

**THEMATIC RECOMMENDATIONS ADOPTED AT THE FORUM ON THE PARTICIPATION OF NGOS
IN THE 57TH ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'
RIGHTS AND THE 31ST AFRICAN HUMAN RIGHTS BOOK FAIR
31ST OCTOBER - 2 NOVEMBER, 2015
KAIRABA BEACH HOTEL
BANJUL, THE GAMBIA**

**TREC/001/11/15: THEMATIC RECOMMENDATION ON FREEDOM OF EXPRESSION AND
ACCESS TO INFORMATION**

We, the participants of the Forum on the Participation of NGOs in the 57th Ordinary Session of the African Commission on Human and Peoples' Rights and the 31st African Human Rights Book fair held in Banjul, The Gambia from 31st October–2nd November 2015;

Note and recognize that situations such as election processes and during conflicts evidence violations of freedoms of expression;

Recognize vulnerable groups amongst women and women with disabilities in 2016 as they commemorate the year of human rights with a special focus on women and specifically looking at the rights to freedom of expression and access to information;

Hereby recommend that the African Commission:

- to require Member States to allocate resource to programmes that support the rights.
- Call for African Members States to observe the provisions of African Charter and principles on Freedom of Expression and Access to Information.
- Require Member states to pass and effectively implement Access to Information laws in line with the recommendations of the Commission and the AU Model Law on Access to Information.
- Providing guidelines on implementation digital surveillance and digital privacy.
- Urge Member States to decriminalize criminal defamation provisions in national legislation.

- Urge Member States to ratify, domesticate and implement effectively the African Charter on Democracy, elections and good governance.
- Ensure that Member States harmonize all laws that impact freedoms of expression and information to conform to international and regional standards.
- Urge Member States to implement existing recommendations on the effective protection of human rights defenders against harassment or persecution.
- Urge Member States to take measures against impunity of perpetrators of violations of freedoms of expression and information.
- Call for the release and or dropping of charges of journalists being prosecuted due to exercising their rights to expression especially under criminal defamation provisions.

Done in Banjul, The Gambia – 2nd November, 2015

TREC/002/11/15: THEMATIC RECOMMENDATION ON FREEDOM OF ASSEMBLY AND ASSOCIATION

We, the participants of the Forum on the Participation of NGOs in the 57th Ordinary Session of the African Commission on Human and Peoples' Rights and the 31st African Human Rights Book fair held in Banjul, The Gambia from 31st October–2nd November 2015;

Recognizing that Freedom of Assembly and Association are universal values that satisfy people's fundamental desire to take control of their own destinies;

Recalling the African Commission on Human and Peoples' Rights Resolution ACHPR/Res.151 (XLVI) 09 and Resolution ACHPR/Rés.229 (LII) 2012 appointing the Study Group on Freedom of Association and extending the mandate of the Study Group;

Bearing in Mind the report and recommendation of the Study Group adopted by the African Commission on Human and Peoples' Rights;

Concerned by challenges facing States in their efforts to ensure, in law and practice, a safe and enabling environment for independent, diverse and pluralistic civil society;

Deeply concerned by the recrudescence restrictive legislations regarding social and economic development, the promotion of freedom of expression, the right to peaceful assembly and freedom of association;

Hereby recommend that the African Commission:

- **Extend** the mandate of the Study Group on Freedom of Association and Assembly in order to draft a guidelines on the implementation of the ACHPR report.

Done in Banjul, The Gambia – 2nd November, 2015

TRES\003\11\2015: THEMATIC RECOMMENDATION ON ASYLUM SEEKERS, REFUGEES, MIGRANTS AND IDPS

We, the participants of the Forum on the Participation of NGOs in the 57th Ordinary Session of the African Commission on Human and Peoples' Rights and the 31st African Human Rights Book fair held in Banjul, The Gambia from 31st October–2nd November 2015;

We *note with dismay* that that this year migration has become a global issue as it affects countries of the north, yet most migration takes place between countries of the South and issues of migration within our continent are not visible.

In this regard *we further note with concern* that in spite of the Common African Position on Migration and Development and the Migration Policy Framework for Africa, issues pertaining to Asylum Seekers, Refugees, Migrants and IDPs are not prioritised by AU institutions, state parties or indeed by civil society. This is in spite of the on-going deaths of thousands of African migrants forced to undertake perilous journeys to seek safety from persecution, conflict and poverty.

The NGOs Forum recommends to the African Commission to:

- develop reporting guidelines on immigration detention for state parties and promote alternatives to immigration detention, particularly to ensure that no child in our continent is detained due to their immigration status.
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- mainstream asylum seekers, refugees, migrants and IDPs into all areas of work such as the situation of reprisals – states should be held to recognise asylum seekers fleeing reprisals and provide protection.
- consider the synergies between International Humanitarian Law and International Human Rights Law as pertaining to asylum seekers, refugees, IDPs and migrants.

To AU State Parties:

- sign and ratify the AU Kampala Convention on IDPs.
- sign and ratify the UN Statelessness Convention.

- develop birth registration systems that are easily accessible to all, including IDPs, to avoid further cases of statelessness occurring.
- ensure that counter terrorism measures do not discriminate against asylum seekers, refugees, migrants or IDPs through profiling or prejudice.

Done in Banjul, The Gambia - 2nd November 2015

TREC\004\11\2015: THEMATIC RECOMMENDATION ON AU MEMBER STATES FOR THE EFFECTIVE FIGHT AGAINST IMPUNITY FOR SERIOUS CRIMES IN AFRICA

We, the participants of the Forum on the Participation of NGOs in the 57th Ordinary Session of the African Commission on Human and Peoples' Rights and the 31st African Human Rights Book fair held in Banjul, The Gambia from 31st October–2nd November 2015;

Recalling the provisions of the Constitutive Act of the African Union, mandating the organization to promote and protect human and peoples' rights, peace, security and stability across the continent, democratic institutions and principles and good governance (articles 3.h and 4.m) and to condemn and reject impunity (article 4.o) ;

Deeply concerned by the grave human rights violations committed in different areas of the African continent, including sexual and gender – based violence, that may amount to genocide, crimes against humanity and war crimes, and other serious violations of international human rights law and international humanitarian law, and *Deeply concerned* by the endemic impunity that continues to benefit their authors ;

Mindful of the suffering of thousands of African victims of those atrocities who continue to seek for truth, justice and reparation;

Emphasizing that international law has developed over more than one century towards a consensus, that international crimes that shock the conscience of humankind and endanger the international public order, should be investigated and prosecuted ;

Considering that by attempting to punish those responsible for these crimes, the International Criminal Court (ICC) is a crucial court of last resort for victims in Africa, attempting to prevent the repetition of future crimes ;

Recalling the importance of developing national authorities' capacities to address international crimes, and noting that in accordance with the principle of complementarity, the ICC has jurisdiction only when national authorities are unwilling or unable to genuinely investigate and prosecute those international crimes ;

Encouraged by the developments at the 13th Assembly of State Parties meeting where Hon. Sidiki Kaba, Minister of Justice, Senegal, was elected as President of the Assembly of State Parties;

Acknowledging the need for the African Continent, to relentlessly support President, Sidiki Kaba's mandate as ASP President;

Considering that 34 African States are parties to the Rome Statute of the ICC and have voluntarily committed to supporting the investigation and prosecution of international crimes whether in their countries or in other Countries where the ICC might exercise jurisdiction;

Recalling further that four African States (Uganda, the Democratic Republic of Congo, the Central African Republic and the Ivory Coast) voluntarily referred situations in their territories to the ICC; that the UN Security Council referred the situation in Darfur and Libya to the ICC and that the ICC Prosecutor decided on its own initiative to open an investigation in Kenya; given the gravity of those crimes and the situation of total impunity;

Considering the Resolutions of the African Commission on Human and Peoples' Rights calling on the African Union Member states to ratify the Rome Statute of the International Criminal Court (1998, 2002) and its Resolution on the end of impunity in Africa and the domestication and implementation of the Rome Statute of the International Criminal Court (2005);

Concerned by the amendments to the Rules of Procedure and Evidence of the ICC adopted during the 12th Assembly of States Parties providing for exceptional treatment in granting excusal from mandatory presence at trial for an "accused subject to a summons to appear who is mandated to fulfil extraordinary public duties";

Deeply Concerned by the proposal presented by the Republic of Kenya to the UN Secretary General in March 2014 for an amendment to Article 27 of the Rome Statute of the International Criminal Court seeking to provide for immunity for incumbent Heads of State, their deputies and anybody acting or entitled to act as such;

Concerned by the proposals put forward for the upcoming 14th Assembly of State Parties to review the application and implementation of Rule 68 of procedure and evidence introduced at the 12th Assembly of State Parties ;

Concerned by the proposals put forward that the 14th Assembly of State Parties to discuss and develop, clear rules and procedures for the application and implementation of Article 97 and 98 of the Rome Statute. With the proposal relating to ongoing ICC proceedings conducted around the Omar al-Bashir visit to South Africa in June 2015 ;

Noting that the issues raised by the States proposing the discussions and the review of the rules and procedure are currently under judicial consideration. The Court must be allowed to deal with the issues before it without interference or pressure by States ;

Observing that while States are at liberty to make proposals for discussions that the Assembly of State Parties, the political body of the ICC, the issues considered by the Assembly should not interfere with the independence of the Court ;

Deeply concerned by the Resolution by the Africa National Congress (ANC), adopted at its National General Council meeting on 11 October 2015, calling on South Africa to withdraw from the ICC and lead other African States to withdraw from being members of the Rome Statute ;

The NGO Forum calls upon the African Union Member States to :

- Pay particular attention to the rights to justice and reparation for victims of the most serious human rights violations and international crimes, and the effective implementation of these rights into domestic legislation ;
- Recall that it is the perpetration of international crimes and impunity of their authors that constitute the most serious threat to peace and security, and not the investigation and prosecution of those crimes ;
- Recall that they have the primary obligation to investigate grave human rights violations and to prosecute those responsible;
- Ensure that the gravest crimes under international law are defined in national legislation and genuinely prosecuted and that those responsible are brought to justice in their domestic courts in accordance with internationally recognized fair trial standards ;
- Fully cooperate with the ICC in its efforts to investigate and bring to justice those responsible for international crimes ;
- Respect the jurisdiction of the ICC to determine cases before on the basis of legal principles and *without undue influence* from external sources ;
- Reject any special -favourable or unfavourable- treatment in investigations and prosecutions for international crimes based on the official capacity of the suspect or accused that is inconsistent with the principle of equality before the law ;

- When they have not yet done so, ratify the Rome Statute of the International Criminal Court and to ensure its effective implementation at the national level ;
- Include members of the African Commission on Human and Peoples' Rights in all discussions relating to impunity, in conformity with its role for the promotion and the protection of human rights in Africa.

Done in Banjul, The Gambia – 2nd November, 2015

TREC\005\11\2015: THEMATIC RECOMMENDATION ON INDIGENOUS POPULATIONS AND COMMUNITIES IN AFRICA

We, the participants of the Forum on the Participation of NGOs in the 57th Ordinary Session of the African Commission on Human and Peoples' Rights and the 31st African Human Rights Book fair held in Banjul, The Gambia from 31st October–2nd November 2015;

Deeply concerned over the recent forceful evictions of Sengwer in Kenya and Maasai of Tanzania from their ancestral lands and territories by their respective governments

Deeply concerned over the deteriorating situation of Indigenous Peoples in Africa where they suffer from loss of their ancestral lands and gross violations of human rights by some government agencies, investors and mainstream population

Deeply concerned over increased poverty amongst indigenous peoples and inadequate mechanisms to address the social and economic disparity and the double marginalization and discrimination of indigenous children, youth and women by many African States

The NGOs Forum calls upon African Commission to

- Urge Governments' of Kenya and Tanzania to halt forceful evictions of Sengwer and Maasai indigenous peoples from their ancestral lands and territories
- Urge Governments' of Kenya and Tanzania to enact policies and laws that secures the rights of indigenous peoples to own, control and manage their ancestral lands in the forests and protected areas
- Urge Governments' of Kenya and Tanzania enact policies and laws that will promote and enhance indigenous peoples rights to access and benefit from social and economic programmes and projects
- Urge Governments' of Kenya and Tanzania to enact initiate indigenous peoples policies
- Urge African states to respect and promote indigenous peoples rights to security and ownership of their ancestral lands, rights to development, right to their culture and language

- Urge African states to enact policies, laws and measures that protect and promote the rights of indigenous peoples
- Urge African states to enact policies and laws to protect and promote the rights of indigenous peoples from marginalization, discrimination and poverty

Done in Banjul, The Gambia – 2nd November, 2015