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To: African Commission on Human and Peoples' Rights

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JOINT SUBMISSION ON THE ACHPR DRAFT DECLARATION ON THE PROMOTION OF THE ROLE OF HUMAN AND PEOPLE'S RIGHTS DEFENDERS AND THEIR PROTECTION IN AFRICA

1. African Initiative of Women Human Rights Defenders, Article 19, Centre for Environmental Rights, Centre for Health Education and Vulnerable Support (CHEVS), Centre for Human Rights, University of Pretoria (CHR), Equality Now, Initiative for Strategic Litigation in Africa (ISLA), Institute for Human Rights and Development in Africa (IHRDA), International Federation for Human Rights (FIDH), within the framework of the Observatory for the Protection of Human Rights Defenders, International-Lawyers.Org (INTLawyers), Ipas Africa Alliance, Kenya Legal and Ethical Issues Network (KELIN), KUTAKESA| Movimento dos Defensores de Direitos Humanos de Angola, Lawyers for Human Rights (LHR), Pan Africa ILGA, Pan African Lawyers Union (PALU), African Renaissance, Rights Bridge Africa, Right to Protest Project Africa (R2P), Robert and Ethel Kennedy Human Rights Center (RFK), Southern Africa Human Rights Defenders Network (Southern Defenders), Strategic Initiative for Women in the Horn of Africa (SIHA Network), Synergía - Initiatives for Human Rights, Trust for Indigenous Culture and Health (TICAH), Women's Association for Women & Victims' Empowerment (WAVE-Gambia) and World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders welcome the African Commission on Human and Peoples' Rights (ACHPR) initiative to adopt an African Declaration on the Promotion and Protection of the Role of Human and Peoples' Rights Defenders ('the Draft Declaration').¹ The recognition that defenders are indispensable to the realisation of the African human rights system is long overdue. This submission is made jointly on behalf of the aforementioned human rights organisations, which have focus areas relating to the right to freedom of association, assembly and expression, environmental rights, gender equality and equal protection before the law.

2. While we welcome the initiative for a Draft Declaration, we hold grave concerns that it reproduces structural weaknesses and holds a fundamental incorrect framing positioned as 'African cultural values and traditions', which privileges state-centric, moralised and cultural frameworks over lived realities of its people. We further submit that the Draft Declaration contravenes international norms as well as contradicts positions developed by the ACHPR.

A. Note on length of comments

3. While we acknowledge and appreciate the Commission's guidance requesting submissions of no more than five pages, we have respectfully exceeded the prescribed page limit in this instance due to the joint nature of these submissions involving more than 20 organisations. Given the interconnected nature of the concerns raised and the

¹ <https://achpr.au.int/sites/default/files/files/2026-04/draft-dhrdrev-march-2026eng.pdf>

importance of presenting a coherent and consolidated position, we considered it more constructive to submit a single unified document rather than divide the submissions into multiple fragmented batches, which may inadvertently diminish the clarity, context and overall essence of the observations and recommendations being advanced.

B. Draft Declaration is not responsive to the authorising Resolution

4. The Draft Declaration patently deviates from both the spirit and objective of the authorising Resolution ACHPR/Res.432(LXV) 2019, which principally envisaged the development of a regional normative instrument aimed at strengthening the protection, recognition and enabling environment for human rights defenders in Africa in light of the ‘progressive tightening of civic space and the increase in acts of reprisal against human rights defenders as a result of their collaboration with human rights bodies’. It is inconceivable that a Resolution which speaks to ‘reprisals against human rights defenders’ could have envisaged that the categories of entities and or individuals referred to as ‘human rights defenders’ would include organs of states, including their security institutions. Thus, the conflation of state actors who are generally recognised in international and regional human rights law as duty bearers with human rights defenders is a conceptual overreach and dilution of the definition of human rights defenders and consequently a marked deviation from the core essence of the Resolution that authorised the drafting of the Declaration.
5. While the Resolution emphasises reinforcing the concept and role of human rights defenders and consolidating continental ownership of the protections reflected in the 1998 UN Declaration on Human Rights Defenders, the Draft Declaration introduces provisions and framing that risk shifting the instrument away from a protection oriented framework toward one that legitimises restrictions and heightened state control over human rights defenders. In particular, the repeated emphasis on limitations, public order considerations, and broad references to restrictions ‘in accordance with law’ without sufficiently stringent safeguards risks creating interpretive space for states to justify restrictive legislation and practices that are already being weaponised against defenders across the continent.
6. The Resolution mandated an inclusive and protective process aimed at responding to shrinking civic space and reprisals against defenders. However, aspects of the Draft Declaration appear insufficiently responsive to the lived realities and protection needs of human rights defenders operating in increasingly authoritarian contexts. Rather than unequivocally centering state obligations to protect defenders from criminalisation, surveillance, reprisals, arbitrary restrictions and judicial harassment, parts of the draft place disproportionate emphasis on balancing or limiting rights, potentially diluting existing protections already guaranteed under the African Charter on Human and Peoples’ rights (the Charter), ACHPR jurisprudence and the UN Declaration on Human Rights Defenders.

7. The Draft Declaration significantly deviates from the mandate and purpose of Resolution ACHPR/Res.432(LXV)2019 by placing disproportionate emphasis on ‘African values’ and ‘traditional values’ from the very preamble onward, despite the fact that the authorising Resolution was specifically concerned with strengthening the recognition, promotion and protection of human rights defenders in response to shrinking civic space and increasing reprisals against them. **Respectfully, this Declaration is NOT about African values, the Resolution specifically authorised the drafting of ‘an African Declaration on the Promotion of the Role of Human Rights Defenders and their Protection in Africa’.** Surprisingly, the preamble of the Draft Declaration does not even in a single paragraph acknowledge the violence, repression, and harassment that human rights defenders and their families face across the continent nor the important role they play in the promotion and protection of human rights in Africa, the exact reasons for which this Declaration was necessitated. Rather than centering the lived realities, protection needs, and enabling environment of human rights defenders, the draft repeatedly and excessively focuses on ‘African values’ or ‘traditional values’ discourse that was neither the focus nor the objective of the drafting mandate. This reframing risks shifting the Declaration away from a protective human rights instrument into a broader normative debate about morality, culture and identity, thereby creating ambiguity that may be exploited to justify restrictions on defenders and dilute existing protections under the African Charter.
8. A declaration intended to protect human rights defenders should primarily articulate rights, state obligations, and safeguards against reprisals, not attempt to resolve contested questions concerning African values that require separate, deeper and more consultative engagement by the ACHPR.

C. Form matters: A Declaration is not the right instrument to discuss ‘African values’

9. The question of ‘African values’ is an important and legitimate subject for engagement within the African human rights system. Indeed, the ACHPR has an important mandate under Article 45 of the African Charter to undertake studies, conduct research, and contribute to the interpretation and contextual development of human rights norms within African realities and traditions. However, a declaration on human rights defenders is neither the appropriate normative vehicle nor the proper procedural context within which to undertake a broad and potentially contested articulation of African values and their relationship to rights protection. The authorising Resolution ACHPR/Res.432(LXV)2019 was specifically aimed at strengthening the recognition, promotion and protection of human rights defenders in response to shrinking civic space and reprisals against defenders. Introducing broad and undefined discussions on ‘African values’ into such an instrument without much deliberative context risks shifting its focus away from protection and creating conceptual ambiguity that may ultimately weaken safeguards for defenders rather than reinforce them.

10. The Draft Declaration's reliance on the 4th preambular paragraph of the African Charter and Articles 17 and 18 as a basis for suggesting that human rights defenders must undertake their work 'in respect of common or shared African values' reflects a problematic interpretation of the Charter framework. The 4th preambular paragraph of the African Charter merely acknowledges that the Charter was drafted taking into account 'the virtues of historical tradition and the values of African civilization', and does not create an independent normative limitation on the work of human rights defenders or on the exercise of protected rights. Similarly, Articles 17(3) and 18 impose obligations primarily on States to promote and protect morals and traditional values recognised by the community in a manner consistent with the Charter. These provisions cannot reasonably be interpreted as creating enforceable duties on human rights defenders to align their advocacy or activities with undefined conceptions of 'African/traditional values', particularly where such interpretations may conflict with rights expressly protected under the Charter itself. To do so risks transforming provisions intended to guide state responsibility and contextual interpretation into restrictive tools capable of undermining the independence, universality and protective mandate of human rights defenders in Africa.
11. The concept of African values is itself complex, evolving and capable of multiple interpretations across diverse legal, cultural, religious and political contexts on the continent. Without a rigorous and inclusive interpretive process, there is a significant risk that references to African values within a normative declaration may be selectively invoked by states to justify restrictions on rights, dissent, association, gender equality, or the work of particular categories of human rights defenders. This is particularly concerning within the current context of shrinking civic space, where concepts such as sovereignty, morality, public order and culture are increasingly weaponised to legitimise repression. A declaration, by its nature, is intended to provide clear normative guidance and protection standards. It is therefore ill-suited to resolving or codifying complex philosophical, cultural and jurisprudential debates that remain unsettled and require deeper examination.
12. A more appropriate and constructive approach would be for the Commission, if it is so minded, to initiate a dedicated continental study or thematic consultation process on African values and human rights within the framework of the African Charter and other regional human rights instruments. Such a process would allow for broader participation by scholars, traditional leaders, civil society, states, national human rights institutions, women's rights movements, youth groups, indigenous communities and other stakeholders. Importantly, it would also permit a careful examination of how African values intersect with universality, dignity, equality, non-discrimination, participation, and the evolving jurisprudence of the African human rights system. Through a study process, the Commission would be better positioned to provide principled guidance on how African values should inform the promotion, protection and fulfilment of rights guaranteed under the African Charter and other regional human

rights instruments without creating uncertainty or inadvertently undermining existing protections.

13. Such an approach would also be more consistent with the Commission's broader interpretive and promotional mandate under Article 45 of the African Charter, including its role in undertaking studies and developing soft law guidance grounded in evidence, consultation and comparative analysis. A dedicated study would allow the Commission to engage this important subject with the depth, nuance and legitimacy it deserves, while preserving the primary protective purpose of the proposed Declaration on Human Rights Defenders in Africa.

D. Other general observations

14. While the Draft Declaration does not explicitly state that threats against human rights defenders are isolated, its framing addresses harm primarily through individual incidents of reprisals and *ex post-facto* responses. It does not expressly acknowledge the systemic, structural, and legally enabled patterns through which defenders are routinely targeted across the continent. This omission risks understating the sustained and deliberate nature of risks faced by human rights defenders, particularly those engaged in protest, dissent, feminist and civic-space advocacy. This omission is critical. Defender protection frameworks exist precisely because power must be constrained, not merely encouraged to act benevolently. The extensive reliance on what is viewed as shared, common, and immutable African values throughout the Draft Declaration risks essentialising culture in ways that reproduce patriarchal, heteronormative, and authoritarian interpretations.
15. The Draft Declaration reflects a broader pattern of normative regression. Regionally and internationally, there is a growing trend toward narrowing, reinterpreting, or weakening established human rights protections. This erosion is increasingly advanced through the usage of concepts such as 'African values' and 'culture', language that is used to justify limitations on, and undermine, fundamental human rights. This Draft Declaration reflects this trend by making these concepts central to the definition and conduct of human rights defenders. This systemic dimension is not merely incidental but reflects a pattern of repression that is legally enabled and institutionally reproduced, in violation of States' obligations under Articles 1, 9, 10 and 11 of the African Charter to recognise, respect, protect and fulfil the rights to expression, association and assembly.

E. Deviation from international and regional frameworks

Principle 1: Definition of Defender of Human and People's Rights

16. Principle 1 adopts a conditional definition of human rights defenders. It defines them as natural persons or legal entities acting 'in respect of common or shared African

values’ and further characterises them as ‘defenders of the Republic and the values of the Republic’. This framing makes recognition dependent on alignment with state-defined or culturally framed values, rather than on the universal and regional human rights principles contained in treaty provisions that underpin human rights protection. This framing risks conditioning the legitimacy of human rights work on alignment with state-defined interests, thereby excluding dissenting voices, particularly those challenging systemic abuses.

17. Although the Draft Declaration states in its conceptual framework that it builds on the ‘*Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*’² (‘1998 UN Declaration’), adopted by the United Nations General Assembly, it clearly departs from that instrument’s understanding of who qualifies as a human rights defender. While the 1998 UN Declaration does not set out a single formal definition in one provision, its overall text supports a broad and universal understanding of human rights defenders based on what they do. Under that approach, human rights defenders are identified by their work to promote and protect human rights, not by their conformity to ideological, political, cultural, or moral expectations.
18. The ACHPRs’ own jurisprudence and resolutions consistently affirm that human rights defenders play an independent role in promoting accountability, democracy, and the rule of law, and that this role frequently places them at odds with State authorities.³ Resolutions on the situation of human rights defenders and on the right to peaceful demonstrations recognise that defenders are often targeted because of their criticism of State policies, their exposure of abuses, or their participation in protests and public advocacy.⁴ The Commission has repeatedly condemned the use of public-order, morality, and security frameworks to suppress such activities, reaffirming that dissent and protest are legitimate and protected forms of human rights work, not acts of disloyalty or destabilisation.⁵
19. The formulation in Principle 1(2) further conflicts with the Declaration of Principles on Freedom of Expression and Access to Information in Africa,⁶ which affirms that

² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA, 53rd sess, UN Doc A/RES/53/144 (1999) GA Res 53/144.

³ See e.g., Kigali Declaration, 1st African Union Ministerial Conference on Human Rights in Africa (2003) at para 28; ACHPR, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), Extraordinary Sess. 21 (2017) at paras 29, 47; Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples’ Rights under the theme “Women’s Rights: Our Collective Responsibility” (2016) at para 54. See also, *Robert F. Kennedy Human Rights and Institute for Human Rights in Africa v the Federal Democratic Republic of Ethiopia*, ACHPR, 77 Sess. (2023) Comm. 599/16.

⁴ See e.g. ACHPR, Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, Extraordinary Sess. 21 (2017); ACHPR, Principles and Guidelines on Human and Peoples’ Rights while Countering Terrorism in Africa, Sess. 56 (2015) at p 34.

⁵ See e.g., *Konate v Burkina Faso*, Judgement, Appl. 004/2013 (AfCHPR, Oct. 4, 2014).

⁶ Declaration of Principles on Freedom of Expression and Access to Information in Africa, ACHPR, 65th Sess (2019).

freedom of expression includes the right to criticise public authorities, challenge dominant narratives, and disseminate information that may offend, shock, or disturb.⁷ These protections are foundational to democratic society⁸ and cannot coexist with a framework that implicitly casts defenders as merely guardians of state interests. Conditioning recognition or protection on alignment with ‘the values of the Republic’ risks legitimising reprisals against women human rights defenders, journalists, protest leaders, and others whose work directly challenges State practices or entrenched power structures.

Principle 3: The specificity of the African approach to the defence of human and peoples' rights

20. Principle 3 departs in several respects from binding regional and international human rights standards, including the African Charter, the UN Declaration on Human Rights Defenders, and the jurisprudence and soft law of the ACHPR. Principle 3(2) states that defenders act ‘*in accordance with a legitimate foundation of common and indisputable African traditional values that make the African continent specific*’. While the affirmation of African values is important, the formulation raises significant legal concerns due to its vagueness and potential misuse.
21. The African Charter does not condition the legitimacy or protection of human rights defenders on conformity with undefined ‘traditional values’. Rather, the Charter guarantees rights universally and without discrimination under Articles 2 and 3, while protecting freedoms essential to the work of defenders, including freedom of expression (Article 9), freedom of association (Article 10), and freedom of assembly (Article 11).⁹ Moreover, Articles 60 and 61 of the African Charter require the Charter to be interpreted consistently with international human rights law and standards.¹⁰ The wording in Principle 3 risks legitimising restrictions on defenders whose work may challenge dominant social, cultural, religious or political norms, including women human rights defenders, defenders working on sexual and reproductive health rights, Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) rights defenders, Indigenous peoples’ rights defenders, environmental defenders, journalists, minority rights defenders, and other groups historically exposed to stigma and reprisals.
22. The draft also departs from the universally accepted definition contained in the UN Declaration on Human Rights Defenders (1998).¹¹ Article 1 of the UN Declaration provides that ‘*Everyone has the right, individually and in association with others, to*

⁷ Ibid., Principles 2 (non-interference with freedom of opinion), 6 (Protection of human rights defenders and others)

⁸ *Elgak v Sudan*, Decision, Comm. 379/09 (ACmHPR, Mar. 14, 2014) at para 114. See also, *Law Office of Ghazi Suleiman v Sudan*, Decision, Comm. 228/99 (ACmHPR, Nov. 25, 2009) at para 40: ‘The African Commission affirms the ‘fundamental importance of freedom of expression and information as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms.’

⁹ <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>

¹⁰ <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>

¹¹ https://www.omct.org/site-resources/legacy/declaration_defenseurs_0912_1998_eng.pdf

promote and to strive for the protection and realization of human rights and fundamental freedoms'.¹² Importantly, the UN Declaration does not require defenders to conform to prevailing cultural or traditional norms in order to enjoy recognition and protection. Similarly, Article 12(2) obliges States to protect defenders against '*violence, threats, retaliation, discrimination, pressure or any other arbitrary action*'.¹³ The current formulation in Principle 3 risks undermining these protections by creating subjective criteria for determining who qualifies as a legitimate defender.

23. The ACHPRs' Guidelines on Freedom of Association and Assembly in Africa (2017)¹⁴ require that any restriction on rights must comply with the principles of legality, legitimate aim, necessity, proportionality, and non-discrimination. The notion of '*indisputable African traditional values*' lacks legal precision and fails to satisfy the principle of legality because it is open-ended, subjective, and susceptible to arbitrary interpretation by States. This is particularly concerning in contexts where authorities invoke 'African values', morality, religion, culture or public order to suppress dissenting voices and civic space.
24. The current wording also risks conflicting with the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), particularly Article 2(2), which requires States to modify discriminatory social and cultural patterns, and Article 5, which obliges States to prohibit harmful practices. Women human rights defenders frequently challenge harmful practices justified in the name of tradition or culture. The Declaration should therefore avoid language that could unintentionally legitimise restrictions against them.

Principle 4: Distinguishing between public and private sector advocates

25. Principle 4 raises significant conceptual and legal concerns that risk undermining the independence, legitimacy and protection framework applicable to human rights defenders under regional and international law. Principle 4 classifies the following as 'Public Sector Defenders' '*The State (the executive, legislative and judicial powers) as well as the Administrations (agents and civil servants, including the Police and the Army)*'. This formulation departs from established international and regional standards governing the definition of human rights defenders.
26. Under the UN Declaration on Human Rights Defenders, defenders are individuals, groups and organs of society acting to promote and protect human rights. While State institutions have obligations to respect, protect and fulfil human rights, they are not generally classified as 'human rights defenders' in the same manner as independent actors operating in civil society. The distinction is important because **States are duty-bearers** under international law, **human rights defenders are rights-holders** entitled

¹² https://www.omct.org/site-resources/legacy/declaration_defenseurs_0912_1998_eng.pdf

¹³ https://www.omct.org/site-resources/legacy/declaration_defenseurs_0912_1998_eng.pdf

¹⁴ <https://achpr.au.int/en/soft-law/guidelines-freedom-association-and-assembly-africa>

to protection from abuses, including abuses committed by State actors. By categorising the executive, police, army and State administrations as ‘human rights defenders’, the draft risks blurring the distinction between those responsible for protecting rights, and those who monitor, challenge or seek accountability from State power.

27. This conflation is inconsistent with the African Charter framework, which imposes obligations on States under Article 1 to ‘*recognize the rights, duties and freedoms enshrined in the Charter and ... adopt legislative or other measures to give effect to them*’. The Charter consistently treats States as primary duty-bearers rather than as rights defenders equivalent to independent civil society actors. The inclusion of security institutions such as the police, and the army within the category of ‘human rights defenders’ raises serious concerns regarding the integrity of the protection framework. Across the African human rights system, many documented violations against defenders involve security forces, including arbitrary arrest, intimidation, surveillance, torture, excessive use of force, enforced disappearance, and reprisals.¹⁵ Human rights defenders, as recognised under international law, are individuals or groups acting independently often in opposition to State abuses.¹⁶ The Commission’s own jurisprudence consistently treats States as the primary duty bearer under Article 1 of the African Charter.¹⁷ This duty-bearer framework is distinct from the role of human rights defenders, whose function is to monitor compliance, expose violations, and hold power to account. By designating the State as a ‘defender’, the draft erases the critical distinction between those who exercise power and those who hold power to account. This conceptual conflation risks legitimizing State narratives that portray repressive actions as ‘defensive’ of human rights.
28. The ACHPRs’ own normative standards consistently affirm that the human rights defenders framework derives its coherence from a clear structural distinction: defenders are the right-holders whose independent work must be protected, and states are the duty-bearers obliged to create the conditions under which that work can take place.¹⁸ This distinction reflects a fundamental reality about state power. States exercise

¹⁵ Refer to the African Commission Decisions on Communications available here: <https://achpr.au.int/en/category/decisions-communications>

¹⁶ United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA Res 53/144, adopted 9 December 1998.

¹⁷ See Communication 245/02: *Zimbabwe Human Rights NGO Forum v Zimbabwe*, paras. 143 and 146; Communications 25/89, 47/90, 56/91, 100/93: *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme and Les Témoins de Jehovah v Zaire*, para 47; and Communication 241/01: *Purohit and Moore v The Gambia*, para 84.

¹⁸ See Communication 245/02: *Zimbabwe Human Rights NGO Forum v Zimbabwe*, paras. 143 and 146; Communications 25/89, 47/90, 56/91, 100/93: *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme and Les Témoins de Jehovah v Zaire*, para 47; and Communication 241/01: *Purohit and Moore v The Gambia*, para 84; In Communication 105/93, 128/94, 130/94 and 152/96: *Media Rights Agenda and Others v Nigeria*, the State sought to justify a series of measures restricting press freedom on grounds of public order and security. The Commission held that vague or overly broad public interest justifications cannot lawfully be used to curtail fundamental freedoms (paras 69–70). See also Communications 140/94, 141/94 and 145/95: *Constitutional Rights Project and Others v Nigeria*, para 42; Communications 48/90, 50/91, 52/91 and 89/93: *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* paras 79–80.

legislative, executive and judicial authority, hold a monopoly on the legitimate use of force, and have the authority to deprive individuals of their liberty. This concentration of power requires checks, and human rights defenders are among the primary actors who provide them. When states exceed their prerogatives, the ACHPRs' provides the accountability framework that domestic institutions cannot or will not supply. Principle 4 undermines this distinction by designating the state itself, in its executive, legislative and judicial branches, together with its police and army as a category of human rights defender on an equal footing with independent civil society actors and individuals who are often risking their lives and liberty to defend human rights from state abuse or inaction.

29. The introduced distinction between public and private sector defenders is deeply concerning, as it risks undermining the state's duty to respect, protect and fulfil its human rights obligations. It conflicts with the Commission's established approach, which consistently treats the state as the primary entity against whose conduct defenders must be protected.¹⁹ It also creates an irresolvable internal contradiction, if the state is a defender, the duties imposed by Principle 38 apply equally to states and civil society, making the state both the author and the subject of those duties, the protective obligations in Principles 39-44 become paradoxical, and government-organised NGOs (GONGOs) can claim defender status and invoke the Declaration's protections against scrutiny by genuine civil society actors.
30. Principle 4 correctly references National Human Rights Institutions (NHRIs) and the Principles relating to the Status of National Institutions (Paris Principles). However, the draft should clarify that NHRIs occupy a distinct institutional category because their legitimacy depends on independence, pluralism, autonomy from government, and compliance with the Paris Principles. Grouping NHRIs together with executive authorities, police and military institutions risks undermining that distinction.
31. The draft includes '*Communities or Groups to which individuals belong, whatever their nature (customary, religious, economic, social, etc.)*'. Without clarifying that such groups must operate consistently with human rights principles. This omission is problematic because some non-state actors, including religious, customary or community structures, may themselves engage in or legitimise discrimination, harmful traditional practices, violence against women, attacks against minorities, or reprisals against defenders. The African Charter, the Maputo Protocol, and the African Charter on the Rights and Welfare of the Child all require the elimination of harmful practices, even where such practices are culturally or traditionally justified.

¹⁹ See Communication 245/02: *Zimbabwe Human Rights NGO Forum v Zimbabwe*, paras. 143 and 146; Communications 25/89, 47/90, 56/91, 100/93: *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme and Les Témoins de Jehovah v Zaire*, para 47; and Communication 241/01: *Purohit and Moore v The Gambia*, para 84.

32. The consequences cascade through the entire instrument. The Declaration must unambiguously reflect the structural logic of the human rights defenders framework, obligations to protect, to facilitate, to investigate, to remedy lie with the state as duty-bearer, rights and protections to act freely, to organise, to access information, to engage with international mechanisms without reprisal lie with defenders as right-holders. No provision should be capable of being read as transferring the burdens of one onto the other.
33. We submit that the Declaration must clearly distinguish between the state as duty-bearers and individual state actors who may, in exceptional circumstances, act in a defender capacity. The primary and defining category of human rights defender must be the independent, non-state actor, an individual, group or organization whose primary loyalty is not to the state, but to human dignity, the rights of people, and the norms of African human rights law.

F. Specific recommendations

Principle 1: Definition of Defender of Human and People's Rights

34. We submit that the Declaration must clearly affirm that human rights defenders are entitled to challenge, criticise, resist, and peacefully protest against state laws, policies, and practices, without such actions being construed as anti-state or contrary to their perceived African values. Any definition of a human rights defender adopted by the Commission must align with the African Charter, the Commission's soft-law instruments, and established jurisprudence by recognising defenders as independent actors whose primary loyalty is to human dignity, the rights of people, and the norms of African human rights law and not to the State itself. Accordingly, we recommend that the ACHPR:
 - I. Remove conditional language linking recognition of defenders to 'shared African values' or 'values of the Republic', and reaffirm the universality of human rights as the foundation of the African human rights system.
 - II. Adopt a broad, activity-based definition of human rights defenders consistent with the 1998 UN Declaration on Human Rights Defenders and the Commission's existing jurisprudence and soft law instruments.
 - III. Affirm that dissent, protest, criticism of State authorities, and grassroots organising are legitimate and protected forms of human rights work, and that defenders do not need to conform to State interests to be entitled to protection.
 - IV. Recognise and address the structural nature of attacks against defenders, including reprisals, criminalisation, digital surveillance, restrictive NGO laws, and the misuse of public order, morality, and national security frameworks.
 - V. Provide explicit protection for groups at heightened risk, including women human rights defenders, defenders working on sexual and reproductive health

rights, LGBTI defenders, Indigenous peoples' rights defenders, environmental defenders, journalists, minority rights defenders, and other groups historically exposed to stigma and reprisals.

- VI. Align the Declaration with existing ACHPR standards and jurisprudence, particularly on freedom of expression, association, and assembly.
- VII. Clarify states' obligations to both refrain from interfering with defenders and with existing ACHPR standards and jurisprudence, particularly on freedom of expression, association, and assembly.
- VIII. Acknowledge the diversity and evolving nature of African values, including traditions of resistance, liberation, and social justice movements.

Principle 9: The general African values of the promotion and protection of human and peoples' rights

- 35. The articulation of duties and values remains imprecise throughout the Draft Declaration, with no effort made to clarify meaning or establish dimensions relevant to compliance. For instance, in Principle 9, values are enumerated in abstract terms, without any attempt to integrate legal or moral dimensions.²⁰ This remains a challenge in light of the fact that the Draft Declaration is centred around duties and values, but only provides an abstract list of duties and values, without a clear specific legal or moral basis or even provisions related to non-enforcement. Thus, Principle 9 lacks the specificity necessary to adequately safeguard human rights defenders against arbitrary interpretations of these undefined duties and values.
- 36. Framing values as duties makes protection conditional, states will determine whether a defender has adequately respected 'African values', giving them a basis for withdrawing protection from those whose work is deemed inconsistent with official interpretations of African tradition. The list is internally inconsistent 'betrayal (avoid)' and 'banish vanity' are behaviours, not values, 'surveillance' is listed without qualification, irreconcilable with the right to privacy, and concepts such as 'national solidarity' and 'state security' are rooted in the European nation-state model imposed through colonisation, not in African tradition. Several values pose a direct risk of misuse 'state security (do not compromise)' is among the most commonly invoked justifications for the arrest and prosecution of defenders across Africa 'the moral health of society' is a subjective standard historically used to justify discrimination against women, LGBTI persons and religious minorities, and 'the primacy of the community over the individual' risks delegitimizing defenders acting on behalf of minority groups. The Declaration should include a non-derogation clause affirming that no value listed may be used to restrict, penalise or delegitimize the work of any human rights defender.

Principle 15: Values as the duties of the individual emanating from the African Charter on Human and Peoples' Rights

²⁰ See e.g., Principle 9 (5)(10)(11)(15)(31).

37. Although it offers a more focused set of ‘African values’ than Principle 9, we are concerned that the values enumerated in Principle 15 encapsulate the conditional nature of protections offered to limited groups of human rights defenders in the Draft Declaration. Notably, the inclusion of the ‘cohesion and respect of the family’ poses a risk to the safety of some feminist and/or queer human rights defenders. The subsequently listed values centred around a militarised view of state security and African unity²¹ work towards limiting the protected groups of human rights defenders to those aligned with states. Thus, when deciding which values are to be included and how these are expressed in the Declaration, we submit that they must not act as functional limitations to the categories of human rights defenders who will fit the value-based requirements, notably those who challenge State governments.

Principle 23: Specific values in the field of economic, social and cultural rights

38. The Draft Declaration’s reference to economic, social, and cultural rights in Principle 23 remains inadequate because it fails to guide human rights defenders towards ensuring that States commit the maximum available resources to the realisation of these rights. While such obligations may be loosely subsumed under the category of, ‘other measures’, this framing is insufficient given the tendency by many states to view economic, social and cultural rights as secondary in importance. A stronger and more explicit direction is necessary to ensure meaningful implementation and accountability as regards to economic, social and cultural rights as reflected in international law,²² including ACHPR formal²³ and soft law.²⁴ Indeed, the ACHPR’s Guidelines on implementing economic, social and cultural rights from the African Charter explicitly states that these protections must extend to human rights defenders.²⁵

Principle 30: Rules for the rights of defenders of freedom of expression

39. We welcome that the Draft Declaration has integrated some principles from the 2019 Declaration on Freedom of Expression and Access to Information in Africa into the proposed Principle 30. However, we submit that it is necessary to go beyond the few references in Principle 30 in order to adequately address the role of technology, notably Artificial Intelligence (AI), in human rights defenders’ work, including the increased safety risks it facilitates. Although Principle 30 focuses on some of the State’s basic positive²⁶ and negative²⁷ responsibilities, it lacks bolstered protections of human rights

²¹ Principle 15(2): ‘the non-compromise of the security of the State, the preservation and strengthening of national independence and territorial integrity, participation in the contribution of the defence of one’s country, the safeguarding of the fundamental interests of society and the promotion and realization of African unity.’

²² International Covenant on Economic, Social and Cultural Rights, UNCHR, 21st Sess, UN Doc A/RES/2200A (XXI), GA Res 2200A (1966).

²³ African Charter on Human and People’s Rights, OAU, 1 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 at arts. 20,22.

²⁴ Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples’ Rights under the theme “Women’s Rights: Our Collective Responsibility” (2016) at paras 38-40.

²⁵ Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (2011) at para 48.

²⁶ Principle 30(1): ‘facilitate the creation of community media’.

²⁷ Principle 30(2): ‘refrain from exercising [...] censorship or [...] control over the media system’

defenders' freedom of expression. Thus, we submit that protections must be strengthened by expanding State responsibility to ensure human rights defenders' safety when exercising their freedom of expression by incorporating the 2019 Declaration on Freedom of Expression and Access to Information in Africa.²⁸

Principles 13 & 36: Digital protections

40. We further welcome the Draft Declaration's concern with the impact of technologies, notably including AI, on human rights defenders' work in Principles 13 and 36, which offer digital protections of human rights defenders' work. We submit that these protections must align with the Declaration of Freedom of Expression's Principles on anonymity and encryption,²⁹ prohibition of unlawful surveillance,³⁰ gendered online violence, *Ibid.*, and platform accountability.³¹

Principle 38: The duties of human and peoples' rights defenders

41. Principle 38, which imposes extensive duties on human rights defenders, goes beyond the scope of reasonable expectations of human rights defenders. Specifically, paragraphs 2, 4, 5, 6 and 9 of Principle 38 risk imposing barriers to freedom of expression and the rights of association and assembly.³²

42. The definition of human rights defenders and freedom of expression must be complementary. The United Nations Human Rights Council (UNHRC)'s *General comment No. 37 (2020) on the right of peaceful assembly* presents States' obligations regarding the right of peaceful assembly. It attributes to States a responsibility 'to respect and to ensure' that, 'given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience'.³³ The *General comment* also reiterates a positive obligation to 'take all reasonable measures [...] to protect all participants and to allow such assemblies to take place'.³⁴ This high standard expected of states contradicts the highly restrictive duties imposed on human rights defenders by the Draft Declaration.

43. The restrictive framing of defenders in the Draft Declaration reflects a broader pattern emerging in recent AU normative instruments, including the AU Convention on Ending Violence Against Women and Girls (CEVAWG). Rather than expanding civic space protections in line with evolving international human rights standards, these

²⁸ See e.g., Principles 5 (Protection of the rights to freedom of expression and access to information online), 6 (Protection of human rights defenders and others), 10 (Guarantee of freedom of expression), 19 (Protection of journalists and other media practitioners), 20 (Safety of journalists and other media practitioners), 22 (Criminal measures).

²⁹ Declaration on Freedom of Expression and Access to Information in Africa, Principle 40(2)(3).

³⁰ *Ibid.*, Principle 20(2)

³¹ *Ibid.*, Principle 39

³² African Charter of Human and People's Rights, OAU (1981) at arts. 9-11.

³³ General comment No. 37 (2020) on the right of peaceful assembly (article 21), UNHRC, 2020, UN Doc CCPR/C/GC/37 at para 21-22.

³⁴ *Ibid.* at paras 27, 52.

instruments increasingly embed conditional, state-centric, and securitised approaches to participation and advocacy. This trend risks normalising restrictive understandings of who qualifies as a legitimate human rights actor and under what conditions advocacy may occur.

44. Principle 38 raises significant normative and practical concerns in the breadth and framing of the duties it imposes. The duty to respect legislation on counter-terrorism, money laundering and illicit financial flows mirrors the precise legal frameworks used to freeze the accounts of human rights organisations, prosecute defenders under security legislation for documenting abuses, and restrict foreign funding under the guise of financial integrity. The duty to refrain from ‘manipulation of opinions or data’ to avoid ‘destabilizing duly established institutions’ reproduces the foundational narrative of foreign agent laws and repressive NGO legislation worldwide, framing legitimate evidence-based advocacy as subversion. The duty not to ‘hinder the proper conduct of national affairs’ is so vague as to encompass any form of dissent, protest or criticism that a government chooses to characterise as inconvenient. The duty to protect national institutions from ‘external interference’ echoes the sovereignty arguments routinely used to reject engagement with international human rights mechanisms, including the ACHPR itself.
45. Similar to Principle 38 of the Draft Declaration, article 10 of CEVAWG reflects an emerging normative tendency to frame human rights defenders primarily as actors operating in partnership with, or within programmes sanctioned by, the State. This departs from established international and regional standards recognising that human rights defenders often operate precisely in opposition to state practices, including through protest, litigation, documentation, and transnational advocacy. Such formulations risk recasting defenders from independent rights-holders into regulated stakeholders whose legitimacy depends on state approval, thereby undermining the autonomy and watchdog function central to human rights defence.
46. Human rights defenders working on issues such as women’s rights, sexual and reproductive health and rights, LGBTI rights, sex workers’ rights, migrants’ rights, disability rights, environmental justice, land rights, detention, policing, and accountability for State violence are frequently framed as acting against culture, morality, family values, public order, or national sovereignty. The formulation in Principle 38 risks reinforcing these patterns and providing normative cover for further repression, particularly against already marginalised and targeted groups of defenders. In doing so, it contributes to a broader pattern in which legal frameworks are used to constrain and ultimately decimate the spaces and conditions in which human rights defenders are able to operate and organise
47. Thus, we submit that the Declaration must retract paragraphs 2, 4, 5, 6 and 9 of Principle 38 and any other duties imposed on human rights defenders that might limit the exercise of their right of assembly and freedom of expression and association. Furthermore, the

duties attributed to human rights defenders in the Declaration must be consistent with State's duties to facilitate protest in order to prevent the misuse of human rights defenders' duties to criminalise dissent. Indeed, the Declaration on Freedom of Expression and Access to Information in Africa explicitly imposes a high threshold for State's justifiable limitation on the exercise of the rights to freedom of expression and access to information.³⁵ Similarly, in *Elgak v Sudan*, the ACHPR 'considers that any restrictions on freedom of expression must be provided by law, serve a legitimate interest and be necessary in a democratic society'.³⁶ These principles located in ACHPR jurisprudence and soft-law instruments should be explicitly addressed in the Declaration.

G. Specific Recommendation: Protection of LGBTI Human Rights Defenders

48. The omission of any explicit recognition of defenders working on issues related to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) in the Draft Declaration is particularly concerning when considered against the ACHPRs' own jurisprudence, resolutions and statements of its special mechanisms. Defenders working on the rights of LGBTI persons remain among the most systematically targeted human rights defenders across the African continent, facing violence, harassment, arbitrary arrest, criminalisation, social persecution and restrictions on their freedom of expression, association and assembly.
49. The Draft Declaration's silence on this category of defenders is therefore inconsistent with the ACHPRs' established normative framework, including the Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, ACHPR/Res.275(LV)2014,³⁷ and the Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa, ACHPR/Res.552(LXXIV)2023.
50. The Commission further recalled that such violations constitute breaches of several rights protected under the African Charter, including the rights to life, dignity, equality before the law, non-discrimination, liberty and security of the person. Significantly, operative paragraph 3 of Resolution 275 calls upon States Parties to 'ensure proper investigation and diligent prosecution of perpetrators and establish judicial procedures responsive to the needs of victims'. The Resolution therefore clearly recognises that persons targeted because of their sexual orientation or gender identity are entitled to the

³⁵ See *Declaration on Freedom of Expression and Access to Information in Africa*, Principle 9 (Justifiable limitations).

³⁶ *Elgak v Sudan*, Decision, Comm. 379/09 (ACmHPR, Mar. 14, 2014) at para 114.

³⁷ In Resolution 275, adopted during the Commission's 55th Ordinary Session held in Luanda, Angola, in 2014, the ACHPR expressly condemned 'the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their real or imputed sexual orientation or gender identity'.

full protection of the African Charter and that States bear positive obligations to prevent violence, ensure accountability and protect affected persons and communities.

51. Defenders working to promote and protect these rights necessarily fall within the scope of the Commission's protection mandate. This position was reinforced and expanded by the ACHPRs' Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa, ACHPR/Res.552(LXXIV)2023. Resolution 552, the Commission acknowledged the widespread violence, discrimination, stigmatisation and harmful practices experienced by intersex persons across Africa and called upon States to adopt measures to prevent violence, ensure access to justice, prohibit harmful medical practices and protect the dignity and bodily autonomy of intersex persons. Human rights defenders advocating for the rights of intersex persons are therefore equally encompassed within the ACHPRs' existing normative protection framework and should be expressly recognised within the Draft Declaration.

52. The ACHPRs' Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa has similarly recognised the heightened risks faced by defenders working on issues relating to sexual orientation and gender identity. Following the promulgation of Nigeria's Same-Sex Marriage (Prohibition) Act on 13 January 2014, the then Special Rapporteur on Human Rights Defenders in Africa, Mrs Reine Alapini-Gansou, issued a public statement from Banjul on 5 February 2014 expressing grave concern regarding the implications of the legislation for both sexual minorities and defenders advocating on their behalf.³⁸ In that statement, the Special Rapporteur noted the promulgation on 13 January 2014 in Nigeria of the Same-Sex Marriage Prohibition Act, and is deeply concerned about the consequences this law may have on sexual minorities who are already vulnerable as a result of social prejudice. The Special Rapporteur specifically criticised Sections 4(1) and 5(2) of the Act, which criminalised support for LGBTI organisations and advocacy activities, observing that some provisions of the Act, in particular Sections 4(1) and 5(2) which prohibit and provide for penalties against defenders of the rights of LGBTI people. This intervention is particularly significant because it confirms that the ACHPRs' has already recognised, through its special mechanisms, that defenders working on sexual orientation and gender identity issues face specific and heightened risks requiring targeted protection.

53. The Draft Declaration's failure to explicitly recognise these defenders is therefore inconsistent not only with Resolutions 275 and 552, but also with the Commission's own jurisprudence and institutional practice concerning the protection of defenders at risk. The urgency of addressing this omission is further underscored by the increasing trend across several African States towards criminalising not only same-sex relations, but advocacy itself. Recent legislation and legislative proposals in countries including Uganda, Ghana, Senegal, Burkina Faso and Mali have sought to criminalise advocacy relating to sexual orientation, gender identity, gender expression and sex

³⁸ <https://achpr.au.int/en/news/press-releases/2014-02-06/press-release-implication-same-sex-marriage-prohibition-act-2013>

characteristics; prohibit support to LGBTI organisations, restrict public expression in favour of equality, or penalise defenders perceived as promoting SOGIESC rights. In several contexts, merely defending the rights and dignity of LGBTI persons is increasingly treated as a criminal offence. Human rights defenders operating in these contexts face harassment, surveillance, arbitrary arrest, threats, attacks, office closures and reprisals simply for carrying out legitimate human rights work.

54. Against this background, the Draft Declaration's repeated reliance on broad and undefined concepts such as 'traditional values', 'community values', 'morality', 'public order', 'the moral health of society', and 'African traditions' particularly within Principles 3, 9, 15, 38 and 44 creates a substantial risk of misuse. Across many jurisdictions, precisely these concepts are routinely invoked to justify the persecution, criminalisation and exclusion of defenders working on SOGIESC issues. Without explicit safeguards clarifying that cultural, religious, moral or traditional considerations cannot be used to deny protection to human rights defenders, the Draft Declaration risks reinforcing the very frameworks that have historically been used to legitimise violence and repression against LGBTI defenders.
55. The Draft Declaration should therefore clarify that no defender may be subjected to violence, intimidation, harassment, criminalisation, discrimination, arbitrary arrest, detention or reprisals because of the identity or status of the persons whose rights they defend. Explicit recognition is essential if the Draft Declaration is to fulfil its protective mandate in relation to one of the groups of defenders most exposed to violence, criminalisation and reprisals across the African continent today.
56. We recommend the inclusion of a dedicated provision within the section addressing vulnerable or at-risk defenders, or alternatively within the general protection framework, stating that:
 - I. States shall ensure the protection of all human and peoples' rights defenders without discrimination of any kind, including defenders working on issues related to sexual orientation, gender identity, gender expression or sex characteristics.
 - II. No person shall be subjected to violence, intimidation, harassment, criminalisation, discrimination, arbitrary arrest, detention or reprisals because of their work in promoting or protecting the rights of persons targeted on the basis of their real or imputed sexual orientation, gender identity, gender expression or sex characteristics.
 - III. States shall refrain from invoking culture, tradition, religion, morality, public order or community values to justify restrictions on the legitimate work of human and peoples' rights defenders based on sexual orientation, gender identity, gender expression or sex characteristics.

- IV. States shall adopt all necessary legislative, administrative and judicial measures to protect defenders at risk in accordance with the African Charter ACHPR/Res.275(LV)2014 and ACHPR/Res.552(LXXIV)2023.

H. The necessity of an ad hoc Working Group to revise the Draft Declaration

57. Given the importance and potential normative impact of the proposed Declaration on Human Rights Defenders in Africa, the drafting process would substantially benefit from the establishment of a dedicated ad hoc working group composed of Commissioners, independent experts, representatives of national human rights institutions, and civil society actors, particularly human rights defenders themselves. Such an approach would be more consistent with the participatory and consultative spirit underpinning the African human rights system and would help ensure that the Declaration reflects the lived realities, protection needs, and operational challenges faced by defenders across diverse African contexts. Human rights defenders are often the primary subjects affected by restrictive laws, reprisals, surveillance, criminalisation and shrinking civic space; accordingly, their meaningful participation in shaping the instrument intended for their protection is essential to both its legitimacy and practical effectiveness.
58. A broader and more inclusive drafting mechanism would also assist the ACHPR in addressing the significant legal, conceptual and contextual concerns currently raised by the draft, including questions relating to African values, permissible limitations, state obligations, and the scope of protection afforded to defenders. A multi-stakeholder working group would create space for deeper comparative analysis, engagement with existing ACHPR jurisprudence and international standards, and careful reconciliation of differing perspectives through expert deliberation rather than broad normative assertions. Ultimately, such a process would strengthen the credibility, legitimacy and protective value of the Declaration and better ensure that it fulfils the objective envisaged by Resolution ACHPR/Res.432(LXV)2019 - namely, the strengthening of the recognition, promotion and protection of human rights defenders in Africa within a context of increasing reprisals and shrinking civic space. This approach is not unknown to the ACHPR as existing Working Groups of the Commission include the participation of experts and civil society actors.

I. Conclusion

59. While the aspiration to develop an African Declaration on human rights defenders is commendable, the current draft is not responsive to the authorising resolution, represents a significant departure from the protective ethos that should underpin such an instrument and risks being weaponised against human rights defenders. It marks significant deviation from the Commission's own jurisprudence built over the last three decades through case law and soft law instruments including concluding observations to state parties. Unless substantially revised, it risks legitimizing restrictions, weakening protections, and eroding the trust of those it seeks to serve and may

negatively impact on the consistency, credibility and legitimacy of the African Commission as the primary promoter and protector of human rights on the continent.

60. Honourable Chair, Commissioners, we stand ready to engage constructively with the African Commission and other stakeholders to ensure that the final declaration is one that genuinely advances the protection, recognition, and empowerment of human rights defenders across Africa.

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