

Module 1

*Summary Modules on
Litigating Digital Rights
and Freedom of
Expression Online*



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MODULE 1

KEY PRINCIPLES OF INTERNATIONAL LAW AND FREEDOM OF EXPRESSION

- Human rights have become firmly entrenched in international law since the adoption of the seminal Universal Declaration of Human Rights in 1948.
- Since then, international human rights law has become increasingly influential in domestic courts and has set a global standard for the protection of human rights.
- Freedom of expression is one such right that has benefitted from this trend but is increasingly under threat from the dramatic changes to the media and information eco-system occasioned by the rise of the internet.
- African regional instruments, if properly understood and utilised, constitute a powerful tool in the arsenal of defenders of freedom of expression.

1. INTRODUCTION

Since at least the formation of the United Nations ([UN](#)) and the construction of a human rights regime founded in international law in 1948, the right to freedom of expression has become universally acknowledged. An example of this universal acknowledgement is found in the case of [Madanhire and Another v Attorney General](#) from the Zimbabwean Constitutional Court, where the Court stated that:

“There can be no doubt that the freedom of expression, coupled with the corollary right to receive and impart information, is a core value of any democratic society deserving of the utmost legal protection. As such, it is prominently recognised and entrenched in virtually every international and regional human rights instrument.”¹

Because the principle of freedom of expression is explicit in so many treaties, and soft law instruments, and is widely acknowledged in domestic and regional law, it has come to be regarded as a principle of customary international law.² Nevertheless, today’s rapidly evolving world is presenting new and unprecedented threats to the full realisation of the right to freedom of expression for many around the world, especially journalists and the media.

In order for African defenders of freedom of expression to adequately address these new challenges, it is crucial to have a firm understanding of freedom of expression in international and regional law. This module seeks to provide an overview of the key principles related to freedom of expression in international law, as well as in African regional instruments, and provide a foundation for understanding how to use these principles in the new digitally-connected world.

¹ *Madanhire and Another v Attorney General* (2014) (accessible [here](#)).

² Statute of the International Court of Justice (1948) (accessible [here](#)) at Article 38, which documents the four recognised sources of international law.

2. KEY PRINCIPLES OF INTERNATIONAL LAW

2.1. Human rights in international law

Human rights are inherent to all persons and dictate the minimum standard that must be applied to all people. They are enshrined in both national and international law and all persons are entitled to enjoy such rights without discrimination. When fully realised, human rights reflect the minimum standards to enable persons to live with dignity, freedom, equality, justice and peace.

The cornerstones of human rights are that they are inalienable and therefore cannot be taken away; are interconnected and thus dependant on one another; and indivisible, meaning that they cannot be treated in isolation. Not all rights are absolute, and some rights may be subject to certain limitations and restrictions to balance competing rights and interests.

Human rights under **international law** are generally considered to be rooted in the Universal Declaration of Human Rights ([UDHR](#)), which was agreed to by the United Nations in 1948 following the end of World War II. The UDHR is not a binding treaty in itself, but countries can be bound by those UDHR principles that have acquired the status of customary international law. The UDHR has further been the catalyst for the creation of other binding legal instruments, most notably the International Covenant on Civil and Political Rights ([ICCPR](#)) and the International Covenant on Economic, Social and Cultural Rights ([ICESCR](#)). Together, these three instruments constitute what is known as the [International Bill of Rights](#). Since their adoption, additional thematic treaties have been developed to address certain topics:

- [The International Convention on the Elimination of All Forms of Racial Discrimination](#);
- [The Convention on the Elimination of All Forms of Discrimination against Women](#);
- [The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#);
- [The Convention on the Rights of the Child](#);
- [The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#);
- [The Convention on the Rights of Persons with Disabilities](#); and
- [The International Convention for the Protection of All Persons from Enforced Disappearance](#).

In **Africa**, the African Charter on Human and Peoples' Rights ([African Charter](#)) is the primary treaty governing human rights on the continent. States are the primary duty-bearers for the realisation of human rights, which encompasses both negative and positive duties.

- With **negative duties**, states must avoid violating the rights of individuals and communities within their territories and protect them against violations by others.

- On the other hand, the obligation to fulfil human rights requires states to take **positive steps** to enable the full enjoyment of these rights.

In 2023, the African Union Convention on Cyber Security and Personal Data Protection ([Malabo Convention](#)) was ratified by Mauritania, the 15th country to do so, thereby bringing the convention into effect. By ratifying treaties, states commit to putting in place domestic measures, such as legislation, to give effect to their treaty obligations.

2.2. *Applying international law in a domestic context*

International and regional human rights law not only sets a standard for domestic law to follow but is in many cases binding on states. However, the exact way in which international law obligations are implemented domestically varies around the world.

The ICCPR creates a binding obligation on states. Regional human rights standards are also particularly influential, especially since there is near-universal ratification of the African Charter by African states.³

The way in which international law applies domestically is largely determined by whether a state applies monist or dualist principles:

- **Monist** states are those where international law is automatically part of the domestic legal framework. However, their exact status — whether above or on par with a state's constitution or domestic law — varies.
- **Dualist** states are those where international treaty obligations only become domestic law once they have been enacted by the legislature. Until this has happened, courts are not expected to comply with these obligations in a domestic case, although there are states in which some parts of international law may be automatically applied or used as a tool to interpret domestic law.

States with common law systems are invariably dualist, and while States with civil law systems are more likely to be monist, many are not. Because the application of international law is so varied and complicated, practitioners must evaluate the specific context in a given country to understand how to apply international and regional law most effectively.

3. THE RIGHT TO FREEDOM OF EXPRESSION UNDER INTERNATIONAL LAW

3.1. *Freedom of expression under international law*

The United Nations was the first international entity to enshrine the right to freedom of expression in international law in 1948 with the UDHR. Article 19 states: “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

³ African Commission on Human and Peoples' Rights, 'State Parties to the African Charter' ([accessible here](#)).

regardless of frontiers.”⁴ This was the foundation of what later became Article 19 of the [ICCPR](#). The rights contained under Article 19 comprise three core tenets:

- the right to hold opinions without interference (freedom of opinion);
- the right to seek and receive information (access to information); and
- the right to impart information (freedom of expression).

The right was further elaborated on in General Comment No. 34 by the UNHRC⁵. General Comment No. 34 on the ICCPR notes that the right to freedom of expression includes for example:

- political discourse;
- commentary on one’s own affairs and on public affairs;
- canvassing, discussion of human rights;
- journalism, cultural and artistic expression, teaching, and religious discourse.⁶

It also embraces expressions that may be regarded by some as deeply offensive.⁷ The right covers communications that are both verbal and non-verbal, and all modes of expression, including audio-visual, electronic and internet-based modes of communication.⁸

In terms of article 19(3) of the ICCPR, the right to freedom of expression contained in article 19(2) may be subject to certain restrictions:

“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 (*ordre public*), or of public health or morals.”

With respect to a limitation on the right to freedom of expression under article 19(2) of the ICCPR, a three-part test is used to assess whether such a limitation is justified:

- the limitation must be provided for in law;
- it must pursue a legitimate aim; and
- it must be necessary for a legitimate purpose.⁹

⁴ UN, ‘Universal Declaration of Human Rights’ (1948) (accessible [here](#)).

⁵ See above n 4 at para 11.

⁶ OHCHR, General Comment No. 34 (2011) (accessible [here](#)) at para 11.

⁷ *Id.* For further discussion on this, see Nani Jansen Reventlow, ‘The right to ‘offend, shock or disturb’, or the importance of protecting unpleasant speech’ in Perspectives on harmful speech online: A collection of essays, Berkman Klein Center for Internet & Society (2016) (accessible [here](#)) at pp 7-9.

⁸ See above n 6 at para 12.

⁹ For a fuller discussion on how freedom of expression may be legitimately limited, see the training manual published by Media Defence on the principles of freedom of expression under international law: Richard Carver, ‘Training manual on international and comparative media and freedom of expression law’ (2018) (accessible [here](#)) at pp 14-16. For more on proportionality see the 2002 decision of *Attorney-General v Mopa* in the Lesotho Court of Appeal (accessible [here](#)) and *Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v Zimbabwe* in the ACHPR (2009) (accessible [here](#)).

This test applies similarly to limitations of the right to freedom of expression under other legal instruments, including the African Charter.

The ICCPR is not the only treaty within the United Nations framework to address the right to freedom of expression. For instance:

- Article 15(3) of the [ICESCR](#) specifically refers to the freedom required for scientific research and creative activity, providing that: “The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.”
- Articles 12 and 13 of the UN Convention on the Rights of the Child ([CRC](#)) contain extensive protections relating to the right to freedom of expression enjoyed by children in articles 12 and 13.
- Article 21 of the United Nations Convention on the Rights of Persons with Disabilities ([CRPD](#)) contains extensive protections relating to freedom of expression and access to information about persons with disabilities in article 21.

It is therefore clear that the right to freedom of expression is firmly entrenched within the United Nations system, both as an important right on its own, as well as a crucial enabling right. For example, as stated in General Comment No. 25, in the context of the right to participate in public affairs, voting rights and the right of equal access to public service, it was noted that:

“Citizens can also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”¹⁰

3.2. Freedom of expression online

Article 19(2) of the ICCPR stipulates that the right to freedom of expression applies regardless of frontiers and through any media of one’s choice. General Comment No. 34 further explains that article 19(2) includes internet-based modes of communication.¹¹

In a 2016 resolution, the UN Human Rights Council ([UNHRC](#)) affirmed that:¹²

“[T]he same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.”

3.3 African regional standards

In 2016, the African Commission on Human and Peoples’ Rights ([ACHPR](#)) affirmed the UNHRC’s declaration and called on states to respect and take legislative and other measures

¹⁰ UNHRC General Comment No. 25 (1996) (accessible [here](#)) at para 8.

¹¹ See above n 6 at para 12.

¹² UNHRC, ‘Resolution on the promotion, protection and enjoyment of human rights on the internet’ A/HRC/32/L.20 (2016) (accessible [here](#)) at para 1.

to guarantee, respect, and protect citizens' rights to freedom of information and expression through access to internet services.¹³ This was supplemented in 2019 by the Declaration of Principles on Freedom of Expression and Access to Information in Africa adopted by the ACHPR, which recognises the role of new digital technologies in the realisation of the rights to freedom of expression and access to information, and also affirms that the same rights that people have offline should be protected online in accordance with international human rights law and standards.¹⁴

The 2019 Declaration differs from the 2002 Declaration in the following notable ways:

- It emphasises the importance of access to information by dedicating an entire section to the subject, whereas the 2002 Declaration mentioned it only in the Preamble.
- It calls on States to “recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression [and] access to information.”¹⁵
- It “articulates State obligations with respect to internet intermediaries, noting that States must ensure that internet intermediaries provide access to the internet in a non-discriminatory manner and that the use of algorithms or other artificial intelligence uses do not infringe on international human rights standards;”¹⁶
- It provides guidance on requests to remove online content.¹⁷

It addresses the protection of personal information and communication surveillance and requires States to adopt laws regulating the processing of personal information.¹⁸

In 2023 the ACHPR, together with other international bodies, issued a Joint Declaration on Media Freedom of Democracy due to the concern about the impact of online platforms on media freedom and freedom of expression. This declaration provides recommendations to States to secure and facilitate the media's role as a vital institution and pillar of democracy, with particular attention to online media.¹⁹

While freedom of expression is clearly protected by a considerable body of treaty law, it can also be regarded as a principle of customary international law, given how frequently the principle is enunciated in treaties, as well as other soft law instruments.²⁰ Most human rights treaties, including those dedicated to the protection of the rights of specific groups — such as

¹³ ACHPR, ‘Resolution on the right to freedom of information and expression on the internet in Africa’ ACHPR/Res.362, (2016) (accessible [here](#)).

¹⁴ ACHPR, ‘Declaration of Principles on Freedom of Expression and Access to Information in Africa’ (2019) (accessible [here](#)). The Declaration replaces the Declaration of Principles on Freedom of Expression in Africa which the African Commission adopted in 2002 (accessible [here](#)).

¹⁵ ACHPR, ‘Declaration of Principles on Freedom of Expression and Access to Information in Africa’, Principle 37(2) (2019) (accessible [here](#)).

¹⁶ International Justice Resource Center, ‘New ACHPR Declaration on Freedom of Expression & Access to Information’ (2020) (accessible [here](#)).

¹⁷ ACHPR above n 11 at Principle 39(4).

¹⁸ *Id* at Principle 42.

¹⁹ ACHPR, ‘Joint Declaration on Media Freedom and Democracy’ (2023) (accessible [here](#)).

²⁰ See above n 7 at p 5.

women, children, and people with disabilities — also make explicit mention of freedom of expression.²¹

Freedom of expression in the digital age

In recent years, freedom of expression has been under attack from a variety of new and challenging sources.

- First, the rise of social media and new media platforms has in many places decimated the revenue model for independent media, leaving many media houses weakened or bankrupt and unable to play their crucial role of holding power to account.
- Second, the rise of the internet has upended the traditional information ecosystem. This has resulted in a backlash from governments seeking to regulate growing cybercrimes and a flood of misinformation, often to the detriment of freedom of expression and legitimate dissent.²²

Ethiopia has recently passed a controversial social media law that was criticised for restricting online speech, and Nigeria is attempting to do the same with the so-called 'Social Media Bill.'²³ In 2022, **South Africa's** Film and Publications Regulations came into force.²⁴ These Regulations have been heavily criticised as they essentially give an authority power to censor digitally distributed content. Other trends, such as the rise of disinformation and States' responses thereto, pose serious and increasing threats to freedom of expression online. Similarly, the increase in the use of sophisticated surveillance technology on mobile phones has given rise to restrictions on freedom of expression, particularly among journalists.²⁵

4. JOURNALISM AND FREEDOM OF EXPRESSION

4.1. The changing role of journalists

A particular challenge that arises in the context of digital rights is the changing roles of journalists and publishers online. Journalists are vitally important protagonists when discussing digital rights and freedom of expression because they investigate and criticise the actions of the state and other powerful actors as part of the exercise of their functions. The particular role that the media plays in achieving an open and democratic society, and the special protections that this deservedly engages, have frequently been emphasised by the courts. Of course, the media industry has also experienced dramatic and rapid change as a result of the rise of the internet and social media, thus defending press freedom has become

²¹ *Id.*

²² For more see Washington Post, 'There's a worrying rise in journalists being arrested for 'fake news' around the world' (2019) (accessible [here](#)) and Freedom House, 'The Rise of Digital Authoritarianism: Fake news, data collection and the challenge to democracy' (2018) (accessible [here](#)).

²³ Al Jazeera 'Nigerians raise alarm over controversial Social Media Bill' (2019) (accessible [here](#)) and Al Jazeera, 'Ethiopia passes controversial law curbing 'hate speech' (2020) (accessible [here](#)).

²⁴ Business Tech 'New internet censorship regulations for South Africa' (2022) (accessible [here](#)).

²⁵ Forbidden Stories 'Journalists under surveillance' (2021) (accessible [here](#)).

more complicated and needs to be tailored to the new and evolving dynamics of the media ecosystem.

Nevertheless, General Comment No 34²⁶ expressly provides that journalism is a function shared by a wide range of actors, from professional full-time reporters and analysts to bloggers and others who engage in forms of self-publication in print and on the internet. Thus, journalistic protections should be construed broadly to apply to both professional and citizen journalists who are disseminating information in the public interest, so as not to unduly constrain freedom of expression.

In 2013, the [UN Special Rapporteur on Freedom of Expression](#) stated that²⁷ “[n]ew technologies have provided unprecedented access to means of global communication, and have therefore introduced new means of reporting on news and events around the world.” The report notes that, although citizen journalists are not trained professional journalists, it is nevertheless an important form of journalism as it can contribute to a richer diversity of views and opinions, and can provide an immediate, insider’s view of a conflict or catastrophe.

In interpreting the ICCPR in relation to freedom of the press, General Comment No. 34 states:²⁸

“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 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... As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, state parties should take particular care to encourage an independent and diverse media.”

Recently, the Constitutional Court of **South Africa** provided a resounding defence of freedom of the press in their role of providing access to information for the public and enabling freedom of expression in the 2021 case of *amaBhungane v Minister of Justice*.²⁹ In defending the right of journalists to protect the confidentiality of their sources and to be safe from surveillance, the judgment stated:

“I agree that keeping the identity of journalists’ sources confidential is protected by the rights to freedom of expression and the media. This Court has acknowledged the constitutional importance of the media in our democratic society, and has confirmed that “[t]he Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of section 16”. It follows that the confidentiality of journalists’ sources, which is crucial for the performance by the media of their obligations, is protected by section 16(1)(a).”³⁰

²⁶ See above n 4.

²⁷ Report of the UNSR on Freedom of Expression to the UN General Assembly (UNGA), A/65/284 (2013) (accessible [here](#)) at para 21.

²⁸ See above n 4.

²⁹ *amaBhungane v Minister of Justice* (2021) (accessible [here](#)).

³⁰ *Id* at para 115.

In the earlier High Court judgment of the same case, the Court pertinently held that:

“In a country that is as wracked by corruption in both our public institutions and in our private institutions as ours is, and where the unearthing of wrongdoing is significantly the work of investigative journalists, in an otherwise, seemingly, empty field, it is hypocritical to both laud the press and ignore their special needs to be an effective prop of the democratic process.”³¹

The proliferation of Strategic Lawsuits Against Public Participation (SLAPP) by political and corporate entities is becoming an increasingly prevalent threat to journalists. In **South Africa**, numerous instances of defamation and urgent proceedings have been employed in efforts to suppress activists and journalists:

- In the case of *Maughan v. Zuma*, former President Jacob Zuma initiated a private criminal prosecution against a journalist for an article she authored about him. However, the High Court, in dismissing Zuma's case, underscored the importance of protecting journalists from intimidation through SLAPP suits, affirming the fundamental freedoms of expression and the press.
- In *Mazetti Management Services v. Amabhungane*, a private company obtained an ex-parte and in-camera court order, compelling journalists to surrender documents and restraining them from reporting on the matter. Upon reconsideration, the High Court denounced this order as an abuse of the ex-parte procedure, citing international principles advocating for the protection of journalists from such misuse of legal and judicial processes.

While South African courts remain vigilant against SLAPP tactics, the persistence of powerful actors in seeking to silence dissent is anticipated. Fortunately, international, regional, and comparative legal frameworks offer valuable tools to counteract these attempts at intimidation and censorship.

4.2. *New threats to journalism*

The rise of social media and the internet has not only changed the environment in which journalists work and the role that they play in society, as well as the financial model that supports journalism as an industry, it has also given rise to a host of new threats to journalists and press freedom. The internet has become a central platform for the dissemination of journalistic content, as well as a primary mechanism through which journalists engage, on an individual and professional level, with their audiences. The proliferation of mis- and disinformation online has further exacerbated these trends by undermining the credibility of traditional media and creating toxic online communities in which journalists are forced to engage.

³¹ *amaBhungane v Minister of Justice* (2017) (accessible [here](#)) at para 131.

Using competition and copyright law to ensure media sustainability

There is a new trend in media regulation, focusing on using competition and copyright regulation to ensure the sustainability of journalism, as a response to the growing challenges media faces in the digital age and to the dominance of large tech platforms, such as Google and Facebook. In 2024 in **South Africa**, the Competition Commission is conducting a media and digital platforms inquiry where it is exploring mechanisms for big tech platforms to fairly distribute online advertising revenue to media companies that argue that they produce the content that attracts users to these platforms.³² Australia's News Media and Digital Platforms Mandatory Bargaining Code, although not yet in effect, is an example of a copyright reform used to require digital platforms to pay media for the use of their content on their platforms.³³

4.3 Threats faced by women journalists

While all journalists are at risk of online violence and harassment, women journalists uniquely face this harassment due to their sex or gender and are particularly prone to it. A [survey](#) by the UN Educational, Scientific, and Cultural Organisation (UNESCO) found:

- Nearly three-quarters of women journalists have experienced online violence,
- 30% responded to online violence by self-censoring on social media. Black, indigenous, Jewish, Arab, and lesbian women journalists experienced both the highest rates and most severe impacts of online violence.
- 20% of women surveyed were physically attacked or abused offline in connection with online violence that they had experienced.³⁴

The online assaults against women journalists represent a significant menace to their safety, gender parity, and press freedom.³⁵ These attacks, often orchestrated, sexually explicit, and malevolent, frequently focus on women belonging to religious or ethnic minorities, or individuals who identify as gender nonconforming.

The systemic harassment and abuse faced by women and gender minority journalists online have serious consequences for diversity and representation in the media by chilling the participation of diverse voices. It also results in physical, medical, psychological, professional, and other impacts in the real world that can be devastating.

As stated by UNESCO, such harassment “amounts to an attack on democratic deliberation and media freedom, encompassing the public’s right to access information, and it cannot

³² Competition Commission of South Africa ‘Media and Digital Platforms Market Inquiry’ (accessible [here](#)).

³³ Australian Competition and Consumer Commission ‘News media bargaining code’ (accessible [here](#)).

³⁴ UNESCO, ‘The chilling global trends in online violence against women journalists’ (2021) (accessible [here](#)).

³⁵ UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on reinforcing media freedom and the safety of journalists in the digital age’ (2022) (accessible [here](#)).

afford to be normalised or tolerated as an inevitable aspect of online discourse, nor contemporary audience-engaged journalism.” It, therefore, amounts to a new and emerging threat to freedom of expression that can and should be addressed under existing international standards and human rights law.

In a significant and welcome development, the 2019 [ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa](#) (African Declaration) calls on states to guarantee the safety of journalists and media practitioners, and to “take specific measures to ensure the safety of female journalists and media practitioners by addressing gender-specific safety concerns, including sexual and gender-based violence, intimidation and harassment.”³⁶

The ACHPR in a 2022 [Resolution](#) further reaffirms that States must “[p]rotect women journalists from digital violence by repealing overly wide surveillance laws that perpetuate their vulnerability”.³⁷ Further, the ACHPR in its 2023 [Joint Declaration](#) on Media Freedom and Democracy recommends to online platforms that they consider the disproportionate risks of online attacks faced by women journalists in their human rights impact assessments and recommends that States adopt comprehensive measures for the safety of journalists in a manner that integrates gender and intersectionality perspectives.³⁸

5. AFRICAN REGIONAL INSTRUMENTS

A number of regional instruments guarantee the right to freedom of expression in Africa. For example, article 9 of the African Charter provides as follows:

- “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.”³⁹

Oversight and interpretation of the African Charter is the sole domain of the African Commission on Human and Peoples' Rights ([ACHPR](#)), which was established in 1987. A protocol to the African Charter was adopted in 1998 which created an African Court on Human and Peoples' Rights ([ACtHPR](#)), and which came into effect in 2005.⁴⁰

It should be noted that reference to “within the law” in article 9(2) of the African Charter should not be seen as permitting states to enact laws that violate the right to freedom of expression. The ACHPR made clear in [Constitutional Rights Project v Nigeria](#) that “[g]overnment[s] should avoid restricting rights, and take special care with regard to those rights protected by constitutional or international human rights law. No situation justifies the wholesale violation of human rights.”⁴¹

³⁶ ACHPR, ‘Declaration of Principles on Freedom of Expression and Access to Information in Africa’ (2019) (accessible [here](#)) at Principle 20.

³⁷ ACHPR, ‘Resolution on the Protection of Women Against Digital Violence in Africa’ ACHPR/Res.522 (2022) (accessible [here](#)).

³⁸ ACHPR, ‘Joint Declaration on Media Freedom and Democracy’ (2023) (accessible [here](#)).

³⁹ African Charter on Human and Peoples' Rights (1981) (accessible [here](#)).

⁴⁰ *Id.*

⁴¹ *Constitutional Rights Project v Nigeria* (1998) (accessible [here](#)) at pp 57-58.

The right to freedom of expression is further underscored in the African Declaration and the ACHPR Guidelines on Freedom of Association and Assembly in Africa.⁴² Nuanced aspects of the right to freedom of expression are explained and recommendations to States and other bodies in relation to these aspects in instruments such as the Resolution on the Deployment of Mass and Unlawful Targeted Communication Surveillance and its Impact on Human Rights in Africa,⁴³ and the Joint Declaration on Media Freedom and Democracy.⁴⁴

There are also a number of sub-regional instruments that engage the right to freedom of expression, such as the:

- Treaty Establishing the East African Community (EAC)⁴⁵,
- Revised Treaty of the Economic Community of West African States (ECOWAS),⁴⁶ and
- Protocol on Culture, Information and Sport of the Southern African Development Community (SADC).⁴⁷

Other regional bodies also provide useful guidance on how to interpret the right to freedom of expression. For example, the [European Court of Human Rights](#) has published a Case-Law Guide⁴⁸ providing insight into the decisions of the Court pertaining to article 10 of the European Convention on Human Rights, which deals with freedom of expression. Likewise, the [Inter-American](#) provides a jurisprudence booklet on freedom of expression.⁴⁹

6. CONCLUSION

The right to freedom of expression is firmly established in international and regional human rights law, which has proven instrumental in ensuring binding domestic and regional judgments against states seeking to violate this fundamental and touchstone right. However, the right is increasingly being challenged in new ways as a result of the dramatic changes wrought upon the world by the growth of the internet and technology, particularly for journalists and the media. Leveraging the international law and jurisprudence that exists to continue to protect this fundamental right in a rapidly evolving world is more important than ever.

⁴² ACHPR, 'Guidelines on Freedom of Association and Assembly in Africa' (accessible [here](#)).

⁴³ ACHPR, 'Resolution on the deployment of mass and unlawful targeted communication surveillance and its impact on human rights in Africa' (2023) (accessible [here](#)).

⁴⁴ ACHPR, 'Joint Declaration on Media Freedom and Democracy' (2023) (accessible [here](#)).

⁴⁵ See, for instance, *Burundi Journalists' Union v The Attorney General of the Republic of Burundi*, Reference No. 7 of 2013 (2015) (accessible [here](#)).

⁴⁶ Economic Community of West Africa States, 'Revised Treaty' (1993) (accessible [here](#)).

⁴⁷ Southern African Development Community, 'Protocol on Culture, Information and Sport' (2001) (accessible [here](#)).

⁴⁸ European Court of Human Rights, 'Guide on Article 10 of the European Convention on Human Rights' (2020) (accessible [here](#)). For more, see also the ECHR's Factsheets on Access to the Internet and Freedom to Receive and Impact Information and Ideas (accessible [here](#)), on Hate Speech (accessible [here](#)), on the Protection of Journalistic Sources (accessible [here](#)), and on the Protection of Reputation (accessible [here](#)).

⁴⁹ Inter-American Court of Human Rights, 'Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos n° 16: libertad de pensamiento y de expresión' (accessible [here](#) in Spanish).