

African Union-European Union Civil Society Seminar on the AU-EU Human Rights Dialogue

20-21 November 2015

RECOMMENDATIONS

Representatives of African and European civil society met on 20-21 November 2015 to discuss challenges around the right to freedom of expression on both continents and in inter-continental relations. Civil society expects the Pan-African Programme and the AU-EU Partnership to integrate the various activities proposed in this document.

Civil society calls on the AU and EU to act upon the following key priorities:

1. Support unhindered participation of the independent civil society in decision-making and make the AU and EU truly people-centred institutions.
2. Protect journalists and all actors of freedom of expression and support media independence.
3. Support the right to information and a culture of openness as requirements for democracy, good governance and sustainable development.
4. Ensure the protection of human rights in the digital age.
5. Ensure access to justice as a *sine qua non* condition for freedom of expression.

1. Supporting unhindered participation of the independent civil society in decision-making and making the AU and EU truly people-centred institutions

The African and European civil society Seminar underlines that an independent civil society is a key guarantor of freedom of expression. We remind States' and continental organisations' of their responsibility to ensure unhindered participation of the independent civil society and inclusion in transparent decision-making. We express deep concern with regard to the shrinking space for civil society on both continents. In particular, civil society regrets the attempts by some Member States to interfere with CSOs' participation in the intergovernmental decision making processes. Civil society recalls that the AU-EU Partnership is a 'people centred' one and that this commitment should be translated into action at all levels of the relationship in order to ensure a meaningful partnership. We therefore call for clarification of the modalities of civil society engagement in the Partnership.

In relation to the present Seminar, civil society expects the AU and EU officials, meeting on 24 November 2015 at the AU-EU Human Rights dialogue, to clearly reassert their commitments to ensuring unhindered participation of the independent civil society in the AU-EU partnerships. In

particular, the AU and EU must commit to removing all hurdles which prevent full participation of civil society.

The African and European civil society calls on:

1.1. The AU to ensure that African organs continue opening themselves to ensure inclusiveness of civil society voices, including those concerning sensitive issues like the death penalty. In particular, consideration should be given to the adoption of guidelines on civil society inclusion, which should notably foresee the removal of criteria on the source of financing. Steps should also be taken to prevent undue limitations on CSOs to obtain observer status of the AU organs and institutions.

1.2. The AU and EU to ensure that the funding priorities under the Pan-African Programme, including the funds foreseen for civil society support in Africa, take into account the priorities of civil society.

The civil society Seminar proposes the following activities related to freedom of expression:

- a continental conference on Freedom of Expression in Africa in order to review the state of freedom of expression on the continent and review the implementation of AU instruments protecting and promoting freedom of expression.
- support to African special procedures, in particular the AU Special Rapporteur on freedom of expression.
- support to civil society to effectively create awareness, monitor and participate in the realisation of sustainable development goals and the human rights-based approach to development. In particular, this support should include civil society programmes on effective protection mechanisms for journalists, media actors and human rights defenders.

1.3. The AU to work with civil society on the implementation of the principles set up in the Declaration of principles on Freedom of Expression in Africa (Banjul Declaration). Civil society calls on the AU to work on the adoption of a Protocol to the African Charter on freedom of expression, building on the aforementioned Declaration, in order to make those principles legally binding.

1.4. The AUC to develop a high level mandate on Human Rights, who should be the interlocutor of the EU Special Representative on Human Rights, and should monitor Member State's activities in relation to commitments made at the continental level.

1.5. The respective Steering Committee of the AU-EU Human Rights Dialogue Seminar should be supported in elaborating individual and joint mandates for proper coordination and advancement of the AU-EU's Partnership goals in relation to democratic governance and human rights. In addition, the steering committee should be supported in drawing up and overseeing implementation of respective plans of action.

2. Protecting journalists and all actors of freedom of expression and supporting media independence

The Seminar noted that while the media landscape has expanded and has more players, cases of impunity on attacks against journalists and media workers, media concentration and increased use of legislation to criminalise freedom of expression are also quite obvious. Impunity is particularly concerning as globally up to 90% of attacks against journalists remain unaddressed. The AU and the EU should also condemn propaganda for hatred in the firmest way and take practical steps to eliminate it in both continents.

The African and European civil society calls on:

2.1. The AU and the EU to step up the protection of journalists, by *inter alia* meeting the reporting obligations under the UNGA Resolution, which proclaimed 2nd November as the International Day to end impunity for crimes committed against journalists, and by integrating this concern in all relevant programmes and activities.

In particular the AU and EU should:

- systematically integrate the protection of journalists, media actors and human rights defenders in security and peacekeeping missions and police and justice reforms.
- promote the development and implementation of comprehensive national action plans on safety and security of journalists – in particular in conflict countries – to tackle the problem of impunity for crimes committed against journalists.
- ensure AU and EU Member States take measures to guarantee journalists' right to protect their sources.
- ensure AU and EU Member States decriminalise expression by repealing criminal defamation, sedition, insults and publication of false news Laws.

2.2. The AU and EU to support self-regulation of the media. Ethical journalism standards should be encouraged through the voluntary adoption of codes of conduct to promote professional reporting.

2.3. The AU and EU to work on the creation of standards for media pluralism and diversity and support independent media regulation. The AU and EU should support the development of global standards on ownership to prevent concentration of media and promote editorial independence.

3. Supporting the right to information and a culture of openness as conditions for democracy, good governance and sustainable development

The Seminar noted the increasing number of countries in the EU and AU with comprehensive Right to Access Information laws and binding regional and international instruments. Further, some States have initiated open data portals, open contracting and extractive industry transparency initiatives, among others. However, most States still consider that information must be kept secret in principle. In addition, the implementation of right to information regimes is challenged by bureaucratic hurdles. As a result, the political will is diminished and both public servants and citizens lack critical capacity to effectively service and resort to the available regimes.

The African and European civil society calls on:

3.1. The AU and the EU to support their Member States to adopt, review and amend right to information laws in conformity with the best international standards and effectively implement them as critical levers of democracy, human rights and Sustainable Development Goals. Such initiatives would ensure that there is transparency and value for money in public contracts.

3.2. The EU to work on a Model Law on freedom of information, and to encourage Member States to adopt legislation up to the best international standards.

3.3. The AU and the EU to support civil society in effective engagement, monitoring and implementation of the Sustainable Development Goals.

4. Ensure the protection of human rights in the digital age

Civil society considers that the AU and the EU should recognise that access to electronic communications should be a basic human right that must not be undermined, in full or in part. The Seminar observes that information controls are used to disproportionately deny (e.g., Internet filtering), disrupt (e.g., network shutdowns), monitor (e.g., network surveillance), or undermine (e.g., encryption) information for political ends, or for concerns relating to national security, terrorism or public order. Civil society expresses its concern with regard to the risk that supposedly exceptional laws and regulations adopted in the aftermath of terrorist attacks are increasingly becoming the norm, rolling back of judicial oversight and parliamentary accountability. The lack of clear accountability means that individuals must often seek redress from private rather than public actors. There is a need for a just balance between legitimate security objectives and respect for human rights.

The African and European civil society calls on:

4.1. The AU and the EU to take steps to ensure full access to all of the Internet. The institutions must ensure that the population on both continents have affordable access to all of the Internet – not just parts of it – all of the time.

4.2. The EU and the AU to support the creation of better redress and appeal mechanisms for privacy and other digital rights violations, for example through national data protection authorities. Any government actions towards internet intermediaries need to ensure that the right to freedom of expression is upheld. Any restrictions to fundamental rights must be prescribed by law and be necessary and proportionate.

4.3. The AU and the EU to further develop institutional knowledge on digital rights issues within their policy-making. Regular digital rights training should become mandatory for the human rights contact points at EU missions and AU officials. Moreover, EU missions and AU institutions should allow for secure communication in situations and regions where this can be pivotal to the safety of individuals.

4.4. The AU and the EU to support human rights-enhancing technologies and ensure that exporting of surveillance technologies, by companies located in the EU and elsewhere, are regulated to ensure they are not misused. Further deregulation of cryptography at international and national levels, in particular in the Wassenaar Arrangement, and exemptions in the EU dual-use regulation through the mechanism of a General Export Authorisation for cryptography (GEA) is recommended.

5. Ensuring access to Justice as a *sine qua non* condition for freedom of expression

Civil society underlines that there can be no freedom of expression or association without access to Justice. The AU and the EU should support the African Court for Human and Peoples Rights as the effective guarantor of freedom of expression. Civil society regrets the fact that only 27 African States out of the 54 AU members have ratified the Protocol on the ACtHPR. Civil society further regrets that only seven countries have made the declaration under article 34.6 of the Charter allowing individual and civil society access to the Court.

The African and European civil society calls on:

5.1. The EU to take decisive measures to accede to the European Convention on Human Rights.

5.2. All AU Member States to ratify the Protocol to the African Charter on the ACtHPR.

5.3. All AU Member States to make the declaration under article 34.6 of the African Charter to ensure individual and civil society organisations access to the ACtHPR.

5.4. AU Member States to implement the case law of the ACtHPR, in particular with regard to the protection of journalists (e.g., *Kone vs Burkina Faso* case).

5.5. More generally, AU and EU Member States to respect and enforce decisions on freedom of expression by courts and other human rights mechanisms.