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**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

**Opening remarks by H.E Lady Justice Imani Daud Aboud, President of the
African Court on Human and Peoples' Rights**

**AT THE TRAINING OF JUDICIARY ACTORS ON FREEDOM OF EXPRESSION
AND SAFETY OF JOURNALISTS**

(19 to 23 September 2022)

- Hon. President of the East African Court of Justice,
- Hon. Judge Ngunyali, representing the Principal of IJA,
- Honourable Judges in attendance from various African countries
- Mr. Zlatan Milisic, UN Resident Coordinator,
- Mr. Mehdi BENCHELAN, UNESCO HQ,
- Representative from the AUC
- Distinguished trainers, speakers and facilitators
- Dear participants; ladies and gentlemen

All protocol observed

I am honoured and privileged to attend and make my remarks in this training of Judiciary Actors on Freedom of Expression and Safety of Journalists in Arusha. To begin with, I wish to thank the organizers of this training for the invitation to the African Court as the subject of Freedom of Expression and Safety of Journalist which is synonymous to the right to information and freedom of expression, is one that the African Court holds dearly as enshrined in the African Charter on Human and Peoples' Rights and guaranteed by the various international and national human rights instruments.

I am pleased to salute the organisers of this wonderful training and workshop for their initiative to set-up and implement a platform for training of judicial actors on freedom of expression and safety of the journalist in Arusha.

A British man of letters John Milton seemed to equate freedom of expression with the right to life, which is generally said to be the right without which no other right can be enjoyed. When he said *"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."*

The role of judicial actors in the protection and promotion of the right to freedom of expression among others includes; to understand the importance of the right of access to information, and the international legal framework underpinning it, to examine content and scope of the right of access to information, including its limitations. to examine the specific obligations of States with regards to access to information, to explore the relationship between access to information and other rights, such as the right to the truth, to understand the importance of media pluralism in guaranteeing access to information

Honourable Justice, Judges and distinguished guests

Courts and judges are the first instance in the protection of human rights and play a fundamental role in reviewing the decisions regarding the declaration of state of emergency and/or exceptional measures affecting fundamental rights. Freedom of expression and unfettered access to public information are to be considered as powerful instruments to fight the pandemic and protect the health of the population.

Journalists shall be properly protected from arrests and/or questioning by law enforcement, limitations to report on the situation and possible disruptions in the operation of hospitals, health care facilities, public transportation, or other public spaces. Journalists' work should be considered as the provision of an essential service and protected and enabled accordingly, including by granting access to protective masks and other relevant gear. Judicial actors, particularly judges, could pay special attention when reviewing cases related to addressing measures to fight disinformation, guaranteeing that international standards on freedom of expression and privacy are fully respected within those measures.

When considering possible hate speech cases, it is the responsibility of judicial actors, to make a proper assessment of each piece of content based on principles, rules and conditions established in international law. Freedom of expression and access to information are fundamental freedoms as well as enablers to ensure the rule of law, and human rights more broadly. Journalists, as watchdogs of our societies, have an essential role to play in this regard to ensure every citizen's right to information.

It is therefore crucial to raise the capacities and strengthen the knowledge of the judiciary in order to guarantee international legal standards on freedom of expression, access to information, and the safety of journalists. Through five comprehensive modules, this toolkit aims to reinforce the practical application of universal standards on human rights, by bringing in approaches of regional human rights courts as well as perspectives from national legal systems. It incorporates examples and debates originating in different legal traditions, including the common law and civil law systems, to provide a global framework for judges and judicial actors around the world.

The state of freedom of expression and related liberties in Africa is inevitably apprehended through the prism of democratization and the burgeoning of post 1990's constitutional democracies. It is largely accepted that freedom of expression is the fourth pillar of democracy in its originating sense of the government for the people, of the people and by the people. As a derivative of democracy, freedom of expression therefore vests with the citizenry the inherent right to criticize and ask the state to function properly and work as it is obliged to. These principles form the basis for commitments by Member States of the African Union to freedom of expression under the African Charter on Human and Peoples' Rights. These undertakings are similarly expressed in founding instruments of regional economic communities such as the Economic Community of West African States and the East African Community. It is in pursuit of the same goals that States established human rights institutions such as the African Court, the African Commission and the African Committee of Experts on the Rights and Welfare of the Child. The constitutional recognition of freedom of expression in the national spheres and establishment of technical media oversight bodies within governments exemplifies the same trend.

Despite its long-standing recognition from both legal and socio-political perspective, freedom of expression and associated civil liberties have remained under increased threat. It therefore appears that greater efforts are needed if freedom of expression is to play its full potential in the advent of the democratic societies that Africa and Africans look for. Having said that, the relevant question could be how this will be achieved. I believe, and this has also been the endeavour of the African Court over the years, that an effective attempt to safeguard freedom of expression in Africa requires firstly, that actors join forces; secondly, that judicial dialogue is encouraged based on dissemination of jurisprudential and normative practices; and lastly, an inter-sectional dialogue is established between the various actors of the system.

My first call is indeed for actors to join forces and an observation is worth making about the topics of the present workshop. Looking at the topics of the workshop, it appears that freedom of expression, media rights and safety of journalists encompass the efforts made so far by regional courts in Africa to address the most current challenges facing free speech and the right to information. From the earlier decisions of the African Commission on Human and Peoples' Rights dating from the era of military rule in Nigeria to the most recent pronouncements of the ECOWAS Court on the post

Jammeh era in the Gambia, the African Court has judicialized the enforcement of not only freedom of expression but also largely media rights, and indeed States obligation to guarantee the safety of media professionals. This justifies that the topic of this workshop inspires a call for various actors to join forces because freedom of expression expands beyond the rights to freely exercise media professions to embrace the much larger demand that citizens should participate directly in democratization by censoring public governance through free speech. Therefore, achieving an effective enforcement of freedom of expression involves various sections of society including media professionals, law implementation and enforcement institutions as well as the citizenry at large.

A second plea on strategies to advance freedom of expression in Africa is for regional institutions to instill change from a dialogical perspective under the umbrella of integration. There is no single African country which does not actively pledge for regional integration namely through shared norms including on freedom of expression. The rationale behind an integration movement is traditional to achieve a top-down approach to governance that is to pursue a vertical dialogue and penetration of norms and practices. In this regard, the African Court and other such institutions have developed legal understanding on how freedom of expression should be understood and applied across the continent. The African Court in particular has contributed significantly to this approach by enforcing safety of journalists in the case of *Norbert Zongo v Burkina Faso*. The Court has similarly strengthened freedom of expression through a critical move towards decriminalization of press offences by applying the well-established principle of proportionality but also that of acceptable limitations to rights in democratic societies as was done in the case of *Lohé Issa Konaté v Burkina Faso*. Finally, the Court has enforced a more civic approach to freedom of expression involving a political context as was seen in the matter of *Ingabiré Victoire Umuhoza v Rwanda*. The call that I believe is warranted here is for these enforcement models to serve as norms for domestic implementation of freedom of expression through jurisprudential dialogue with national courts. It is a cause for satisfaction that courts in Lesotho and Kenya have provided illustrations of how institutional interaction, and more precisely judicial dialogue, can strengthen the legal protection of freedom of expression, media rights, and safety of journalists.

Finally, my call is also for an inter-sectional dialogue to be established between the various stakeholders of the African network for freedom of expression. An overview of freedom of expression case law in Africa in the recent years reveals a trend to building on various sections of the right, block after block. Cases have ranged from individualized adjudication of freedom of speech in a political context to wholesale decriminalization of press offences. It should be born in mind that such strategic approach to litigation involves an iterative interaction between engineers of litigation, actual litigants, adjudicators, and implementers. The cycle that obtains here suggests that the outcome of enforcement of freedom of expression in regional and national courts serves as a seed for litigation houses to refine their interventions and feed enforcers who in turn will service implementers. My call is therefore that, if this cycle is to lead to sustainable achievements, there is need to establish a permanent inter-sectional dialogue between all these stakeholders. The present workshop actually provides the best illustration of an inter-sectional dialogue and should consequently be reinforced and further promoted. In this respect, I extend great appreciation and congratulations to UNESCO and other such institutions that have been forming alliances across the continent towards a strong and multi-actor network for freedom of expression in Africa.

The judiciary actors selected for this workshop and resource persons in attendance unequivocally augur well, and I can assure you of the unfettered commitment of the African Court to take prime cognizance of the outcome of these exchanges. The African Court also remains committed to both vertical and horizontal judicial dialogue in Africa as an effective tool to safeguard the African Charter's rights in general and freedom of expression in particular.

With these words of commitment, I wish us fruitful exchanges and thank you for your kind attention.

IMANI DAUD ABOUD