

Civil Society Joint Declaration on Responding to the Attacks on the Independence of the African Commission on Human and Peoples' Rights (ACHPR) in Banjul, The Gambia

24 October 2018

We civil society organisations and National Human Rights Institutions working on all aspects of human and peoples' rights in Africa having met in Banjul, The Gambia under the theme "Defend the ACHPR" on the 23rd of October 2018 to dialogue on our response to the attacks on the independence of the ACHPR do adopt the following declaration:

Aware that the ACHPR has been subject to gradual and escalating threats and attempts to undermine its credibility and independence by individual State parties. These threats have culminated into full blown attacks which are led by autocratic and populist governments African Union member states who do not want to be held accountable for human rights violations that they commit at national level and seek to create a culture of impunity by weakening our accountability mechanisms.

Taking note of Para. 5 of Decision EX.CL/Dec.1008-1030(XXXIII) of the AU Executive Council (Decision 1015) which is a distortion of core principles of international human rights law and an attempt to rewrite the African Charter on Human and Peoples' Rights (African Charter). The paragraph misstates the independence enjoyed by the ACHPR as "functional in nature and not independent from the organs that created it. It purports to limit the independence enjoyed by the ACHPR to 'functional' independence and to remove its institutional and the commissioners' personal independence, which are key to an all effective quasi-judicial bodies.

Taking exceptional note of the attempt to displace the primacy of the African Charter as the treaty that establishes and regulates the functioning of the ACHPR by revising the law, history and origins of the ACHPR by falsely stating that the organs (of the AU) created the body" in order to make it owe its existence and allegiance to them and not the African Charter.

Deeply perturbed that Decision 1015 contains numerous provisions that misstate the African Charter, international law and encroach on the powers of the ACHPR, including the following provisions:

- The Commission only enjoys functional independence;
- It is not independent from the AU organs that established it;
- Cautioning on the tendency of the ACHPR acting as an appellate body, thereby undermining national legal systems;
- ...the work of the ACHPR should be aligned with the Constitutive Act, Agenda 2063, African Common Positions, institutional reform of the Union, and decisions of the policy organs taking into consideration the virtues of historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights...;
- Requesting State Parties to: ...conduct an analytical review of the interpretative mandate of ACHPR to in the light of a similar mandate

exercised by the African Court and the potential for conflicting jurisprudence...

- Requesting the ACHPR:
 - *“to consult the office of the Legal Counsel and other relevant legal bodies within the framework of formulating a code of conduct and the revision of the rules of procedure”*
 - *“submit its revised criteria for granting and withdrawing observer status for NGOs to the “policy organs” for consideration and review”; that the “revised criteria must be in line with already existing criteria of accreditation of NGOs by the AU” and they ... “must take into account African values and traditions”.*
 - *to “verify all allegations and carry out due diligence with state concerned...”*
 - *to “withdraw the accreditation of CAL by December 2018”.*
 - *to “observe confidentiality”.*

Dismayed that Decision 1015 also required that the ACHPR withdraw the accreditation of the Coalition of African Lesbians as an NGO with observer status. The ACHPR has proceeded to implement the decision by notifying CAL that it has withdrawn its observer status as of 8th August 2018. This is an alarming development where the ACHPR has been coerced to act outside of the scope of the powers given by the African Charter.

Deeply concerned by the fact that these provisions of Decision 1015 signal increasing restrictions and barriers for civil society organizations’ access to the African Human Rights System in general, and to all 517 NGOs who currently hold observer status with the ACHPR and are striving to advance and defend human rights for African populations and all those who would like to see accreditation in the future.

Reiterating that as a treaty body and considering its mandate, the ACHPR cannot abandon its accountability and responsibility towards African people who suffer from serious human rights violations that are perpetrated by State actors with impunity.

Declare our commitment to work together to protect and defend the ACHPR and have agreed to the following actions:

1. Highlight the human rights record of African Union member states who are behind Decision 1015 and the insidious role played by the Arab republic of Egypt in weakening African accountability mechanisms, also going against the African Union Agenda 2063, which includes an Africa of good governance, democracy, respect for human rights, justice and the rule of law as one of its seven aspirations. At a time when AU member states are moving away from capital punishment, Egypt not only retains the punishment in its laws, it has recently issued the highest number of death sentences in the continent. It routinely defies the decisions of the ACHPR, closes civil society organization, engages in enforced disappearance and extra judicial killings, characterized by a heavily politicized judiciary and imprisons its citizens for speaking out against human rights violations. States which have continuously and consistently

ignored decisions of African human rights mechanisms as well as United Nations mechanisms should not lead the agenda for our continent's reforms.

2. Resolved through the NGO Forum by adopting a resolution to ask the ACHPR to reject the offer of the Arab Republic of Egypt to host the upcoming session of the ACHPR and if already accepted, to rescind its acceptance. If the ACHPR proceeds to host its session as civil society formations we have also resolved not to attend the session in Egypt.
3. Vowed to defend and protect the independence of the ACHPR in all its sessions and to continue to organise and mobilise African human and peoples to demand a reversal of the decision taken by the Executive Council of the AU to interfere with the ACHPR.
4. To relentlessly engage the office of the African Union Legal Counsel and to highlight the various international law and African Charter provisions that have distorted in the making of Decision 1015 in order for her to provide correct legal advise to African union organs and to guard against the distortion of the African Charter and of international human rights law.
5. To engage African Union member states who share Africa's commitment to moving away from an era that has been characterised by conflict, unchecked exercise of States powers, impunity, and lack of development towards building the Africa that we want as envisioned in Agenda 2063.

Banjul, The Gambia
October 24, 2018