

RECOMMENDATIONS OF THE FIRST AFRICA-EUROPEAN UNION CIVIL SOCIETY HUMAN RIGHTS SEMINAR

Brussels, 16-17 April 2009

I. Introduction

1. The 1st African and European Union (EU) Civil Society Human Rights Seminar has been held in Brussels on 16 and 17 of April 2009. About 50 Civil Society Organisations (CSOs) from Africa and EU have attended the seminar.

2. The seminar was held in the spirit of the Africa-EU Partnership which has pledged to “further promote the development of a vibrant and independent civil society and of a systematic dialogue between it and public authorities at all levels.” Participants have acknowledged the important role placed on CSOs in the Africa-EU Partnership and have expressed their commitment to work towards the realization of this grand agenda.

3. In the two-day long seminar, participants have discussed the following issues:

- The legal frameworks for civil society in Africa and Europe: NGO laws and the role of civil society in implementing human rights instruments;
- The fight against torture in Africa and EU based on African and EU human rights instruments and institutions; and
- The Role of CSOs in the EU-AU partnership: the way forward.

4. Having deliberated on the issues thoroughly over two days, participants identified the following areas on which they have agreed on common recommendations they would like to forward to the official Africa-EU dialogue on human rights to be held in Brussels on April 20, 2009.

5. The participants have also agreed on the need for a follow-up mechanism for the seminar and have suggested for establishment of a team of six members to be chosen by the African CSOs (three members) and by the EU CSOs (three members).

II. Legal frameworks for civil society in Africa and EU: NGO laws and the role of civil society in implementing human rights instruments

6. Participants recalled that the main responsibility to protect and promote human rights rests on the concerned States and the major role of civil society in the field of human rights is to hold governments accountable for their human rights commitments and to encourage and monitor the implementation of human rights.

7. It is recognised that in order for the CSOs to perform their role effectively, there should be a favourable legal framework that respects and promotes freedom of association as enshrined in the international and regional human rights instruments. Participants noted that respect for freedom of association is a crucial indicator of the

respect for the rule of law. They noted that there are challenges in Africa and the EU in respecting the freedom of association and have called upon African and EU member states to take the following measures with a view to creating favourable conditions for the smooth functioning of CSOs:

A) Ratification of international and regional instruments

8. Participants have noted that there are international and regional human rights instruments that guarantee freedom of association and create enabling environment for CSOs to promote human rights in Africa and the EU. They have also acknowledged that not all of the African and EU Member states have ratified these human rights instruments and therefore called upon African and EU Member states to ratify all relevant international instruments to comply with their obligations under these human rights instruments including the Declaration on the protection of human rights defenders, adopted by consensus by the UN General Assembly in 1998.

9. Participants have also called upon African and EU member states to discharge their obligations of providing periodic reports to the relevant regional and international bodies.

B) Domestication of international instruments

10. Participants have also noted that not all countries in Africa and EU have fully domesticated the international treaties they have ratified and as a result their implementation remains much to be desired.

11. Participants call on African and EU States to translate their international commitments to respect freedom of association into their domestic legislations.

12. They have also noted that NGOs laws should aim at promoting transparency and accountability and not result in restricting the activities of CSOs in general and human rights defenders in particular. In this respect, participants recommend that such laws should establish a simplified system of registration through notification to the concerned authorities, and allow CSOs receive funds without difficulties.

13. Participants have recognised positive developments in creating favourable legal and administrative frameworks in several countries in Africa and EU. However, they also noted that, in both regions, even where domestic legislation complies with international human rights instruments, there are gaps between these laws and their implementation. They recommend that African and EU Member States develop consistent policies and abolish practices resulting in the restrictions of freedom of association, such as administrative harassment.

14. States of emergency have resulted in severe restrictions on the right to freedom of association and other rights and freedoms instrumental for effective implementation of the freedom of association. Participants have recommended that African and EU member states should ensure that conditions for the declaration of states of emergency have complied with regional and international human rights instruments.

15. Participants recognised the legitimacy of fighting terrorism. However, they raised the concern of anti-terrorism legislations which in Europe and in Africa have resulted in gross human rights violations. In that light, they have called upon African and EU member states to ensure that antiterrorism legislations:

- do not result in restrictions of freedom of association and control of the operation of CSOs,
- guarantee blacklisted CSOs the right to be heard and entitled to legal remedy,
- guarantee that attempts to restrict funding of blacklisted organisations do not unduly affect CSOs.

16. Participants have recommended the creation of a joint EU-AU body to monitor the implementation of anti-terrorist legislations and their consequences on the freedom of association.

C) Legal remedy

17. Participants recommend that legal frameworks for CSOs in Africa and EU member states ensure that CSOs faced with restrictions to their work have a legal remedy. In that light they have noted that legal remedy will not be effective in the absence of an independent judicial organ and called upon African and EU member states to guarantee the independence of the judiciary and the right to a fair trial as enshrined in the Universal Declaration on Human Rights and other international and regional human rights instruments.

D) Interaction between civil society and governments

18. Participants have called upon African and EU member states to encourage the collaboration between civil society and governments at the national level and ensure that civil society is involved in the development of NGO laws.

III. The fight against torture: the Monitoring of Conditions of Detention, presentation of the situation in Europe and Africa

19. Participants have emphasised that the fight against torture or other forms of cruel, inhuman or degrading treatment or punishment in any circumstances is a priority that requires a continued political will by African and EU member states and call up on the states to make this issue their priority agenda.

A) Ratification of international and regional instruments

20. Participants noted that many States in Africa and the EU have not ratified the relevant human rights instruments in the area in particular, the International Convention Against Torture and other cruel, inhuman and degrading treatment and its Optional Protocol (OPCAT), and the African Charter on Human and Peoples' Rights. They call for the ratification of these instruments by all African and European

countries as appropriate. They also call on States to lift any reservations they have made to these instruments.

21. Participants have acknowledged that the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) provide a comprehensive framework for the prohibition, prevention and punishment of torture and call upon the AU to make the Guidelines a binding instrument and ensure their implementations in the existing regional human rights mechanisms. They also call for encouraging the implementation of the EU Guidelines on torture.

B) Implementation

22. Participants call on African and EU states to fully implement all their legal obligations in respect of the absolute prohibition of torture. They, in particular, call upon the states to ensure that their legislation prohibits and criminalises torture in all its forms, as defined in article 1 of the International Convention Against Torture. They also call upon the inclusion of the definition of torture in their legislation, in compliance with this article.

23. Participants call on African and EU member states to adopt comprehensive laws and effective mechanisms addressing all aspects of torture including prevention, protection of victims, reparation, rehabilitation of victims and the issue of impunity.

24. Participants have also noted that convictions have been made based on confessions which are in several occasions obtained through torture and call upon African and EU states to clearly prohibit convictions based only on confessions. Participants have raised their concerns in areas with an increased incidence of torture, such as the fight against terrorism, or the fight against illegal immigration and they call upon African and EU member states to mainstream human rights in their efforts to address these issues. They also call upon African and EU member states to ensure that the principle of non refoulement to countries where torture is practice is fully respected.

25. They call on African and EU member states to encourage increased coherence between their internal and external approaches to the fight against torture and ill-treatment.

C) Vulnerable people

26. Participants call upon African and EU member states to give a special attention to vulnerable groups, who are particularly exposed to torture, including women and children, who are particularly affected by torturous customary laws and practices.

D) Implementation mechanisms of the fight against torture

27. Participants call on African and EU Member states to go beyond their obligation to prohibit torture and undertake proactive policies, in cooperation with CSOs.

28. In particular, participants call upon the states to cooperate with relevant human rights mechanisms, including: submitting of periodic reports to the Committee Against Torture, the Committee on the Rights of the Child; extending invitations to the UN Special Rapporteurs and to the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Prisons and Conditions of Detention in Africa to visit places of detentions so that they can conduct *in situ* investigations. Furthermore, they call for regular consultations between existing UN, African and EU mechanisms.

29. They recommend that the fight against torture be systematically addressed in the framework of the political dialogue held under article 8 of the Cotonou Agreement.

30. Participants stressed the positive impact of the work of the European Committee for the Prevention of Torture (CPT) and its *ad hoc* visits to places of detention. They call for the empowerment of the African mechanisms, particularly the Special Rapporteur on Prisons and Conditions of Detention in Africa and the follow-up Committee on the Implementation of the Robben Island Guidelines (RIG Committee), to adequately address the issue of torture in Africa. To this end, they call for the extension of the mandate of the RIG Committee, by the ACHPR, to become an effective Committee for the Prevention of Torture.

31. In general participants call upon African and EU member states to strengthen their efforts in the fight against torture by taking several measures at the national level particularly targeting:

- prevention and prohibition of torture, including by setting up national preventive mechanism, as provided for by the OPCAT, by allowing for any independent investigations conducted to places of detention, by developing capacity building activities for law enforcement officials and by ensuring that those responsible for acts of torture are prosecuted and punished;
- reparation, including restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition for direct and indirect victims.

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