, resulting in a violation of Article 9 of the Charter. More info [here](#).

***Media Rights Agenda v. Nigeria (2000)***. The case concerned the arrest, conviction, and sentence of Mr. Niran Malaolu, editor of the Nigerian daily newspaper named "The Diet," following the publication of news stories on a coup plot against the government. To conceal the actual reason behind the Applicant's detention, a military tribunal convicted Mr. Malaolu for his alleged involvement in a coup and sentenced him to life imprisonment. In this regard, the Commission ruled that Mr. Malaolu's publication was the only factor leading to his arrest, trial, and further conviction. Therefore, the Commission found that Nigeria had violated the provisions of Article 9 of the Charter, given that the government had abused its authority to limit the Applicant's freedom of expression. More info [here](#).

#### vi. Rights of non-national journalists

***Zimbabwe Lawyers for Human Rights v. Zimbabwe (2009)***. The case relates to the deportation of Mr. Andrew Barclay Meldrum, an American journalist residing in Zimbabwe, following a publication of an article in the Daily News upon which he was convicted of "publishing falsehood." In this respect, the Commission concluded that Mr. Barclay's deportation was meant to silence him due to a published article that did not favor the government. The Applicant was deported despite the fact that he was granted a stay order by a court. Consequently, the Commission ruled that even if the Applicant was not stopped from expressing his opinions where he was deported to, his freedom of expression was wrongfully restricted in Zimbabwe, a signatory party to the Charter, resulting in a violation of Article 9. More info [here](#).

#### vii. Hierarchy of international law over domestic legal order

***Article 19 v. Eritrea (2007)***. The present case relates to the incommunicado detention and ill-treatment of 18 journalists since September 2001, following their publication of a public letter written by a

dozen senior officials and other members of the ruling elite criticizing the government. In this respect, the Commission held that allowing national laws to restrict the right to freedom of expression without setting boundaries would render the right an illusion. Hence, according to the Commission, international standards and maxims of law must be accorded hierarchy over domestic legal frameworks. Further, the Commission ruled that pursuant to Article 9 of the Charter, any law banning the press as a whole or imprisoning those opposed to the government must be deemed illegal and, as such, contradictory to the Charter. Finally, the Commission held that the facts of the case disclosed a violation of Article 9 of the Charter. More info [here](#).

## C. Limitations to freedom of expression

### i. National emergencies

***Liesbeth Zegveld v. Eritrea (2003)***. The case concerned the incommunicado detention of eleven former government officials who were openly critical of the Eritrean Government. In this regard, the Commission ruled that any law restricting the right to freedom of expression must conform to the Charter and other relevant human rights standards. The Commission further added that even in emergencies or exceptional circumstances, the Charter does not admit derogations of the rights. Thus, even if individuals exercise their rights in infringement of national legal restrictions, due process and fair trials must still be exhausted. Therefore, since no charges were ever pressed against the victims nor were they brought before a judge, the Commission concluded that Eritrea interfered with the Applicant's freedom of expression by adopting measures (the illegal arrests) that were not in consonance with the Charter, resulting in a violation of Article 9. More info [here](#).

***Amnesty International and others v. Sudan (1999)***. The case concerned the systematic human

rights violations prevailing in Sudan during the state of emergency declared following the coup of 30 July 1989. During the time of the events, the Sudanese military and police arrested, illegally detained, executed, and tortured non-Muslims and perceived opponents of the Revolution for National Salvation. In this vein, the Commission emphasized that “the Charter contains no derogation clause, which can be seen as an expression of the principle that the restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law.” [para. 79] Furthermore, the Commission held that the restriction of human rights during national emergencies is not permitted beyond what is necessary; when such a measure is required by law, the restriction should be minimal as per the spirit of the Charter. Likewise, the Commission held that restricting the enjoyment of a human right must be treated as an exception to the norm since human rights legitimize the government’s operations and actions in a democratic society. The Commission concluded in the present case that the facts before it disclosed a violation of Article 9 of the Charter. More info [here](#).

***Constitutional Rights Project v. Nigeria (1998)***. The case relates to the proscription imposed on magazines and the detention of journalists and activists who opposed the annulment of the presidential elections of 1993. In this respect, the Commission held that the “wholesale” violation of a human right is never justified and rejected the government’s argument that these measures were taken in order to prevent a certain situation from arising. Likewise, the Commission stated that special regard must be given to constitutional and international human rights law. Thus, albeit the Government maintained that its decision to detain journalists and ban certain magazines intended to address the conflict that followed after the annulment of the elections, the Commission held that such measures hindered society’s confidence in the rule of law and fueled an already chaotic situation. According to the Commission, national authorities

must not limit freedom of expression by overriding constitutional provisions or ignoring their international obligations. Hence, the Commission concluded that the facts before it disclosed a violation of Article 9 of the Charter. More info [here](#).

## ii. Legitimate restrictions to freedom of expression

***Monim Elgak and others v. Sudan (2015)***. The case relates to the arrest and interrogation of Monim Elgak, Osman Hummeida, and Amir Suliman because of their alleged cooperation with the International Criminal Court’s investigation concerning the human rights situation in Sudan. In this sense, the Commission recalled that in addition to the grounds set out in Article 27 of the Charter, any restriction on freedom of expression must also “...be provided by law, serve a legitimate interest and be necessary in a democratic society” [para. 114]. However, the Commission ruled that there was no justifiable reason to restrict the Applicants’ freedom of expression since their alleged work for the International Criminal Court could not be deemed to have threatened national security. Hence, the Commission considered that the facts before it disclosed a violation of Article 9 of the Charter. More info [here](#).

The cases *Media Rights Agenda v. Nigeria* (1998), *Egyptian Initiative for Personal Rights v. Egypt* (2013), *Agnes Uwimana-Nkusi v. Rwanda* (2021), *Kenneth Good v. Botswana* (2010), *Gabriel Shumba and Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe* (2021), *Article 19 v. Eritrea* (2007), and *Interights v. Mauritania* (2004) also deal with legitimate restrictions to freedom of expression. However, they were included under other sections of this the paper, in relation to other issues.

# IV. Decisions of the African Court on Human and Peoples' Rights

Although the case law of the African Court on issues related to freedom of expression does not have that many judgments, the Court has provided important standards on a diverse number of issues. For instance, the Court has analyzed the protection afforded to political speech and journalists, as well as access to State-held information or the legitimate limitation that may be imposed on to freedom of expression. The present section will address the decisions of the African Court which interpreted and implemented the rights to freedom of expression and access to information as per the provisions of Article 9 of the Charter.

## A. Violence against journalists

***Norbert Zongo v. Burkina Faso (2014)***. The instant case concerned the murder of journalist Norbert Zongo in retaliation for a story he was working on, which implicated the younger brother of the President of Burkina Faso in the torture and murder of another man. The Court held that Burkina Faso infringed Article 9 of the Charter by failing to investigate the Applicant's murder which indirectly stymied freedom of expression in the media. The Court further indicated that Burkina Faso's failure to prosecute and convict those responsible for the Applicant's murder inhibited other journalists' freedom of expression by invoking fear in media members, hindering confidence in the governmental apparatus, and paralyzing the free flow of information in breach of Article 9(2) of the Charter. More info [here](#).

## B. Subsequent liability/ criminal defamation

***Ingabire Victoire Umuhiza v. Rwanda (2018)***. The case concerned the criminal conviction of Ingabire Victoire Umuhiza, leader of the political party Forces Démocratiques Unifiées, following her declarations on the Rwanda Genocide of 1994 and her public statements criticizing the government and certain public officials. In this respect, the Court held that criminal laws upon which the Applicant was convicted pursued a legitimate aim and complied with the "provided by law" requirement under the Charter. However, the Court recalled that political discourse should be afforded a wider margin of tolerance and that public figures can be legitimately subject to political opposition to encourage governmental transparency. In this regard, the Court held that convicting the Applicant based merely on social context and history could have potentially inhibited the right to freedom of expression of others and render the prerogative ineffective. In this vein, the Court held that any form of effort to coerce the right to freedom of expression, insofar as it is disproportionate or unnecessary in a democratic society, is incompatible with the Charter. Thus, the Court ruled that convicting the Applicant based on her political statements amounted to violating her right to freedom of expression. More info [here](#).

***Lohé Issa Konaté v. Burkina Faso (2014)***. The case relates to the conviction of journalist Lohé Issa Konaté on the grounds of defamation, public insult, and contempt of court for publishing several newspaper articles accusing a State Prosecutor of corruption. In this sense, the Court held that in democratic societies, freedom of expression must be afforded a wider margin of tolerance when the expression refers to public figures in the context of public debate.

Therefore, having due regard to the State Prosecutor's capacity as a "public figure," the Court emphasized that people in highly visible roles are required to tolerate more severe criticism. The Court then ruled that the Applicant's conviction constituted a disproportionate and unnecessary interference to his freedom of expression, considering the Applicant's career as a journalist and the Respondent State's failure to demonstrate how such restriction could have protected the reputation and rights of other members of the judiciary. Consequently, the Court found a violation of Article 9 of the Charter. More info [here](#).

### **C. Right to receive State-held information**

**XYZ v. Benin (2020).** This case relates to the amendment of the Beninese Constitution without the prior consultation of the Beninese society. In this respect, the Court held that even if the Beninese Parliament and the Constitutional Court approved the amending law, in a democratic society, all citizens must have access to State-held information to encourage governmental transparency and allow civilian participation in the affairs of the State. Furthermore, the Court indicated that State-held information such as the amendment of the Constitution was of particular importance to the Beninese society as it directly affected their rights and the national security of Benin. Hence, since the Beninese Parliament amended the Beninese Constitution without prior national consensus, the Court held Benin responsible, *inter alia*, for violating the Applicant's right to receive information as per Article 9 of the Charter. More info [here](#).

### **D. Limitations to freedom of expression**

**Sebastien Germain Marie Aïkoue Ajavon v. Benin (2020).** In the present case, the applicant argued that the Beninese parliamentary elections of April 2019 were irregular, since they were based on a series of electoral laws inconsistent with international human rights law. Furthermore, it claimed that the law revising the Constitution, as well as several subsequent laws, adopted by the authorities elected in said election have caused numerous human rights violations. In its decision, the African Court analyzed a series of alleged violations of the African Charter argued by the applicant, amongst which was an alleged violation to the right to freedom of expression due to a set of amendments to the Digital Code. The amendments used criminal law to punish the offences of racially motivated and xenophobic insults using a computer system and that of incitement to hatred and violence on the grounds of race, color, national or ethnic origin, or religion. In its judgment, the Court analyzed the amendments, concluding it was a legitimate limitation on the right freedom of expression. It argued the measure was prescribed by law, prohibited acts that fall under limitations permitted by international human rights law, was necessary, and proportional. More info [here](#).

# Appendix

List of all the cases examined and included in this paper:

Decisions of the African Court		Decisions of the African Commission	
1	<i>XYZ v. Benin</i> (2020)	1	<i>Agnes Uwimana-Nkusi v. Rwanda</i> (2021)
2	<i>Ingabire Victoire Umuhoza v. Rwanda</i> (2018)	2	<i>Open Society Justice Initiative v. Cameroon</i> (2019)
3	<i>Lohé Issa Konaté v. Burkina Faso</i> (2016)	3	<i>Monim Elgak and others v. Sudan</i> (2015)
4	<i>Norbert Zongo v. Burkina Faso</i> (2015)	4	<i>Egyptian Initiative for Personal Rights v. Egypt</i> (2013)
5	<i>Sebatien Germain Marie Aikoue Ajavon v. Benin</i> (2020)	5	<i>Kenneth Good v. Botswana</i> (2010)
		6	<i>Scanlen &amp; Holderness v. Zimbabwe</i> (2009)
		7	<i>Zimbabwe Lawyers for Human Rights v. Zimbabwe</i> (2009)
		8	<i>Article 19 v. Eritrea</i> (2007)
		9	<i>Zimbabwe Lawyers for Human Rights v. Zimbabwe</i> (2008)
		10	<i>Zimbabwe Human Rights NGO Forum v. Zimbabwe</i> (2006)
		11	<i>Interights v. Mauritania</i> (2004)
		12	<i>Liesbeth Zegveld v. Eritrea</i> (2003)
		13	<i>Law Offices of Ghazi Suleiman v. Sudan</i> (2003)
		14	<i>Huri-Laws v. Nigeria</i> (2000)
		15	<i>Sir Dawda K. Jawara v. Gambia</i> (2000)
		16	<i>Media Rights Agenda and others v. Nigeria</i> (2000)
		17	<i>Amnesty International and others v. Sudan</i> (1999)
		18	<i>Amnesty International v. Zambia</i> (1999)
		19	<i>Constitutional Rights Project v. Nigeria</i> (1998)
		20	<i>Media Rights Agenda and others v. Nigeria</i> (1998)
		21	<i>International Pen v. Nigeria</i> (1998)
		22	<i>Gabriel Shumba and others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe</i> (2021)

# Endnotes

1. UNHR Comm., *Keun-Tae Kim v. The Republic of Korea*, Comm. No. 574/1994 (1999).
2. ECtHR, *Gavrilovic v. Moldova*, App. No. 25464/05 (2009).
3. ECtHR, *Cumpana and Mazare v. Romania*, App. No. 33348/96 (2004).
4. ECtHR, *Mahmudov and Agazade v. Azerbaijan*, App. No. 38577/04 (2008).
5. ECtHR, *Lehideux v. France*, App. No. 24662/94 (1998).
6. ECtHR, *Radio France and all v. France*, App. No. 53984/00 (2004).
7. ECtHR, *Raichinov v. Bulgaria*, App. No. 47579/99 (2006).
8. ECtHR, *Kubaszewski v. Poland*, App. No. 571/04 (2010).
9. ECtHR, *Lyashko v. Ukraine*, App. No. 210/40/02 (2006).
10. ECtHR, *Fedchanko v. Russia*, App. No. 33333/04 (2010).
11. ECtHR, *Krutov v. Russia*, App. No. 15469/04 (2009).
12. ECtHR, *Lombardo et al. v. Malta*, App. No. 7333/06 (2007).
13. IACtHR, *Tristan Donoso v. Panamá*, Series C, No. 193 (2009).
14. IACtHR, *Herrera-Ulloa v. Costa Rica*, Series C, No. 107 (July 2004).
15. IACtHR, *Palamara Iribarne v. Chile*, Series C, No. 135 (2005).
16. IACtHR, *Ricardo Canese v. Paraguay*, Series C, No. 11131 (2004).
17. ECtHR, *Tolstoy Miloslavsky v. United Kingdom*, App. No. 18139/91 (1995).
18. IACtHR, *Ivcher Bronstein v. Peru*, Series C, No. 74 (2001).
19. ECtHR, *Handyside v. United Kingdom*, App. No. 5493/72 (1976).
20. ECtHR, *Gündüz v. Turkey*, App. No. 35071/97 (2003).
21. Another case cited in this decision: ECtHR, *Medvedyev and Others v. France*, App. No. 3394/03 (2010).
22. Other cases cited in this decision were: ECtHR, *Marckx v. Belgium*, App. No. 6833/74 (1979); ECtHR, *Oberschlick v. Austria*, App. No. 11662/85 (1991).
23. ECtHR, *Lingens v. Austria*, App. No. 9815/82 (1986).
24. Other cases cited in this decision were: ECtHR, *Handyside v. United Kingdom*, App. No. 5493/72 (1976); UNHR Comm., *Jong-Kyu Sohn v. Korea*, Comm. No. 518/1992 (1995); UNHR Comm., *Shin v. Korea*, Comm. No. 926/2000 (2004).
25. ECtHR, *Thorgeirson v. Iceland*, App. No. 13778/88 (1992).
26. ECtHR, *Garaudy v. France*, App. No. 65831/01 (2003).
27. ECtHR, *Hans-Jurgen Witzsch v. Germany*, App. No. 7485/03.
28. ECtHR, *Perincek v. Switzerland*, App. No. 27510/08 (2015).
29. ECtHR, *Handyside v. United Kingdom*, App. No. 5493/72 (1976).
30. ECtHR, *Jersild v. Denmark*, App. No. 15890/89 (1994).
31. ECtHR, *Surek v. Turkey*, App. No. 24762/94 (1999).
32. ECtHR, *Ergin v. Turkey*, App. No. 47533/99 (2006).
33. The African Commission did not cite a specific case from the IACtHR in its decision, but cited the following academic publication: Posetano, Naiara (2016), "The Protection of the Right to Freedom of Expression: A Panorama of the Inter-American Court of Human Rights Case Law," *Espacio Juridico: Journal of Law [EJIL]*- Quais A2.16.51. 10.18593/ejil/v16i3/9770, p.60.
34. IACtHR, *Claude Reyes v. Chile*, Series C, No. 151 (2006).
35. Other cases cited in this decision were: IACtHR, *Ivcher Bronstein v. Peru*, Series C, No. 74 (2001); ECtHR, *Glas Nadezhda Eood and Anatoliy Elenkov v. Bulgaria*, App. No. 14134/02 (2007); ECtHR, *Maestri v. Italy*, App. No. 39748/98 (2004); ECtHR, *Purcell v. Ireland*, App. No. 15404/89 (1991); ECtHR, *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, App. No. 38433/09 (2012); ECtHR, *Meltex Ltd and Mesrop Movsesyan v. Armenia*, App. No. 32283/04 (2008); ECtHR, *Informationsverein Lentia and Others v. Austria*, App. No. 17207/90 (1997); ECtHR, *Radio ABC v. Austria*, App. No. 19736/92 (1997); ECtHR, *Demuth v. Switzerland*, App. No. 38743/97 (2002).
36. UNHRC Comm., General Comment No. 34 (CCPR/C/GC/34).
37. ECtHR, *Meltex Ltd and Mesrop Movsesyan v. Armenia*, App. No. 32283/04 (2008).
38. IACHR, *Declaration of Principles on Freedom of Expression*, 108th Period of Sessions (2000).
39. ECtHR, *The Observer and The Guardian v. United Kingdom*, App. No. 13585/88 (1991).



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