



Communiqué on
CSO Consultation
on the Year of
Peace and
Security in Africa

January

2010

[Addis Ababa,

20 – 21 January 2010]

CCP-AU



We, the undersigned Civil Society Organisations in Africa and the Diaspora working in all five geographical regions of the continent, met on 20 and 21 January 2010, in our CSO Consultation for the Year of Peace and Security in Africa, to consider peace and security issues that our leaders will deliberate upon in the upcoming 14th Ordinary African Union Summit of Heads of State and Government. We welcome this opportunity to collectively reflect on the state of issues on the continent, and developments made since the last summit to allow us to communicate concrete recommendations to our Heads of State and Government.

In light of the theme of the upcoming 14th Ordinary Summit "Information and Communications Technologies" and other agenda items, we would like to make the following recommendations on the several issues that will be on the agenda of the Summit relating to Peace and security in Africa, International Justice and Crisis in Africa.

Welcoming the adoption of the *Tripoli Declaration on the Elimination of Conflicts in Africa and the Promotion of Sustainable Peace by the Special Session of the AU Assembly, 31st August 2009*, whereby Heads of State and Government have acknowledged the prevalence of conflict and related crisis, strengthening AUC institutional capacity to promote peace and the role of Civil Society in promoting peace, security and stability as partners of governments.

Noting that the year 2010 has been declared as *the Year of Peace and Security on the Continent* with emphasis being placed on the need to add momentum and give more visibility to AU peace efforts,

Recalling the adoption of the Livngstone Formula that provides a platform for civil society to provide qualitative information and technical support to the Peace and Security Council of the African Union, a

Recognising the commitment made by Heads of State and Government on the ratification of critical instruments for peace processes, recommitment of contributions both in terms of financial and technical aspects and looking for ways to hold all that have pledged accountable,

Affirming that the effective prosecution of international crimes is an essential component for achieving sustainable peace and represents the basis for long-lasting conflict resolution and the consolidation of national reconciliation processes;

Acknowledging the adoption of the Ezulwini Framework, which among other things, identifies eight aspects of unconstitutional change of government;

Bearing in mind that in 2010 there will be more than ten African countries holding presidential, parliamentary or local elections including: Burundi, Central African

Republic, Chad, Ethiopia, Guinea, Madagascar, Sao Tome and Principe, Rwanda, Sudan, Tanzania and Togo, these pending elections are fraught with significant risks of political instability, recurrence or intensification of conflicts.

Encouraged by the positive contributions of African governments during the July 2009 United Nations General Assembly Debate on the Responsibility to Protect, in particular the reference by many member states to Article 4(h) of the Constitutive Act of the African Union and its transition from the principle of non interference to the principle of non indifference;

Noting further the importance of institutionalizing early warning and response mechanisms to instances of genocide, war crimes, crimes against humanity and ethnic cleansing;

We therefore make the following recommendations to the Heads of State and Government of Africa on Peace and Security issues in Africa:

Unconstitutional change of Governments

1. We call for urgent adoption, operationalization and popularization of the Ezulwini Framework.
2. We also urge the AU to put in place effective censure and sanction processes for those who fail to comply.
3. We urge the AU to suspend Niger until it restores constitutional order.

Elections in Africa

4. We call upon the AU to observe all the electoral processes in 2010, to ensure full compliance with all AU standards on elections.
5. We call upon the AU and member states that are due to hold elections in 2010 to put in place early warning and effective response mechanisms and broader conflict prevention methods.

Ratification of key African Union Legal instruments

6. We urge AU Member States to urgently ratify the following key instruments, which are crucial to the operationalization of the African Peace and Security Architecture: -
 - a. African Charter on Democracy, Elections and Governance
 - b. African Union Non-aggression and Common Defence Pact
 - c. African Nuclear Weapon-free Zone Treaty

- d. Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, and especially the Declaration for direct access to the Court made there-under
- e. Protocol on the Statute of the African Court of Justice and Human Rights, and especially the Declaration for direct access to the Court made there-under
- f. African Union Convention for the protection and assistance of internally displaced persons in Africa
- g. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa
- h. The African Charter on the Rights and Welfare of the Child

Strengthening International Justice in Africa

7. We call upon the AU to conclude the Cooperation Agreement with the ICC
8. We urge African States parties to the Rome Statute to contribute actively to the preparations of the Review Conference, including discussions about the definition of the crime of aggression and stocktaking processes
 - Call on Member States that are not parties yet to ratify or accede to the Rome Statute
 - Call on Member States to implement the report of the AU High Level Panel on Darfur (*the Mbeki Report*)

Guinea: We call on the Security Council of the UN to refer the situation of Guinea to the ICC, according to the recommendations of the UN International Inquiry Commission;

The Principle of the Responsibility to Protect

1. **Urge** AU Member States to prioritize efforts to prevent and halt genocide, war crimes, ethnic cleansing, and crimes against humanity by taking timely and appropriate action in specific situations where these crimes and violations are imminent.
2. **Urge** AU Member States to strengthen their collaboration with the UN and regional bodies in the provision of assistance required for states to fulfil their responsibility to protect.

Transitional justice

1. Call upon the AU to adopt a policy on transitional justice mechanisms in Member States emerging from conflict based on international human rights standards and norms.

2. Call upon the AU to follow up and monitor the implementation of negotiated settlements and transitional justice measures adopted by Member States.
3. Call on AU Member States emerging from conflict to include victim and survivor voices in the adoption of transitional justice mechanisms.

Land and natural resources

4. We urge AU Member States to domesticate and implement the AU Land Policy Framework, to ensure equitable distribution that takes into account the needs of all citizens.

Operational environment for CSOs

5. Urge AU Member States to abide by the spirit of the AU Charter on Popular Participation and ensure that an optimal regulatory and operational environment for civil society exists, *including the specific plight of human rights defenders in Africa.*
6. Urge the AU and Member States to guarantee the right to information and freedom of the media as guaranteed by the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights and other relevant legal instruments.

Private Sector

7. Urge the AU and Member States to ensure an appropriate regulatory framework for free enterprise that is socially, economically and environmentally responsible and that has appropriate safeguards against ... exploitation

Recalling the principles mentioned in article 4 of the Constitutive Act of the African Union calling on State Parties to respect democratic principles, human rights, rule of law and good governance; the resolutions of the African Commission on Human and Peoples' Rights calling for the ratification of the International Criminal Court Statute; the decisions made by heads of state and government of the AU calling for the fight against immunity for the most serious crimes;

Recalling that various African states are about to, or have already harmonized their domestic law with their international obligations by defining international crimes in their criminal code;

Recalling that African states are amongst the most numerous to have ratified the Rome Statute;

Regarding the International Criminal Court (ICC):

1. Takes into account that the ICC only intervenes when national jurisdictions are unwilling or unable to investigate and prosecute international crimes;
2. Affirms that the ICC addresses the need for justice for victims of the most serious crimes, especially African victims of conflicts and political crisis;
3. Abstains from requesting to use article 16 of the Rome Statute to shield alleged perpetrators from justice;
4. Requests that all concerned states cooperate with the ICC, including by transferring the persons under a warrant of arrest to The Hague;
5. Calls on Member States to adopt implementing legislation of the Rome Statute, allowing national courts to fight against impunity and to cooperate fully with the ICC;
6. Calls on the ICC to respond to its universality principle;
7. Commends the initiative of the mediator Kofi Annan and the Prosecutor of the ICC, supported by civil society organizations, to fight against impunity for the most serious crimes committed in Kenya during post-electoral violence in 2007/2008;
8. Calls on concerned Member States to take all necessary measures to end threats and intimidation against all victims, witnesses and members of the civil society cooperating with the ICC;

Regarding the Review Conference of the Rome Statute that will be held in Kampala in May 2010

- Abstains from proposing amendment and other propositions that could undermine the entire Rome Statute or the independence of the ICC
- Urges the ICC to adopt a communication strategy around the Review Conference, and helps in implementing this strategy in order to communicate about the scope and importance of this event, given that it is held on the African continent.

Regarding the Principle of Universal Jurisdiction

Considering the Commission's Progress Report on the implementation of Decision (Assembly/AU/Dec.199(XI), adopted during the Sharm El-Sheikh (Egypt) Conference in July 2008 and decision (Assembly.AU/Dec.213 (XII) adopted in February 2009 on the abuse of the Principle of Universal Jurisdiction

Considering the report of the AU-EU Technical ad hoc Expert Group on the principle of Universal Jurisdiction

- Recalls that universal jurisdiction is based on international law and international human rights law.
- Calls on Member States to adopt a domestic legislative framework giving their courts jurisdiction to try international crimes and to reform and strengthen their national judicial systems so as to give them full independence.
- Rejects any terminology relating to « misuse » of the principle of universal jurisdiction ; in the case of an unfounded complaint based on this principle, it will be rejected by any independent justice
- Requests Member States to publicize the information sent to the UN Secretary General on their observations regarding the principle of universal or extra-territorial jurisdiction for international crimes and its implementation, in the context of the UN Secretary General's report (A/RES/64/117).

Regarding the case against Hissène Habré

Considering, the decision of 2nd July 2006, mandating the AU to try Hissène Habré in the name of Africa.

Taking into account the constitutional and legislative reforms undertaken by Senegal giving jurisdiction to its national courts to try international crimes;

Considering the voluntary contributions made by the European Union, the African Union and others like France and the United States to organize the trial in Senegal;

Considering the Commission's Activity Report on the implementation of the Decision Assembly/AU/Dec.240 (XII) adopted in February 2009 in Addis Ababa (Ethiopia) by the Conference on the case against Hissène Habré;

- Calls on Senegal to take all necessary measures to start the trial against Hissène Habré as soon as possible.
- Calls on the EU and other potential voluntary contributors to support financially the organization of the trial
- Brings its own financial contribution to the organization of the trial

Regarding the jurisdiction of the African Court on Human and Peoples' Rights

Considering the Decision Assembly/Dec. 213 (XII) adopted in February 2009 and giving responsibility to the Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, to examine the implications of giving jurisdiction to the Court to try cases of serious international crimes like genocide, crimes against humanity and war crimes, which would complement the action of national courts and systems in place to fight against impunity.

- Considers that granting such powers to the African Court is not viable given the

institutional and financial implications

- Considers that granting such powers to the African Court will only add, and not replace, another supranational judicial mechanism that complements national courts in their fight against impunity.
- Calls on Member States to ratify the Protocol to the African Charter establishing the African Court on Human, and Peoples' Rights by making a declaration under article 34.6 allowing individuals and NGOs to refer directly to the Court.
- Calls on Member States to ratify the Statute of the African Court of Justice and Human Rights.

Elections in Africa

Noting that the will to rise or remain in power, often in disregard of constitutional obligations - as in Niger, Guinea and Mauritania recently - and in defiance of international law of human rights - as in Kenya or Zimbabwe - may have serious consequences on political stability or security of a State or a sub-region;

Recommends to AU to adopt a specific decision on elections in Africa recalling states parties who didn't:

- Ratify the African Charter on Democracy and Election and Good Governance,
- Essential free expression of citizens and increased vigilance on the potential risks

Responsibility to Protect

3. *Recalling* the adoption in 2005 of World Summit Outcome Document where UN Member States Nations expressed in Paragraph 138 and 139, their commitment to the protect civilians from genocide, war crimes, crimes against humanity and ethnic cleansing; and the subsequent Security Council Resolution 1674 on the protection of civilians ;
4. *Welcome* the report of the United Nations Secretary General on 'Implementing the Responsibility to Protect' (A/63/677) especially the formulation of the 'three pillar approach';
5. *Commend* the African Governments who spoke favourably in support of strengthening the Responsibility to Protect at the July 2009 General Assembly debate on the Responsibility to Protect.

Signed,

Action Aid, Africa Peace Forum, African Child Policy Forum, Amnesty International, Arab Coalition, Centre for Citizens' Participation in the African Union, Centre for the Study of Violence

and Reconciliation, Coalition for the International Criminal Court, Darfur Consortium, Fahamu/AU Monitor, FIDH, GF2D/WILDAF, Institute for Democracy and Governance, Institute for Security Studies, International Coalition for Responsibility to Protect, NADRE Ethiopia, Open Society Initiative East Africa, Open University of Tanzania, Pan-African Lawyers Union, Southern Africa Litigation Centre, Speak Africa, Trust Africa, WANEP, West African Civil Society Forum, Western Africa Bar Association, World Vision Ethiopia



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