

Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa

The African Commission on Human and Peoples' Rights, meeting at its XX Ordinary Session held from XX to XX in Banjul, the Gambia:

INSPIRED by the objectives and principles enshrined in the Constitutive Act of the African Union of 2000, particularly Articles 3 and 4, which emphasizes the significance of good governance, popular participation, the rule of law and human rights;

REAFFIRMING the importance of the observance of the purposes and principles of the African Charter on Human and Peoples' Rights, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and the Universal Declaration of Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the African Union.

RECALLING the Grand Bay Declaration and its Plan of action adopted by the OAU Ministerial Conference on the promotion and protection of Human Rights in Africa in 1999; the Kigali Declaration African adopted by the African Union (AU) Ministerial Conference on Human Rights in Africa meeting in 2003; the Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa adopted in 2017; the Guidelines on Freedom of Association and Assembly in Africa adopted in 2017;

RECALLING the Resolution on the Protection of Human Rights Defenders In Africa - ACHPR/Res.69(XXXV)03; Resolutions on the Situation of Human Rights Defenders in Africa - ACHPR/Res.104(XXXI)07; ACHPR/Res.119(XXXII)07; ACHPR/Res.345(LVIII)2016; ACHPR/Res.376(LX)2017; Resolution on Human Rights Defenders in Africa - ACHPR/Res.196(L)2011; Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders - ACHPR/Res.336(EXT.OS/XIX)2016; Resolution on the Need to Adopt Legal Measures for the Protection of Women Human Rights Defenders in Africa - ACHPR/Res. 409 (LXIII) 2018; Resolution on the Drafting of an African Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa - ACHPR/Res.432(LXV)2019; Resolution on the need for a Study on the situation of human rights defenders working on sexual and reproductive health rights issues - ACHPR/Res.558 (LXXV) 202; **RECOGNISING** the importance of the contribution of human rights defenders to the protection of human and peoples' rights, democracy, rule of law, peace consolidation and sustainable development; *[Resolution on the Situation of HRDs in Africa ACHPR/RES.376(LX)2017]*

DEEPLY CONCERNED about the situation of human rights defenders in Africa, and their families, who as a result of their activities are victims of several forms of violation, including arbitrary arrest, unlawful detention, acts of torture, inhuman and degrading treatment, extrajudicial and summary execution, killing, enforced disappearance, denial of the right to fair trial, access to medical care and right to food while in detention, and are forced to go into exile; *[Resolution on the Situation of HRDs in Africa ACHPR/RES.376(LX)2017]*

CONCERNED about new challenges, in particular the increased threats against defenders working on issues including the right to health, the fight against HIV/AIDS, reproductive health, sexual orientation and gender, extractive industries, climate justice, the protection of the environment, promotion of democracy and peace, and women rights defenders irrespective of their area of activity; [*Resolution on the Situation of HRDs in Africa ACHPR/RES.376(LX)2017*]

ALSO CONCERNED about the persistence of reprisals against human rights defenders who cooperate with human rights mechanisms; [*Resolution on the Situation of HRDs in Africa ACHPR/RES.376(LX)2017*]

STRESSING that all members of the African Union shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for those who promote and defend human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, color, sex, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, disability, sexual orientation, gender identity or other status,

ACKNOWLEDGING the important role of regional solidarity for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.

EMPHASIZING that the primary responsibility and duty to respect, promote and protect all human rights and fundamental freedoms lie with the State,

EMPHASIZING that non-State actors, including transnational corporations and other business enterprises and non-state armed groups, have a responsibility to respect the human rights and fundamental freedoms of all persons, including human rights defenders [*UN A/RES/76/174*],

RECOGNIZES the important role of civil society organizations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, including efforts to strengthen conflict prevention, peace and sustainable development, including environmental protection, and contributing to the promotion and protection of all civil, political, economic, social and cultural rights, including in the context of the implementation of Agenda 2063 [*UN A/RES/76/174*],

WELCOMES the establishment of sub-regional networks of human rights defenders, which play an important role in empowering human rights defenders on issues of affecting their security including the provisions of security management training and emergency support.

ACCEPTING the right of individuals, groups and associations to promote and protect human rights and fundamental freedoms at the national, sub-regional and regional levels.

COMMITTED to ensure that human rights defenders in Africa can operate in a safe and conducive environment, without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression and harassment, arbitrary or unlawful surveillance, reprisals, from State and non-State actors, online and offline, ensuring, among other things, the right to take part in the conduct of public affairs and in cultural life, the freedom to seek, receive and impart information and equal access to justice, including to an effective remedy [*ACHPR/Res.376(LX)2017; UN A/RES/76/174*];

Definition

Article 1

Human rights defender means any person who, individually or in association with others, acts or seeks to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.

The Rights of Human Rights Defenders

Article 2

Everyone has the right, individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the local, national, regional and international levels.

Article 3

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the local, national, regional and international levels:

- 3.1 To meet or assemble peacefully as well as to participate in peaceful activities concerning human rights and fundamental freedoms, free from interference that is arbitrary or unlawful by public authorities and private actors, at the local, national, regional or international level.
- 3.2 To form, join and participate in non-governmental organizations, associations or groups, whether formal or informal and whether registered or unregistered, for the purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.
- 3.3 To solicit, receive and utilise resources, including from domestic and international sources, including governmental, intergovernmental, philanthropic and private sources, for the express purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.
- 3.4 To communicate with non-governmental or intergovernmental organizations; To know, seek, access, obtain, receive and hold information about all human rights and fundamental freedoms, including information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- 3.5 To know, seek access, obtain, receive and hold such information from business enterprises as may be necessary for exercising or protecting, or assisting to exercise or protect, human rights or fundamental freedoms;
- 3.6 To freely publish, impart or disseminate to others' views, information and knowledge on all human rights and fundamental freedoms;
- 3.7 To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- 3.8 To develop and discuss new human rights ideas and principles and to advocate their acceptance.

- 3.9 To freely communicate with non-governmental, governmental and intergovernmental organisations, including subsidiary bodies, mechanisms or experts with a mandate relevant to human rights and fundamental freedoms, as well as with diplomatic representations.
- 3.10 To unhindered access to, and to communicate and cooperate with, international and regional human rights bodies and mechanisms.
- 3.11 To participate effectively in the conduct of public affairs, including participation on a non-discriminatory basis in the government of his or her country, regarding human rights and fundamental freedoms.
- 3.12 To assist, represent or act on behalf of another person, group, association, organisation or institution in relation to the promotion, protection and exercise of fundamental rights and freedoms, including at the local, national, regional and international levels.
- 3.13 To privacy, and to protect his or her privacy, including through encryption, and be free from intrusion and interference that is arbitrary and unlawful in his or her family, home, places of work, possessions and correspondence, both online and offline.
- 3.14 To be free from any form of intimidation or reprisal on the grounds of or in association with his or her status, activities or work as a human rights defender.
- 3.15 To be free from any form of defamation, stigmatisation, or other harassment, whether offline or online, and whether by public authorities or private actors, in association with his or her status, activities or work as a human rights defender.
- 3.16 To the unhindered exercise of his or her cultural rights in his or her activities and work as a human rights defender and to the free and full development of his or her personality.
- 3.17 To participate in peaceful activities against violations of human rights and fundamental freedoms.
- 3.18 To have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
- 3.19 To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.
- 3.20 To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
- 3.21 To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable regional and international obligations and commitments;
- 3.22 To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

- 3.23 To safe and unhindered access to and communication with sub-regional, regional and international bodies, representatives and mechanisms in the field of human rights and fundamental freedoms, both online and offline.
- 3.24 To meaningful, effective, easily accessible participation in national, sub-regional, regional and international human rights bodies and mechanisms, free from acts of intimidation or reprisal of any sort
- 3.25 To liberty of movement and freedom to choose his or her residence and the right to carry out his or her human rights activities in the entire territory or place of jurisdiction.
- 3.26 To not be expelled, by means of an individual measure or a collective measure, from the territory of the State concerned wholly or partially on account of his or her acts as a human rights defender.
- 3.27 To enter or leave the territory of the State concerned on the grounds of or in association with his or her status, activities or work as a human rights defender in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others:
- 3.28 to benefit from an effective remedy, full reparation, and to be protected in the event of the violation of their rights; and
- 3.29 to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

State Obligations

Article 4

- 4.1 Each Member of the African Union has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by creating a safe and conducive economic, social and political environment, to ensure that all human rights defenders, are able to enjoy all those rights and freedoms in practice.
- 4.2 Each Member of the African Union shall adopt such legislative, policy, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.
- 4.3 Each Member of the African Union has the responsibility to take legislative, judicial, administrative or other appropriate measures within their jurisdictions for the purpose of improving public understanding by human rights defenders of their rights.
- 4.4 Each Member of the African Union shall ensure that human rights defenders are able to carry out their peaceful work in an enabling environment, free from fear of harassment, reprisal, intimidation and discrimination.
- 4.5 Each Member of the African Union shall ensure and support the creation and development of independent national institutions for the promotion and protection

of human rights and fundamental freedoms, including the rights of human rights defenders [*Marrakech Declaration*]

- 4.6 Each Member of the African Union shall take all necessary measures to ensure:
 - 4.6.1 that the human rights and fundamental freedoms of human rights defenders are effectively guaranteed and ensured;
 - 4.6.2 that all laws, policies and programs are consistent with the rights of human rights defenders; and
 - 4.6.3 that human rights defenders are able to undertake their activities and work in a safe and enabling environment free from restriction.
 - 4.6.4 States shall take all necessary measures to facilitate and protect the exercise of the rights of human rights defenders, including
 - 4.6.5 to permit and facilitate access, in accordance with the law, to places where a person is deprived of liberty;
 - 4.6.6 to permit and facilitate access to places and to information required by human rights defenders to exercise their rights in accordance with the law;
 - 4.6.7 to provide information about violations of human rights or fundamental freedoms that may have occurred within the territory or subject to its jurisdiction;
 - 4.6.8 to develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms; and
 - 4.6.9 to promote and publicly acknowledge the role, function, activities and work of human rights defenders as legitimate and important.
- 4.7 State authorities shall provide free access to materials relating to human rights and fundamental freedoms
- 4.8 State authorities shall not disclose or require disclosure of the identity of sources used by human rights defenders.
- 4.9 State authorities shall ensure and support the creation and development of independent national institutions for the promotion and protection of human rights and fundamental freedoms
- 4.10 State authorities shall take all necessary measures to ensure the protection of human rights defenders against arbitrary or unlawful intrusion and interference in his or her family, home, places of work, possessions and correspondence, both offline and online.
- 4.11 Whenever there is reasonable ground to believe that a human rights defender has been killed, disappeared, tortured, ill-treated, arbitrarily detained, threatened or subject to a violation of any of their rights, whether by a public authority or private actor within the territory or subject to its jurisdiction, the competent authority must ensure that a prompt, thorough, effective, independent and impartial investigation is conducted with due diligence and is prosecuted as appropriate.
- 4.12 States authorities shall take all necessary measures to ensure that an effective remedy and full reparation are available and provided for violations of the rights of human rights defenders.

- 4.13 An act of intimidation or reprisal, whether by a public or private actor, against a person, on the grounds of or in association with his or her status, activities or work as a human rights defender, shall be an offence and should be prosecuted and subject to appropriate penalties which take into account the gravity of the offence.
- 4.14 State authorities shall promote, facilitate and adequately resource teaching, training and education about human rights and fundamental freedoms within all public authorities and to all persons within its jurisdiction. Teaching, training and education programs shall include information about this Declaration and the important and legitimate work of human rights defenders.
- 4.15 State authorities shall take all necessary measures to fully and effectively implement protection and urgent protection measures for human rights defenders.
- 4.16 State authorities shall take all necessary steps within their power in conformity with national and international obligations and standards to provide assistance to a human rights defender abroad who has been or may be subject to intimidation or reprisal on the grounds of or in association with his or her status, activities or work as a human rights defender.

Responsibility to defend human rights and fundamental freedoms

Article 5

- 5.1 Everyone has an important role to play and a responsibility to promote and to strive for the protection and realisation of human rights and fundamental freedoms.
- 5.2 No-one shall participate, by act or omission, in a violation of human rights and fundamental freedoms or in undermining democratic societies, institutions and processes.
- 5.3 Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Limitations, Standards and Mandates

Article 6

- 6.1 Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.
- 6.2 Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the African Charter on Human and People's Rights.
- 6.3 In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations that are prescribed by law, in accordance with applicable international obligations and standards, are reasonable, necessary and proportionate, and are solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting

the just requirements of public order and the general welfare in an open and democratic society.

Interpreting the Declaration

Article 7

States should ensure that they interpret this Declaration including the rights contained therein broadly, in line with international standards. Interpretations of the rights that promote the socio-economic well-being of human rights defenders should be promoted. When considering an apparent conflict between national and international standards on human rights defenders, states should prefer any reasonable interpretation of the standard that avoids conflict, over any alternative interpretation that results in a conflict. States should also ensure that other African Charter rights that will aid the exercise of the rights of human rights defenders should be broadly interpreted in the furtherance of the right. Expansive interpretation of the Declaration that further cooperation among HRDs must be encouraged. National laws on HRDs must foster active participation of HRDs and must not place arbitrary restrictions on the rights and freedoms of human rights defenders.

Reporting on the implementation of the Declaration

Article 8

In their report to the African Commission under Article 62 of the African Charter and 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, states must be guided by this Declaration. They should provide details on relevant laws that have been adopted in order to give effect to the rights contained in this Declaration. In instances where restrictive laws have been adopted, states must specify in a clear and precise manner the extent to which they are legitimate in a free and democratic society, the legitimate aim they seek to achieve and the absence of less intrusive means.