Submission on the Call for Input by the African Commission on Human and People's Rights for the Draft Proclamation on the Promotion of the Role of Human Rights Defenders and their Protection in Africa

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PART I: DEFINITION OF HUMAN AND PEOPLES' RIGHTS DEFENDERS

Principle 1 makes strides in defining human Rights Defenders (HRDs). The definition is exhaustive and inclusive. However, **Principle 1 (2),** vaguely refers to HRDs as the 'defenders of the Republic' and its 'values'. The two terms are open to misinterpretation and pose a risk of inhibiting their voices, inherent roles, and rights. The definition should explicitly address the intersectionality of defender identities; recognising that a defender may simultaneously belong to a marginalised group whose rights they are defending.

Similarly, the phrase "in respect of common or shared African values," in **Principle 1 (1)** raises a concern of interpretive subjectivity given that states could use this broad definition to justify discriminatory treatment on certain individuals and groups and deny state protection.

The addition of the state to the list of HRDs as highlighted in **Principle 2 (1), Principle 4 (a),** and **Principle 7,** potentially blurs the line of accountability, and the nexus between a 'rights-holder vs. duty bearer." It may also create scenarios of state control over human rights actors including defining what would constitute abuse and violation as a defence.

Proposals/Recommendations

- The definition should explicitly address the intersectionality of defender identities; recognising that a defender may simultaneously belong to a marginalised group whose rights they are defending.
- Revise **Principle 1 (1)** to state as follows; "....drawing inspiration from," and to explicitly include digital rights defenders who use online platforms, social media, and digital tools to advance human rights.[1]
- The definition of an HRD should be reviewed to center on individual and organisation based HRDs in line with other international instruments such as the UN Declaration on Human Rights Defenders (1998), which identifies HRDs as individuals or groups who act to promote, protect or strive for the protection and realisation of human rights and fundamental freedoms through peaceful means.

PART II: AFRICAN PHILOSOPHY OF DEFENDING HUMAN AND PEOPLES' RIGHTS

Principle 3 highly reflects the philosophy of Africa and largely inspires embrace of the African values. However, it uses some vague terms such as "African traditional values" which have previously been associated with autocracy and repression of rights by African governments labelling HRDs as agents of foreigners and promoters of their interests.

Proposals/Recommendations

- Revise the provision to align with universally applicable human rights norms and add the phrase "in accordance with human rights standards." The Declaration should also be explicit that, where African values conflict with binding treaty obligations, human rights standards prevail. This will prevent the Declaration from being used to justify harmful practices on cultural grounds.
- Delete "African traditional values" or in the alternative, clearly define African traditional values to iron out potential cases of vagueness, broadness and ambiguity that contradicts the principle of legal certainty for permissible restrictions on civic freedoms.

[1] With specific reference to WHRDs, defenders with disabilities, and other groups of defenders with vulnerabilities and whose vulnerabilities are exacerbated by unique structural barriers including inaccessible platforms and biometric bias and exclusion.

Part III: CATEGORY OF HUMAN AND PEOPLES' RIGHTS DEFENDERS

The categorisation of HRDs in Principle 4 is a positive move to providing certainty and specifying responsibility. However, there is a need to draw a clear line between rights-holders and the state actor as a duty bearer. The inclusion of police and military actors as part of HRDs presents anxiety as to the future of human rights since they have frequently been cited as violators of rights and a major hindrance to the work of HRDs across Africa.

Proposals/Recommendations

- Remove police and military from the list of human rights defenders. In the alternative, qualify the police and army as protection mechanisms which should be subject to strict compliance with constitutional mandates and international human rights law.
- Add Women Human Rights Defenders (WHRDs), defenders with disabilities, and other vulnerable defenders under the protected categories of HRDs in need of heightened protection.

Part IV: METHODS AND MEANS OF HUMAN AND PEOPLES' RIGHTS DEFENDERS

This part in **Principles 5, 6, and 7** recognises the need to address human rights violations by HRDs including in the periods and processes during violations and the response period. This provides the potential to deal with perpetrators while exposing the wrongs and addressing the needs of the victims through different avenues. However, the provision in **Principle 6 (2),** calling for the state's obligations to 'encourage' other actors to raise awareness implies a shift of responsibility to other actors rather than the state as the primary duty bearer. This requires clarification and should clearly show that the state has a duty to "support" actors to ensure that states take their primary role in the protection and promotion of the rights of HRDs.

Principle 6 alongside **Principle 7** should also specifically recognize the state's role in facilitating HRDs to undertake their key roles including in monitoring, documenting and reporting, advocating and litigating on human rights. Furthermore, **Principle 7** spells out the means and actors of posteriori defence and, **item (4)** mentions 'Magistrates' in the list of public defenders but excludes other judicial officers like judges making it narrow in application.

Proposals/Recommendations

- Rephrase **Principle 6 (2)** to read; "states shall actively facilitate *a priori* defence by ensuring meaningful public participation in legislative, regulatory and technological processes affecting the enjoyment of human and peoples' rights and protect HRDs from undue interference by third parties including specific threats by tech companies" through facilitating their works or productions of the mind, by using, inter alia, the following channels (means): --------
- Under **Principle 7 item 4,** expand the category to include court officials. Similarly, the list under this principle should focus on response by public institutions as a protection mechanism for HRDs (i.e., courts, National Human Rights Institutes (NHRIs), law enforcement agencies etc) rather than conflating these with specific HRD categories like individuals, journalists, lawyers, Faith Based Organisations and CSOs.

Part V: GUIDING PRINCIPLES OR TRADITIONAL VALUES TO BE TAKEN INTO ACCOUNT IN THE DEFENCE OF HUMAN AND PEOPLES' RIGHTS (COMMON AFRICAN VALUES OR SHARED AFRICAN VALUES)

This part (**Principles 8 to 33**) fronts the values for human rights defence as general African values and positive or conventional African values. They trace the history of rights and recognise the African treaties. It also in **Principle 9** emphasises Ubuntu as the main unifying value of the continent. The values are Afrocentric and reflect Africanisation but potentially pose several challenges in several aspects:

Item 23 of **Principle 9** on the protection of the individual as a member of a Community/Group recognises the work of HRDs in communal sectors such as in land rights and indigenous groups. Nevertheless, the risk of undermining individual sentiments over general group interests can not be underestimated.

Item 28 of **Principle 9** reflects **articles 27 to 29** of the **African Charter on Human and Peoples Rights** however, the use of the phrase "moral health" is very subjective and could be misinterpreted to further promote restrictions on operations of CSOs and NGOs and other HRDs.

Proposals/Recommendations

- Delete Item **28** of **Principle 9**
- To **Principle 9** add the values of i) accountability and transparency- to underscore the obligation of duty holders to account for their decisions and, ii) accessibility of rights, services, and civic participation for all persons, including HRDs without any discrimination.
- Add **item 4** to **Principle 11** to read: "States shall protect the right of defenders to associate and organise through digital means, including through encrypted communication platforms and online networks, and shall refrain from ordering the shutdown of digital communication services, compelling disclosure of membership information, or conducting surveillance of digital organising activities."
- Add an item to **Principle 12** to affirm that human rights obligations under this Declaration attach to the territory and its population and are not extinguished by unconstitutional changes of government, in line with established principles of international human rights law. The provision should also require the **Special Rapporteur** to take proactive protective measures for HRDs facing heightened risk under military governments.
- **Principle 13 (1)** should be revised to include surveillance as part of the actions states are to refrain from in the use of Artificial Intelligence (AI).
- **Principle 13 (3)** should be revised to cover technology-facilitated gender-based violence (TFGBV) by mentioning it.
- Add **item 5 to Principle 13** to read, "HRDs shall exercise due diligence in their use of Artificial Intelligence and digital technologies in advocacy work, ensuring that such use does not expose vulnerable groups; particularly children to harmful content, undue surveillance, or data exploitation, and shall advocate for platform accountability mechanisms that effectively protect children from harmful online content."
- In respect to **Principle 17,** an additional mandate and responsibility should be added to States to ensure the protection of children rights defenders from data exploitation, digital surveillance, and platform-based suppression of their advocacy and taking all efforts to empower them to exercise their right to participate in public affairs.
- Rephrase **Principle 18** to cover and address digital exclusion of older persons and specify a state duty to empower their defenders to challenge exclusionary digital systems.

***PART VI*. THE RIGHTS OF HUMAN AND PEOPLES RIGHTS DEFENDERS**

Rights of HRDs are essential since they defend the rights of others. They must be protected. However, there are several concerns that require attention before the Declaration is finalised.

Proposals/Recommendations

- Under **Principle 14:** include digital sovereignty as a key value since African states largely depend on foreign-owned digital infrastructure and foreign-operated platforms (including Meta, Google, and TikTok) for essential public services such as through Digital Public Infrastructure (DPI); while African citizens access information, organise civic activity, and exercise freedom of expression.[2] Yet, their content moderation policies, data governance frameworks, and algorithmic systems are designed and governed mainly outside Africa without meaningful continental input or accountability.
- Under **Principle 19:** include (i) explicit recognition of Persons with Disabilities (PWDs) as defenders who are entitled to reasonable accommodation,[3] (ii) address specific digital barriers against them that could hinder their effective work, including inaccessible websites, platforms incompatible with assistive technologies, and biometric systems failing persons with disabilities; and (iii) require states to ensure the DPI for these defenders at risk.
- Under **Principle 20:** consider adding a duty towards empowering defenders on their social protection rights to challenge digital identity requirements as conditions for accessing welfare benefits where such requirements demonstrably exclude vulnerable populations.

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[2]Defenders working on data sovereignty and technology governance perform a fundamentally AU-aligned function warranting explicit recognition.

[3] This should include accessible meeting spaces, digital platforms, and complaint mechanisms. The term "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; UN Convention on the Rights of Persons with Disabilities (CRPD), Art. 2

- Under **Principle 21:** add a clause to red "Persons who are refugees in human rights advocacy should be fully protected regardless of their immigration status, taking into account their compounded vulnerability to refoulement, movement restrictions, and digital surveillance by both host states and countries of origin."
- Under **Principle 22:** acknowledge that digital systems can facilitate or deepen displacement and specify the duty to empower internally displaced persons (IDPs) as rights defenders to monitor and challenge digital systems contributing to displacement or denying IDPs their rights, or access to services and remedies.
- Under **Principle 23:** explicitly state that digital rights[4] are increasingly understood as components of economic, social and cultural rights and should be subject to the same broad interpretive approach prescribed in **Item 3** for rights not expressly included in state constitutions.
- Under **Principle 24:** encourage states to also report on legislative measures addressing digital economic exclusion[5]under economic, social and cultural rights issues with direct implications for the most marginalised communities.
- Under **Principle 25:** In line with the AU Digital Transformation Strategy for Africa (2020-2030), call on states to integrate digital rights education into school curricula as a component of human rights education.
- Under **Principle 31:** It should be explicitly provided that states should guarantee access to legal counsel, family communication, and protection from torture, inhuman and degrading treatment for HRDs in detention. Digital communications of detained defenders should be protected from arbitrary surveillance or interception that could violate their right to privacy.
- Under **Principle 33:** (i) explicitly recognise labour rights of digital workers, (ii) ensure that the rights of content moderation workers are respected by platform administrators/tech companies, and (iii) improve working conditions for defenders to monitor contractor chain arrangements used to evade employer accountability.
- Under **Principle 35 paragraph 3**: include a new paragraph stating that: "No State shall apply cybercrime legislation, computer misuse laws, electronic communications regulations, or any other law governing digital conduct to criminalise activities constituting legitimate human rights defence, including whistleblowing, digital journalism, online organising, encrypted communication, and the publication of information about human rights violations."
- Under **Principle 36 (2),** explicitly state that States have the primary duty to protect HRDs from surveillance.
- Under **Principle 37 (7),** expand HRDs rights to include access information from commercial enterprises.
- Under **Principle 37 (7),** include the state's duty to legislate freedom to access information contained in governmental records to facilitate transparency and accountability.
- **Principle 38** Delete Items **2, 3, 4, 5, 8 and 9** from the Declaration and focus on providing stronger protection and safeguards for HRDs under threat. These parts impose vaguely framed duties on HRDs such as on 'external interference,' 'the proper conduct of national affairs,' and 'destabilise[ing] duly established institutions' which may be open to wide interpretation used against HRDs to their detriment.

PART VIII. SPECIFIC OBLIGATIONS AND DUTIES OF THE STATE DEFENDER OF HUMAN AND PEOPLES' RIGHTS

The general categorisation of the State as a human rights defender (**Principles 39** to **44**) raises concerns about its traditionally known responsibility as a primary duty-bearer that must respect, protect and fulfil human rights. Moreover, the State responsibility has often been cited in major human rights violations and violent and unlawful actions against HRDs.

Proposals/Recommendations

- Carefully tweak the role of the State to maintain its primary role as a duty-bearer. There should be reconsideration of the choice of wording when referring to the state in the Declaration to avoid any potential of ambiguities in interpretation and application.

[4] Including the right to access digital services, digital identity, and digital civic participation

[5] Including absence of data protection laws, lack of digital accessibility standards, and failure to regulate platform labour conditions

- Rework **Principle 39 (1)** to include the primary duty of the state to 'refrain' from any action that infringes upon the realisation of human and people's rights, including that of HRDs.
- **Principle 39 (2)** should include key judicial, institutional, technical, and financial steps in the suggested measures.
- **Principle 39 (3)** should be specific on political, institutional, programmatic, technical, financial and technological measures to be undertaken for certainty of actions.
- **Include the aspect of** timely reparations and remedies for HRDs under **Principles 42 (1), as Principle 43.**
- Clearly spell out the duty of the state, as opposed to merely 'encouraging' roles under **Principle 42 (6).**

PART XI: HARMFUL ACTIONS AGAINST HUMAN AND PEOPLES' RIGHTS DEFENDERS

This part is essential for the protection of HRDs against harms that fundamentally affect and discourage their work. However, the list of absolute prohibitions under **Principle 46** is limited.

Proposals/Recommendations

Add prohibition against (i) Enforced Disappearances (ii) Tramped Charges (iii) Arbitrary Arrests, Detentions and Imprisonment (iv) Unfair Trial (v) Violence, abductions and killings and (vi) Digital Repression and Surveillance.

PART XV. ROLE OF THE SPECIAL RAPPORTEUR ON HUMAN AND PEOPLES' RIGHTS DEFENDERS AND FOCAL POINT ON REPRISALS

This part provides an oversight role over the Declaration which potentially enhances accountability. Nevertheless, some specific roles should be assigned to the Special Rapporteur.

Proposals/Recommendations

Under **Principle 50,** the Special Rapporteur should exercise a specific mandate to monitor and report on digital rights of HRDs in Africa; develop specific guidelines on digital rights defenders';[6] and engage proactively with big tech and platform providers operating in Africa.

General Observations

Under **Part VIII,** there is **Principle 44** just before **Part IX.** Again, in **Part X** the first principle is numbered as **44** and the following are numbered **45** and so on. There is a need to correct the numbering of the principles.

Conclusion

The Declaration exhibits ACHPR's efforts to promote the roles of HRDs and their protection in Africa. However, there are key gaps that potentially need to be patched to ensure that the environment within which HRDs operate is favourable for the performance of their work. Some terms as used are broad and vague that they would facilitate repression. Additionally, digital rights defenders are thin throughout the document which calls for incorporation of a comprehensive and cross-cutting digital rights framework. There is also the need to specifically recognise and address the rights of HRDs multi-layered vulnerabilities such as WHRDs, defenders with disabilities, children HRDs, climate HRDs, and HRDs from indigenous and marginalized communities.

[6] Including state conduct standards, platform accountability expectations, and digital security recommendations

About CIPESA

The Collaboration on International ICT Policy for Eastern and Southern Africa (CIPESA, www.cipesa.org) – is one of two centres established under the DfID-funded Catalysing Access to ICTs in Africa (CATIA) Programme. CIPESA is a leading centre for research and information brokerage to enable policy makers in the region to understand ICT policy issues, and for various stakeholders to use ICTs to improve governance and livelihoods.

As such, our work responds to a shortage of information, resources and actors consistently working at the nexus of technology, human rights and society. While initially formed to work in East and Southern African countries, over the years, we have expanded to cover the entire continent. Initially focused on research, over the last decade we have diversified our ways of work to include advocacy, capacity development, and convenings, among others.

About the Digital Rights Alliance Africa

The Digital Rights Alliance Africa (DRAA- 'the Alliance') is a network of traditional NGOs, media, lawyers and tech specialists from across 13 African countries that seek to champion digital civic space and counter threats *via* digital rights monitoring, research, and advocacy. The Alliance was founded by the International Center for Not-for-Profit Law (ICNL) and the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) in response to the rising digital authoritarianism in the region in 2023. DRAA's Strategic Plan (2026-2028) focuses on untangling and addressing, *inter alia*, the critical and multifaceted challenges as well as gaps HRDs and Women Human Rights Defenders (WHRDs) face in Africa. Cognizant of this, the following document outlines the Alliance's submission, providing comments on the draft Declaration with a focus on: **(i)** the conceptualisation of Human Rights Defenders (HRDs); **(ii)** their role, rights and freedoms; **(iii)** the duties and obligations of States; and **(iv)** the protection of HRDs in the context of AI-powered violations.