

Factsheet

Case Law of the African System of Human and Peoples' Rights

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This Factsheet is meant to complement our Special Collection paper on the [Case Law of the African System of Human and People's Rights](#), by presenting an overview of key standards on topical issues regarding freedom of expression and access to information identified in the jurisprudence of the African Court of Human and People's Rights and the African Commission on Human and Peoples Rights. For a complete list of case analyses of decisions of the African Commission included in our database, readers can click [here](#). For a complete list of case analyses of decisions of the African Court, readers can click [here](#). Readers can also access [here](#) the overview and global perspective section of our Special Collection paper for more background information on the African System of Human and People's Rights and its interaction with other regional courts and international bodies.

I. Case Law of the African Commission on Human and People's Rights

A. Right to receive information

i. Relation between freedom of expression and the right to receive information¹

Law Offices of Ghazi Suleiman v. Sudan (2003)²

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.

Sir Dawda K. Jawara v. Gambia (2000)³

The Commission ruled that "[t]he 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.

¹ 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. These cases, together with *Media Rights Agenda v. Nigeria* (1998) were included in other sections of this Factsheet.

² The case concerned the human rights violations committed between 1998 and 2002 against Mr. Ghazi Suleiman, a human rights advocate based in Sudan, who was harassed, persecuted, and arrested as a result of his lectures, public speeches, and declarations promoting human rights within the country.

³ 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 because of articles they had published.

ii. *Right to receive information in deportation proceedings*

Kenneth Good v. Botswana (2010)⁴

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] It 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.

B. Freedom of Expression⁵

i. *Violence against journalists*

Egyptian Initiative for Personal Rights v. Egypt (2013)⁶

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 on their right to freedom of expression under Article 9 of the Charter.

Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)⁷

The Commission recalled that according 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.

⁴ 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.

⁵ Additional sections such as *hierarchy of international law over domestic legal order* can be found on our Special Collection Paper [here](#).

⁶ 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—who promoted a constitutional amendment to allow multi-candidate presidential elections in Egypt—were assaulted by riot police officers and followers of the National Democratic Party.

⁷ The 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))

ii. *Freedom of association/political parties and political participation*⁸

Amnesty International v. Zambia (1999)⁹

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.

iii. *Freedom of association/civil society actors*

Huri-Laws v. Nigeria (2000)¹⁰

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 faculties 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.

International Pen v. Nigeria (1998)¹¹

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 entailed a violation of his rights to freedom of association and to assemble freely.

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

Open Society Justice Initiative v. Cameroon (2019)¹²

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, due to its position in the executive branch. Thus, its decisions were subject to political interference. The Commission also held that the lack of protection against arbitrariness, the discretionary powers afforded to the Minister, and its practice of issuing informal authorizations constituted a prior restraint that breached Article 9 of the Charter.

⁸ See also *Gabriel Shumba and Others (represented by Zimbabwe Lawyers for Human Rights) v. Zimbabwe (2021)*

⁹ 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."

¹⁰ 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") to prevent them from advocating for human rights within Nigeria.

¹¹ The case concerned the conviction and death sentence of Mr. Ken Saro-Wiwa, an Ogoni activist and writer who presided over the Movement for the Survival of the Ogoni People (MOSOP).

¹² 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.

Scanlen & Holderness v. Zimbabwe (2009)¹³

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.

Zimbabwe Lawyers for Human Rights & Associated Newspaper of Zimbabwe v. Zimbabwe (2009)¹⁴

The Commission found that the Respondent State's decision to stop the Applicants from publishing their news, closing their premises, and confiscating their equipment, was 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, in light of the facts, Zimbabwe violated Article 9 of the Charter.

Media Rights Agenda v. Nigeria (1998)¹⁵

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, and thus breached Article 9 of the Charter.

v. Subsequent liability/criminal defamation

Agnes Uwimana-Nkusi v. Rwanda (2021)¹⁶

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. It recalled the importance of freedom of expression in democratic societies, mainly encouraging political debate and personal development. It also emphasized that holding public officials accountable entails that 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 to restrict their right to freedom of expression was not necessary or proportionate in a democratic society and violated Article 9 of the Charter.

¹³ The case relates to the legality of a national law that prevented journalists from practicing journalism without prior accreditation from the Media and Information Commission (MIC)

¹⁴ The case regarded the constitutional challenge against the Access to Information and Protection of Privacy Act of 2002, which prohibited mass media services in Zimbabwe from operating unless registered with the Media and Information Commission (MIC).

¹⁵ The events of this case took place after the annulment of the Nigerian elections of 12 June 1993. The government issued several decrees banning two magazines and 10 newspapers published by four media organizations. State officials conducted "frequent seizures of copies of magazines critical of its decisions," sealed its premises and those of the newspapers, and arrested newspaper vendors that sold the impugned magazines. [para. 1] On 16 August 1993, the government issued the Newspaper Decree No. 43 of 1993, voiding the registration of all existing newspapers under the Newspaper Act and proscribing owning, publishing, or printing an unregistered newspaper with a punishment of either a fine of N250.000, a term of 7 years of imprisonment or both.

¹⁶ The case concerned the conviction of journalists Agnes Uwimana-Nkusi and Saidati Mukakibibi for defamation and threatening national security following the publication of three articles criticizing the government.

Media Rights Agenda v. Nigeria (2000)¹⁷

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.

vi. Rights of non-national journalists

Zimbabwe Lawyers for Human Rights v. Zimbabwe (2009)¹⁸

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.

C. Limitations to freedom of expression

*i. National emergencies*¹⁹

Liesbeth Zegveld v. Eritrea (2003)²⁰

The Commission considered that even in emergencies or exceptional circumstances, the Charter does not admit derogations of its rights. Thus, even if individuals exercise their rights infringing upon 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, it concluded that Eritrea interfered with the Applicant's freedom of expression by adopting measures (illegal arrests) that were not in consonance with the Charter, thus violating Article 9.

Amnesty International and others v. Sudan (1999)²¹

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. Hence, the Commission concluded that the Respondent State violated Article 9 of the Charter.

¹⁷ The case concerned the arrest, conviction, and sentence of Mr. Niran Malaolu, editor of the Nigerian daily newspaper "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.

¹⁸ The case relates to the deportation of Mr. Andrew Barclay Meldrum, an American journalist residing in Zimbabwe, following the publication of an article in the Daily News upon which he was convicted of "publishing falsehood".

¹⁹ An additional case on this issue—*Constitutional Rights Project v. Nigeria (1998)*—can be found in the Special Collection paper [here](#).

²⁰ The case concerned the incommunicado detention of eleven former government officials who were openly critical of the Eritrean Government

²¹ The case concerned the systematic human rights violations in Sudan during the state of emergency declared after the coup of 30 July 1989. During the time of the events, the Sudanese military and police arrested, illegally detained, tortured, and executed non-Muslims and perceived opponents of the Revolution for National Salvation.

ii. *Legitimate restrictions to freedom of expression*²²

Monim Elgak and others v. Sudan (2015)²³

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 did not threaten national security. Hence, the Commission considered that the facts before it disclosed a violation of Article 9 of the Charter.

II. Case Law of the African Court of Human and People's Rights²⁴

A. Violence against journalists

Norbert Zongo v. Burkina Faso (2014)²⁵

The Court held that Burkina Faso breached Article 9 of the Charter by failing to investigate the Applicant's murder which indirectly stymied freedom of expression in the media. It further argued 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.

B. Subsequent liability/criminal defamation

Ingabire Victoire Umuhoza v. Rwanda (2018)²⁶

The Court recalled that political discourse should be afforded a wider margin of protection 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. In this vein, it held that any 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.

²² 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 dealt with legitimate restrictions to freedom of expression. However, they were included under other sections of the factsheet, concerning other issues.

²³ 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.

²⁴ An additional section about limitations to freedom of expression can also be found in the Special Collection paper [here](#) where the case *Sebastien Germain Marie Aikoue Ajavon v. Benin (2020)* is included.

²⁵ 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.

²⁶ The case concerned the criminal conviction of Ingabire Victoire Umuhoza, 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.

Lohé Issa Konaté v. Burkina Faso (2014)²⁷

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.

C. Right to receive State-held information

XYZ v. Benin (2020)²⁸

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 State affairs. Furthermore, the Court argued that State-held information—such as that regarding 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.

For more information, please refer to additional resources such as:

- **CGFOE’ Special Collection paper of the Case Law of the African System of Human and Peoples’ Rights**
- **CGFOE’s case analyses on the jurisprudence of the African Court and African Commission on Human and People’s Rights.**

²⁷ The case relates to the conviction of journalist Lohé Issa Konaté for defamation, public insult, and contempt of court for publishing several newspaper articles accusing a State Prosecutor of corruption.

²⁸ The case relates to the amendment of the Beninese Constitution without prior consultation of the Beninese society.