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Free expression not a reality in South Africa, says Special Rapporteur

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'In practice, freedom of expression is yet to be a reality for a majority of people', said Special Rapporteur Pansy Tlakula, who oversees the evolution of free expression in part of South Africa. As Chief Electoral Officer of the Electoral Commission of South Africa, she organizes elections by registering political parties and managing election funds. She calls this her full-time job, and it kept her busy in the Democratic Republic of Congo in 2006. Jennifer Amur and John Hendel report for Index on Censorship



But during a presentation in London on 22 January, Tlakula spoke as Special Rapporteur of the African Commission for Human and Peoples' Rights and outlined the obstacles the commission faces in achieving freedom of expression in South Africa. The event was held at Frontline media club, where the audience included representatives from Index on Censorship, Article 19 and the Commonwealth Press Union.

Appointed Special Rapporteur in December 2005, Tlakula works to ensure the member-states' compliance with Article 9 of the African Charter on Human and Peoples' Rights, which states that everyone has the right to receive information and the right to express themselves. She represents the commission part-time by monitoring free expression in Swaziland, Namibia, The Gambia and Zambia.

Free expression violations on the rise

Trouble has been prevalent in this area for years. The Media Foundation for West Africa records violations of free press, noting a rise of 20 cases from 2005. Of the 168 press freedom violations in 2006, 27 occurred in the Gambia, making it the second-highest violator of the 15 countries monitored. The foundation also attributed the violations to government action in the Gambia more often than in some other countries.

The African Commission for Human and Peoples' Rights formed in 1986 to implement the African Charter. In 2002, the commission drafted the Declaration of Principles on Freedom of Expression in Africa as a response to the continuing free expression violations by the member-states. The declaration reemphasises the charter's significance, declaring 'the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms'.

Commission struggles to be heard

Ensuring compliance, however, becomes a difficult task when the commission can only make recommendations without the power to enforce them. 'The issue we are facing now is one of implementation', Tlakula said. Even though these recommendations sometimes aren't well-received by the member-states, she's happy that the commission isn't being ignored. 'At least someone's listening', she said.

The commission lacks the power of subpoena or seizure, and therefore cannot issue binding judgments as punishments for violations. As a result, disappearances and arbitrary arrests continue to be commonplace. Also, 'oppressive laws are still adopted', Tlakula said.

Although she can only make recommendations about how to deal with violations, she assists member-states with analysing media and national media laws to ensure compliance with the African Charter. Additionally, she takes action on behalf of alleged victims.

Rapporteur works to make free expression a reality

Another key part of her job as Special Rapporteur is to facilitate cooperation between the countries she oversees and the commission, which she does through promotional visits with government officials and to prisons. For example, while meeting with the foreign minister of Swaziland in August 2006, she held a press conference to address the country about free expression. The event attracted international media, including the British Broadcasting Company and the South African Broadcasting Corporation, but no local media attended. During her presentation, she agreed with an audience member that it was a political snub.

Swaziland is the world's last absolute monarchy, which has led to numerous issues with free expression. In the same month Tlakula visited the country, the minister for public service and information warned all media against questioning the king after a human rights lawyer criticised the king's absolute power on a radio broadcast. Although the country's constitution guarantees freedom of expression, violations continue, leaving the commission to make recommendations until repercussions can be implemented.

In order to help implement the charter, the Special Rapporteur said the next step is to establish a court to specifically address free expression violations. Though much of the infrastructure for the courts is in place, the necessary rules of procedure need to be agreed upon by the countries in the African Union. 'My last hope is in the courts', she said.

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