



# SHAPING PARTNERSHIP TO DELIVER ON HUMAN RIGHTS OBLIGATIONS

EUROPEAN UNION (EU) - AFRICAN UNION (AU)  
SUMMIT 29-30 NOVEMBER 2017

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First published in 2017

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Kortenberglaan 71, 1000 Brussels, Belgium

**Index: IOR 60/7479/2017**

**Original language: English**

**[amnesty.eu](http://amnesty.eu)**

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INTERNATIONAL** 

# INTRODUCTION

As European Union (EU) and African Union (AU) leaders meet for the 5<sup>th</sup> EU-AU Summit on 29-30 November 2017 in Abidjan, Côte d'Ivoire, Amnesty International calls on AU and EU leaders to place human rights at the centre of their discussions. The Summit is proclaimed to be a critical opportunity for leaders of the two continents to respond to the “evolving context and reshape and deepen the Africa-EU partnership.”<sup>1</sup> Several key issues are expected to be on the agenda including security, conflict and peacebuilding, governance and democracy as well as migration and youth.<sup>2</sup>

The Joint Africa-EU strategy (JAES), one of the core instruments of partnership adopted in 2007 asserts that “the respect for human rights, freedom, equality, solidarity, justice, the rule of law and democracy” are the core shared values and commitments of the respective continents.<sup>3</sup> However, this Summit is happening amidst a context of growing human rights concerns in many countries across Africa and Europe. As such, the EU-AU Summit needs to respond to these concerns with concrete actions.

In this briefing, Amnesty International highlights key issues that require urgent and concrete actions by European and African leaders:

- Human Rights Defenders (HRDs) and civil society space
- Security and counter-terrorism measures
- Armed conflict and response
- Refugees and migration
- Accountability and justice

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<sup>1</sup> European Commission, Renewed impetus of the Africa-EU Partnership, Joint Communication to the European Parliament and the Council 4 May 2017 [http://www.africa-eu-partnership.org/sites/default/files/documents/communication\\_for\\_a\\_renewed\\_impetus\\_of\\_the\\_africa-eu\\_partnership.pdf](http://www.africa-eu-partnership.org/sites/default/files/documents/communication_for_a_renewed_impetus_of_the_africa-eu_partnership.pdf)

<sup>2</sup> Ibid

<sup>3</sup> THE AFRICA-EU STRATEGIC PARTNERSHIP: A Joint Africa-EU Strategy, paragraph 1 [http://www.africa-eu-partnership.org/sites/default/files/documents/eas2007\\_joint\\_strategy\\_en.pdf](http://www.africa-eu-partnership.org/sites/default/files/documents/eas2007_joint_strategy_en.pdf)

# HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY SPACE

One of the strategic priorities identified in the Joint Africa-EU strategy is a commitment to promote the development of a vibrant and independent civil society.<sup>4</sup> The European Commission's communication for the Summit further indicates that "strengthening joint efforts to facilitate, preserve, and broaden the space for civil society engagement" is one of its policy priorities including a revitalised initiative for the period 2018-2020 and beyond.<sup>5</sup> Despite these commitments, the global trend of shrinking space for civil society and the ongoing threats to HRDs is manifest both in Africa and the EU.<sup>6</sup> In far too many countries, HRDs face an onslaught of harassment, intimidation, smear campaigns, ill treatment, unlawful detention and even murder.

In recent years, Amnesty International has documented a worrying regression in several EU member states, particularly in Poland and Hungary, including attempts to smear and undermine legitimate activities of civil society groups. The passing of a law in Hungary stigmatising non-governmental organisations (NGOs) that receive foreign funding is the latest in an escalating crackdown on critical voices and will hamper critically important work by civil society groups.<sup>7</sup>

In Poland, large scale public demonstrations were triggered by the government's ongoing efforts to undermine the constitution through consolidation of extensive powers in the hands of the executive branch – at the expense of an independent judiciary. These protesters were met with a show of force and a set of policing measures that infringed their rights to freedoms of expression and peaceful assembly. Further, the amendment to the Law on Assemblies that entered into force in April 2017 introduced restrictions for protests by declaring a priority for "cyclical assemblies" with authorities routinely banning counter-demonstrations.<sup>8</sup>

Equally, crucial lifesaving activities carried out by NGOs in the Central Mediterranean have been put at risk by several factors, mainly a campaign of innuendo and insinuation by some EU and member state representatives, including unsubstantiated allegations of criminal ties of NGOs to smuggling networks; the imposition by Italy of a Code of Conduct on NGO activities at sea; and the repeated threats against NGOs carrying out search and rescue by the EU-funded Libyan coastguard.

Civil society space in Africa is equally under attack. In the last two years, Amnesty International has documented violent crackdowns on assemblies in a number of African states, including Burundi, Democratic Republic of Congo (DRC), Ethiopia, the Gambia, Kenya and Nigeria. In many instances,

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<sup>4</sup> Id Joint Africa-EU Strategy Para 107

<sup>5</sup> European Commission, Renewed impetus of the Africa-EU Partnership; page 10

<sup>6</sup> Amnesty International, "Human Rights Defenders under threat: A shrinking space for civil society," May 2017. <https://www.amnesty.org/download/Documents/ACT3060112017ENGLISH.PDF>; see also "Amnesty International's recommendations on Human Rights Defenders to the EU Presidencies of Estonia, Bulgaria and Austria," 29 May 2017, <http://www.amnesty.eu/content/assets/Letter trio of presidencies on HRD recommendations Estonia.pdf>

<sup>7</sup> Amnesty International, "Hungary NGO law a vicious and calculated assault on civil society," 13 June 2017 <https://www.amnesty.org/en/latest/news/2017/06/hungary-ngo-law-a-vicious-and-calculated-assault-on-civil-society/>

<sup>8</sup> Amnesty International, "Poland: On the streets to defend human rights: Harassment, surveillance and prosecution of protesters", 19 October 2017, <https://www.amnesty.org/en/documents/eur37/7147/2017/en/>

such crackdowns have resulted in the death or serious injury of peaceful demonstrators.<sup>9</sup> In Algeria, Chad, Egypt, Kenya, Morocco, Sudan, South Sudan and Western Sahara, governments continue to impose restrictions on organisations perceived to be critical of the authorities.

In Egypt, for instance, a new law imposing unprecedented harsh restrictions on NGOs came into force on 30 May 2017.<sup>10</sup> The Egyptian penal code further enables authorities to subject civil society staff to criminal prosecution based on vaguely worded terms including “harming national unity and disturbing public order”.<sup>11</sup> Egyptian authorities have also recently blocked access to NGO websites in what is a clear determination to silence independent voices and stamp out online criticism of Egypt’s human rights record.<sup>12</sup>

In Morocco and Western Sahara, the authorities impose severe restrictions on organisations perceived as critical, though obstructing registration, banning activities and expelling foreign partners. Human rights organisations, activists and journalists operate in a hostile environment, in which the authorities subject them to harassment and intimidation, including attempts to discredit them.

In Kenya, authorities have recently engaged in cynical attempts to discredit human rights organisations, especially those involved in election monitoring. In the immediate aftermath of the 8 August general elections, Kenya’s NGO regulator acted to deregister and shut down two human rights organisations, a move that was later suspended by the minister in charge of internal security.<sup>13</sup>

In Chad, state efforts to repress the rights to freedom of expression, assembly and association have intensified over the last two years. The authorities have used an arsenal of outdated laws from the 1960s to demand – and then refuse – authorisation for public gatherings.<sup>14</sup> In Sudan, the government’s long record of stifling dissent continues. Between October 2016 and April 2017, at least 77 people were subjected to arbitrary arrests and detention in Sudan, mainly by the National Intelligence and Security Service.<sup>15</sup> In South Sudan, government authorities, especially the National Security Services (NSS) continually subject those who speak out publicly about the conflict to harassment, arbitrary arrests and detentions, torture and other ill-treatment.<sup>16</sup> This has resulted in self-censorship and a political environment where journalists and HRDs cannot work freely.

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<sup>9</sup> See, for example, Amnesty International, “Kenya: Investigate police killings of pro-opposition protesters”, 12 August 2017, available at <https://www.amnesty.org/en/latest/news/2017/08/kenya-investigate-police-killings-of-pro-opposition-protesters/>

<sup>10</sup> Among the restrictions in the new law is a ban on field research and surveys without government permission. The law forces NGOs to adapt their activities to government priorities and plans or face up to five years in prison. It also gives the authorities wide powers to dissolve NGOs and dismiss their board of administration.

<sup>11</sup> Pursuant to the penal code, Egyptian authorities have launched an investigation into the work of independent human rights organisations for receiving foreign funding in order to conduct their legitimate work of monitoring and combatting human rights violations, which the Egyptian government has designated as “harming national security.” At least 61 civil society workers have been investigated, while 23 are banned from travel, and ten individuals and seven organisations have had their assets frozen. Many defendants could face up to 25 years in jail if convicted. Egyptian authorities have also closed down the prominent human rights organisation, El Nadeem Centre for the Rehabilitation of Victims of Violence and Torture.

<sup>12</sup> Amnesty International, “NGO websites latest targets of Egypt’s online clampdown,” 5 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/ngo-websites-latest-targets-of-egypts-online-clampdown/>

<sup>13</sup> Amnesty International, “Attempts to shut down human rights groups unlawful and irresponsible,” 15 August 2017, <https://www.amnesty.org/en/latest/news/2017/08/kenya-attempts-to-shut-down-human-rights-groups-unlawful-and-irresponsible/>

<sup>14</sup> Amnesty International, “Between recession and repression: The rising cost of dissent in Chad,” 14 September 2017, <https://www.amnesty.org/en/documents/afr20/7045/2017/en/>

<sup>15</sup> Amnesty International, “Courageous and resilient: Activists in Sudan speak out,” 20 September 2017, <https://www.amnesty.org/en/documents/afr54/7124/2017/en/>

<sup>16</sup> Amnesty International, “South Sudan: Release all people arbitrarily detained amid the conflict,” 28 March 2017, <https://www.amnesty.org/en/latest/news/2017/03/south-sudan-release-all-people-arbitrarily-detained-amid-the-conflict/>

Beyond attacks occurring in individual states on both continents, Amnesty International is concerned that the space for civil society is also closing at the institutional level, both in the EU and the AU. Civil society groups engaging the EU are facing increasing challenges in accessing information and certain key decision makers. Procedures regarding public consultation and participation are put aside while negotiating laws and policies that have severe impact on human rights, for instance in the fields of migration and counter-terrorism.

Similarly at the AU, civil society groups face growing exclusion and restrictions. The AU has recently taken regressive decisions locking out civil society from its mid-year summits.<sup>17</sup> A recent report on the institutional reform of the AU contains a worrying recommendation which, if implemented, will make the participation of civil society in all AU summits the exception rather than the rule.<sup>18</sup> The report, authored by President Paul Kagame of Rwanda, recommends that “external parties should be invited to Summits on an exceptional basis and for a specific purpose.”

Only when the AU, EU and their respective member states engage to fully uphold human rights at home, will they have legitimacy and credibility on human rights worldwide. The situation of civil society organisations and HRDs on both continents is and remains a key litmus test of shared human rights commitments.

At the Summit, Amnesty International urges EU and African leaders to:

- Publicly condemn the growing pattern of attacks against HRDs and journalists and the shrinking of civic space both at domestic and regional levels
- Call on all states on both continents, and especially the governments of Algeria, Chad, Egypt, Hungary, Kenya, Morocco, Poland, South Sudan, Sudan, and Western Sahara, to ensure a safe environment in which it is possible to defend human rights without fear of reprisal, harassment or intimidation
- Call on Italy and Libya to refrain from hampering NGOs' life-saving activities in the Central Mediterranean and ensure that NGOs rescuing lives at sea can continue to contribute to rescuing refugees and migrants, in compliance with relevant international law and standards
- Join forces to publicly recognise the importance of the work of HRDs and civil society organisations and take concrete measures to ensure an enabling environment for effective engagement with the AU and EU institutions, including through more regular, substantive and institutionalised exchanges
- Agree on concrete joint steps to use the opportunity of the 20<sup>th</sup> anniversary of the UN Declaration on Human Rights Defenders in 2018 to intensify efforts to protect and enable HRDs and to promote their vital work.

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<sup>17</sup> See, for example, “Decision on Streamlining of the AU Summits and Working Methods of the African Union,” Assembly/AU/Dec.582(XXV).

<sup>18</sup> H.E. Paul Kagame, “The imperative to strengthen our Union: Report on the proposed recommendations for the institutional reform of the African Union,” 29 January 2017.

# SECURITY AND “COUNTER-TERRORISM” MEASURES

Amnesty International is concerned with the growing impact of counter-terrorism measures on human rights across the EU and Africa.

In the past years, individual EU states and regional bodies have responded to violent attacks by proposing, adopting and implementing a wave of “counter-terrorism” measures that have eroded the rule of law, enhanced executive powers, peeled away judicial controls, restricted freedom of expression and exposed everyone to government surveillance. The ‘securitisation’ of Europe has been documented as being deep and widespread. Furthermore, measures have often proved to be discriminatory on paper and in practice, with a disproportionate and profoundly negative impact, particularly on Muslims, foreign nationals or people perceived as such. The EU Directive on Combating Terrorism, adopted earlier this year, creates a number of serious risks to human rights, including rights to freedom of expression, freedom of movement, freedom from discrimination, the right to privacy, as well as the principle of legality.<sup>19</sup>

Taken cumulatively, measures that seek to curb speech and other forms of expression, reflect a landscape where access to information, freedom to offer opinions, exchange ideas, and engage in robust and challenging debate – publicly or online – is in rapid decline in a number of EU member states. The risk that a person could be labelled a security threat or ‘extremist’ has had very real consequences for many people, while the “chilling effect” created by such measures has left the public space for free expression in the EU smaller and more impoverished than it has been in decades. Governments have not only criminalised expression that directly incites a person to commit a terrorism-related acts. Some have criminalised any expression that is deemed to praise, glorify, support, defend, apologise for, or seeks to justify acts defined as “terrorism” under domestic law, for instance in France and Spain. Terms such as “glorify” or “apology” are ill-defined and vague, leaving room for broad interpretation.<sup>20</sup>

In Africa, Amnesty International has also documented serious violations of international human rights and humanitarian law by security forces in their fight against groups labelled as terrorists. Some of these violations could amount to war crimes and crimes against humanity. In the Lake Chad basin, the armed group Boko Haram has committed untold atrocities and war crimes against civilians since 2009.<sup>21</sup> In response, state security agencies in the region, especially Cameroonian and Nigerian security forces, have committed systematic violations of human rights.

Amnesty International has shown how the use of torture in Cameroon’s fight against Boko Haram has become widespread and routine, and practised with impunity.<sup>22</sup> This latest report is an addition to previous ones outlining the human rights violations committed by Cameroonian security forces, including arbitrary arrests, illegal and incommunicado detention, torture, enforced disappearances,

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<sup>19</sup> Amnesty International, “Dangerously disproportionate: the ever-expanding national security state in Europe,” 17 January 2017, <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>

<sup>20</sup> Amnesty International, “Dangerously disproportionate: the ever-expanding national security state in Europe,” 17 January 2017, page 36.

<sup>21</sup> Amnesty International, “‘Our job is to shoot, slaughter and kill’: Boko Haram’s reign of terror in North East Nigeria,” 14 April 2015, <https://www.amnesty.org/en/documents/afr44/1360/2015/en/>

<sup>22</sup> Amnesty International, “Cameroon’s secret torture chambers: Human rights violations and war crimes in the fight against Boko Haram,” 20 July 2017, <https://www.amnesty.org/en/documents/afr17/6536/2017/en/>

extra-judicial executions, inhumane detention conditions and unfair trials.<sup>23</sup> In neighboring Nigeria, Amnesty International has documented a similar pattern and scale of violations committed by state security agencies.<sup>24</sup>

Amnesty International believes that AU and EU member states have the right and duty to protect their citizens from violence. However, efforts to protect civilians must respect relevant obligations under international human rights and humanitarian law.

In this regard, Amnesty International urges the EU-AU Summit to:

- Call on all member states to renew their commitment to uphold their international human rights obligations in the context of countering acts of “terrorism”, in law and in practice
- Take concrete measures to implement civil society recommendations to the EU-AU human rights dialogue with regard to “counter-terrorism” and human rights, issued in January 2017,<sup>25</sup> including by mainstreaming human rights protection in all “counter-terrorism” cooperation agreements as well as developing joint monitoring and follow up mechanisms on human rights impact of “counter-terrorism” measures.

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<sup>23</sup> Amnesty International, “Right cause, wrong means: Human rights violated and justice denied in Cameroon’s fight against Boko Haram,” 14 July 2016, <https://www.amnesty.org/en/documents/afr17/4260/2016/en/>; Amnesty International, “Human rights under fire: Attacks and violations in Cameroon’s struggle with Boko Haram,” 16 September 2015, <https://www.amnesty.org/en/documents/afr17/1991/2015/en/>.

<sup>24</sup> Amnesty International, “Stars on their shoulders, blood on their hands: War crimes committed by the Nigerian military,” 3 June 2015, <https://www.amnesty.org/en/documents/afr44/1657/2015/en/>.

<sup>25</sup> “AU-EU Civil Society Seminar on Counter-Terrorism and Human Rights,” 9-10 January 2017, [http://www.africa-eu-partnership.org/sites/default/files/userfiles/summary\\_and\\_recommendations\\_au\\_eu\\_cso\\_seminar\\_january\\_20173.pdf](http://www.africa-eu-partnership.org/sites/default/files/userfiles/summary_and_recommendations_au_eu_cso_seminar_january_20173.pdf)



# ARMED CONFLICTS AND RESPONSE

In the Joint Africa-EU Strategy, Africa and EU have committed to take concrete action in the area of peace and security.<sup>26</sup> In this regard, the AU is moving closer to fully operationalising the African Peace and Security Architecture (APSA).<sup>27</sup> Perhaps more importantly, the AU has recently begun to take measures to address human rights violations that lead to and/or committed in conflict situations. With the financial support of the EU, the AU has deployed human rights monitors to Burundi, Central African Republic (CAR) and Mali, and incorporated protection of civilian mandates in its recent peacekeeping operations. In December 2013, the AU established its first ever commission of inquiry, to investigate human rights violations and abuses committed in South Sudan. The AU has also adopted a Master Roadmap on Practical Steps to Silence the Guns by the Year 2020 and is currently in the process of developing human rights compliance frameworks and policies for AU peacekeeping operations. In spite of these positive and laudable steps, armed conflicts of varying intensity continue in a number of African countries with severe consequences on civilians.

In CAR, for instance, renewed violence in 2017 has led to large-scale human rights abuses and crimes under international law. Violations have occurred in various parts of the country, including Ouaka, Haute Kotto, Bangassou, Bria, Ouham-Pende, Mbomou, Haute-Mbomou and Basse-Kotto.<sup>28</sup> Amnesty International has similarly documented large-scale violations in South Sudan in 2017, including the forced displacement of tens of thousands of civilians of the Shilluk ethnic minority in Upper Nile region,<sup>29</sup> and war crimes and widespread human rights abuses against civilians in Equatoria region.<sup>30</sup> The organisation has also documented sexual violence committed on a massive scale in South Sudan since December 2013 by both government forces and armed opposition groups.<sup>31</sup>

Amnesty International believes that the AU needs to strengthen its capacity to respond to human rights violations and abuses committed in conflict situations such as those in CAR and South Sudan. In a report published in April 2017, Amnesty International identified six major gaps in AU peace and security processes.<sup>32</sup>

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<sup>26</sup> The Africa-EU Strategic Partnership: A Joint Africa-EU Strategy, paras. 13-26.

<sup>27</sup> GIZ GmbH, *APSA impact report: The state and impact of the African Peace and Security Architecture (APSA) in 2015* (2016) 17-32.

<sup>28</sup> See, for example, Amnesty International, 'CAR: Civilians facing atrocities in Basse-Kotto as UN protection proves ineffective', 8 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/central-african-republic-civilians-facing-atrocities-in-basse-kotto-as-un-protection-proves-ineffective/>

<sup>29</sup> Amnesty International, "It was as if my village was swept by a flood": Mass displacement of the Shilluk population from the West Bank of the White Nile, 21 June 2017, <https://www.amnesty.org/en/documents/afr65/6538/2017/en/>

<sup>30</sup> Amnesty International, "If men are caught, they are killed, if women are caught, they are raped": Atrocities in Equatoria region turn country's breadbasket into a killing field, 4 July 2017, <https://www.amnesty.org/en/documents/afr65/6612/2017/en/>

<sup>31</sup> Amnesty International, "Do not remain silent: Survivors of sexual violence in South Sudan call for justice and reparations," 24 July 2017, <https://www.amnesty.org/en/documents/afr65/6469/2017/en/>

These include:

- Gaps in the collection of data on human rights violations as part of the AU early warning system
- A consistent pattern of failures by the AU to consider, publish and implement the recommendations of fact-finding missions and human rights monitors
- Consistent gaps in the follow-up and enforcement of the decisions of regional human rights treaty bodies on conflict-related human rights violations
- Major gaps in ensuring accountability for serious human rights violations committed in the context of conflicts
- Logistical and resources challenges that continue to impede AU efforts to ensure protection of civilians
- Deep-rooted challenges in the area of institutional coordination and synergy within AU in response to conflicts.

Amnesty International makes the following recommendations to both the AU and the EU:

- Ensure that all organs and institutions involved in conflict prevention monitor and report on the existence of serious or massive violations of human rights as a matter of course
- Support the African Commission on Human and Peoples' Rights to develop its capacity to contribute to conflict prevention efforts, including by gathering and analysing information on gross human rights violations that could lead to and/or are committed in, conflict and crisis situations

In addition, Amnesty International makes the following recommendations:

- The AU Peace and Security Council should clarify, operationalise and institutionalise modalities for regular interaction or meetings with the regional human rights treaty organs.
- The AU should urgently embark on developing policy guidelines on the mandate, design, organisation and working methods of human rights observers deployed to monitor human rights violations and abuses in conflict situations.
- The EU should continue to support the AU's growing practice of deployment of human rights monitors in conflict situations, including efforts aimed at institutionalising this practice.

# REFUGEES AND MIGRATION

Amnesty International is concerned by the continued lack of proportionate “responsibility sharing” for the global refugee crisis, including the disproportionate responsibility borne by several AU member states. The protracted conflicts in Africa, such as the ones in Somalia and South Sudan, have led to crisis-level refugee flows to neighbouring states. For instance Kenya, a country which has hosted refugees for over 25 years, currently hosts close to 500,000 refugees, of which approximately 290,000 are from Somalia. Uganda, which now hosts more than one million South Sudanese refugees, is yet to receive existing financial commitments for much needed humanitarian support.<sup>33</sup> At a solidarity summit held in Kampala, in June 2017, the government raised only US\$358.2 million of the US\$2 billion requested, which envisaged US\$960 million for humanitarian needs.

Recent policies and measures adopted by the EU and its member states still fall short of addressing the disproportionate responsibility borne by several AU member states who continue to host and take in high numbers of refugees. Rather than ensuring the creation of safe and regular routes for people to move to Europe, EU member states are focusing on reducing the number of people arriving in Europe. Some EU member states have adopted measures to restrict access to asylum and related benefits nationally, and to expedite returns in the absence of adequate safeguards against *refoulement*. Some have gone as far as constructing fences along their borders and ushering in measures resulting in violent push-backs of migrants and refugees from the borders, unlawful detentions inside the country and poor living conditions for those left to languish at the borders.<sup>34</sup>

In the context of the EU-AU partnership, Amnesty International is concerned by the drive to externalise the EU's migration management responsibility to countries outside Europe.<sup>35</sup> EU member states and institutions are putting significant pressure on African countries, including through the use of aid, trade and other leverage, to reduce the number of refugees and migrants reaching EU shores.<sup>36</sup> In particular, they are encouraging and supporting transit countries, including some where widespread and systematic human rights violations against refugees and migrants have been documented, to implement stricter border control measures, in the absence of adequate human rights guarantees. These measures are trapping thousands of refugees and migrants in countries where they are exposed to serious human rights violations and abuses and where they have no access to adequate protection. A case in point is the cooperation of EU institutions and member states, Italy in particular, with Libya. This cooperation is leading to an increase in the number of people intercepted at sea by the Libyan coastguard and then returned to detention centres where they are exposed to horrific abuses such as arbitrary detention, torture

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<sup>33</sup> Amnesty International, “Uganda: International community must avert growing crisis as number of South Sudanese refugees reaches a million,” 17 August 2017, <https://www.amnesty.org/en/latest/news/2017/08/uganda-international-community-must-avert-growing-crisis-as-number-of-south-sudanese-refugees-reaches-a-million/>

<sup>34</sup> Amnesty International, “Stranded Hope: Hungary’s sustained attack on the rights of refugees and migrants,” September 2016, <https://www.amnesty.org/en/documents/eur27/4864/2016/en/>

Amnesty International, “Trapped in Greece: an avoidable refugee crisis,” April 2016, [http://www.amnesty.eu/content/assets/Docs\\_2016/ReportsBriefings/Trapped\\_in\\_Greece\\_final\\_140416.pdf](http://www.amnesty.eu/content/assets/Docs_2016/ReportsBriefings/Trapped_in_Greece_final_140416.pdf)

<sup>35</sup> Amnesty International, “Human Rights risks of external migration policies,” 13 June 2017 <https://www.amnesty.org/en/documents/pol30/6200/2017/en/>; “A Perfect Storm: The Failure of European Policies in the Central Mediterranean,” 6 July 2017 <https://www.amnesty.org/en/documents/eur03/6655/2017/en/>

<sup>36</sup> “A mix of positive and negative incentives will be integrated into the EU's development and trade policies to reward those countries willing to cooperate effectively with the EU on migration management and ensure there are consequences for those who refuse,” [http://europa.eu/rapid/press-release\\_IP-16-2072\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2072_en.htm)

and other ill-treatment, including sexual violence, and exploitation.<sup>37</sup> EU member states are also putting pressure on African governments to negotiate re-admission agreements,<sup>38</sup> in some cases without including adequate guarantees against *refoulement*,<sup>39</sup> and without ensuring that irregular border crossings are addressed first and foremost through the offer of safe and regular alternatives for both asylum-seekers and would-be migrants.<sup>40</sup>

Amnesty International also considers that African governments must strengthen asylum systems to provide adequate protection and assistance to those fleeing conflict, persecution and human rights violations. In several countries, refugees continue to be confined to camps, dependent on humanitarian assistance and with limited freedom of movement.

Most major host countries in the region continue to pursue a strict encampment policy, confining refugees to camps where they are dependent on humanitarian assistance and their freedom of movement is curtailed.

Ethiopia, a country hosting close to 800,000 refugees<sup>41</sup>, allows Eritreans to live in urban areas under its 'Out of Camp Policy', however, all other refugees, with exceptions made for urgent protection or medical cases, are confined to camps. Access to formal employment is prohibited in Ethiopia.<sup>42</sup> At the September 2016 Leaders' Summit on Refugees, Ethiopia pledged to expand its 'Out of Camp Policy' and facilitate access to formal employment.<sup>43</sup>

Since 2014, over 70,000 refugees have been returned from Kenya to Somalia under the voluntary repatriation framework.<sup>44</sup> Amnesty International continues to be concerned that the conditions for return in safety and dignity are not yet in place in Somalia and that the decision to return are not being taken voluntarily by the majority of refugees. Amnesty International considers that under such conditions, the majority of returns are in violation of the principle of *non-refoulement*.<sup>45</sup> The protection environment for Somali refugees in Kenya has continued to deteriorate. Since 2015, registration and access to refugee status determination procedures have effectively been blocked for new arrivals from Somalia and refugees who returned to the camp after having previously been repatriated.<sup>46</sup> Unregistered Somali refugees have limited access to humanitarian assistance and basic services in the camp and without legal status are at greater risk of arrest and detention.

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<sup>37</sup> "A Perfect Storm: The Failure of European Policies in the Central Mediterranean," 6 July 2017 <https://www.amnesty.org/en/documents/eur03/6655/2017/en/>

<sup>38</sup> European Commission, Action Plan on Return, 2 March 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302\\_a\\_more\\_effective\\_return\\_policy\\_in\\_the\\_european\\_union\\_-\\_a\\_renewed\\_action\\_plan\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf), including a set of recommendations to member states on how to make return procedures more effective.

<sup>39</sup> See chapter on readmission agreement between Italy and Sudan in Amnesty International, "Hotspot Italy: How EU's flagship approach leads to violations of refugee and migrant rights," 3 November 2016, <https://www.amnesty.org/en/documents/eur30/5004/2016/en/>.

<sup>40</sup> See Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>

<sup>41</sup> UNHCR, "Global Trends - Forced Displacement in 2016," June 2017, <http://www.unhcr.org/5943e8a34.pdf>

<sup>42</sup> UNHCR, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights Compilation Report, Universal Periodic Review, Ethiopia, 2014, <http://www.refworld.org/pdfid/5283488c4.pdf>

<sup>43</sup> Summary Overview Document Leaders' Summit on Refugees, November 2016, [https://refugeesmigrants.un.org/sites/default/files/public\\_summary\\_document\\_refugee\\_summit\\_final\\_11-11-2016.pdf](https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf)

<sup>44</sup> UNHCR, Dadaab Kenya Operational Update, 01-15 October 2017, <http://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/10/15-October-Dadaab-Bi-weekly-Operational-Update.pdf>

<sup>45</sup> Amnesty International, "Nowhere else to go : Forced Returns of Somali Refugees from Dadaab Refugee Campa in Kenya," 14 November 2016, <https://www.amnesty.org/en/documents/afr32/5118/2016/en/>

<sup>46</sup> Amnesty International, "Nowhere else to go."

Burundian refugees in Tanzania and Uganda are also facing increasing pressure to return their country where they would be at risk of death, rape and torture. Tanzania and Uganda stopped automatically granting Burundians refugee status earlier this year.<sup>47</sup> Rwandan refugees in the DRC are at risk of deportation as the 31 December 2017 deadline for the application of the cessation clause for Rwandan refugees approaches.<sup>48</sup>

Amnesty International urges the AU and the EU member states to:

- Act in full respect of international human rights obligations toward migrants, refugees and asylum-seekers, and ensure that any bilateral or multilateral migration cooperation agreements focus primarily on protecting and upholding the human rights of refugees and migrants, including by ending arbitrary detention, torture and other ill-treatment and *refoulement*
- Refrain from entering into or implementing any form of cooperation agreement on border control that might prevent refugees and migrants from leaving a country where they do not have access to effective protection and remedies and are exposed to real risks of human rights violations
- Respect the principle of *non-refoulement*, including by granting people access to fair procedures at all borders to seek international protection, and allowing UNHCR to exercise its full mandate in all relevant countries

In addition, Amnesty International makes the following recommendations:

- EU member states must ensure:
  - a substantial increase in resettlement places for the world's most vulnerable refugees, as identified by UNHCR
  - significant expansion of other safe and legal routes for asylum-seekers to reach destination countries, such as humanitarian visas, family reunification, student visas, and community sponsorship arrangements
  - the development of accessible systems that open up real mobility opportunities for would-be migrants across skill levels.
- EU member states must also ensure increased and predictable humanitarian financing for the relevant AU member states hosting large numbers of refugees
- AU member states must ensure the setting up of adequate asylum systems for assessing and recognising claims for international protection, including the adoption of national asylum legislation consistent with international refugee law and standards.

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<sup>47</sup> Amnesty International, "Burundi : Thousands of refugees under pressure to return despite risk of torture and killings" 29 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/burundi-thousands-of-refugees-under-pressure-to-return-despite-risk-of-torture-and-killings/>

<sup>48</sup> Oxford Academic, International Journal of Refugee Law, *Bringing Rwandan Refugees 'Home': The Cessation Clause, Statelessness, and Forced Repatriation*, Volume 29, Issue 3, October 2017, <https://academic.oup.com/ijrl/article/29/3/417/4057676>

# ACCOUNTABILITY AND JUSTICE

The Joint Africa-EU strategy commits the EU and its member states to “promote and support the rule of law and justice at the international level, including ensuring justice and accountability for the most serious crimes, in compliance with principles set out in the Rome Statute of the International Criminal Court (ICC).” Rejection of impunity is also one of the 16 organising principles of the AU.<sup>49</sup> In many recent pronouncements, the AU has committed to put an end to impunity.<sup>50</sup>

The EU retains a strong policy of support to the ICC and international justice, as demonstrated in its ‘Policy framework on support to transitional justice’.<sup>51</sup> The EU has also regularly spoken out to condemn instances of failures to arrest President Al-Bashir by ICC states parties.<sup>52</sup>

Despite these actions and commitments, impunity for mass atrocities continues to undermine long-term stability and development on the African continent. As witnessed in the conflict-ridden countries in Africa, lack of accountability for atrocities continues to perpetuate the cycle of violence, including in CAR and South Sudan.

While some encouraging steps have been taken to establish accountability mechanisms in CAR and South Sudan, much remains to be done to operationalise them. In South Sudan, while there seems to be some progress in the discussions between the AU and the government of South Sudan on the Memorandum of Understanding for the establishment of the Hybrid Court of South Sudan (HCSS), operationalisation of the court is still not in sight. In CAR, good progress has also been made in developing the infrastructure and capacity of the Special Criminal Court (SCC). However, many challenges remain in the operationalisation of the SCC, including funding challenges. Only US\$5 million of the US\$7 million required for the first 14 months of the court have been obtained from donors including the US, France and the Netherlands as well as from MINUSCA, and there appear to be few commitments to fund the SCC beyond this initial period.

In addition, while positive steps have been taken recently to develop a human rights compliance framework for AU peacekeepers as recommended by the AU High Representative for Financing of the Union and the Peace Fund,<sup>53</sup> much remains to be done to address the accountability gap for violations committed by AU peacekeepers in Africa.<sup>54</sup>

Amnesty International also notes several concerns with respect to some EU member states’ commitments to strengthen international justice. While many EU states are members of the

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<sup>49</sup> AU Constitutive Act, Article 4(o).

<sup>50</sup> See, for example, Solemn Declaration on the 50<sup>th</sup> Anniversary of the OAU/AU, Assembly/AU/Decl.3(XXI).

<sup>51</sup> Adopted 16 November 2015, available at [http://eeas.europa.eu/archives/docs/top\\_stories/pdf/the\\_eus\\_policy\\_framework\\_on\\_support\\_to\\_transitional\\_justice.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf)

<sup>52</sup> See e.g. Statement by the Spokesperson on Chad and the International Criminal Court, 12 August 2016 [https://eeas.europa.eu/headquarters/headquarters-homepage/8569/statement-spokesperson-chad-and-international-criminal-court\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/8569/statement-spokesperson-chad-and-international-criminal-court_en) and Declaration by the High Representative Federica Mogherini on behalf of the European Union on President Al Bashir’s visit to Uganda, 14 November 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/11/14/declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-european-union-on-president-al-bashirs-visit-to-uganda/>.

<sup>53</sup> See Amnesty International, “Counting gains, filling gaps: Strengthening African Union’s response to human rights violations committed in conflict situations,” 20 April 2017, <https://www.amnesty.org/en/documents/afr01/6047/2017/en/>.

<sup>54</sup> African Union Commission, “Securing predictable and sustainable financing for peace in Africa,” August 2016, <http://www.peaceau.org/uploads/auhr-progress-report-final-020916-with-annexes.pdf>

EUROJUST's 'Genocide Network'<sup>55</sup> which aims to improve national level accountability for international crimes through 'universal jurisdiction', many EU member states still maintain restrictive 'universal jurisdiction' laws – for example in relation to territorial or habitual residence requirements - which limit the possibility of pursuing international justice cases at national level.<sup>56</sup> Furthermore, some EU member states continue to pursue and support selective<sup>57</sup> and politically expedient international criminal justice cases domestically, as evidenced by the provision of immunities,<sup>58</sup> particularly 'special mission' immunities, to alleged perpetrators of international crimes from allied regimes as well as hosting alleged perpetrators of crimes under international law on their territory.

A number of EU states parties to the Rome Statute have also been implicated in the recent Office of the Prosecutor's request to open an investigation in Afghanistan, specifically in providing secret CIA detention centres or 'black sites' where the war crimes of torture or related ill treatment was alleged to have taken place.<sup>59</sup> The UK remains under preliminary examination of the Office of the Prosecutor for alleged Rome Statute crimes committed by its forces in Iraq since 13 May 2014<sup>60</sup> and its decision to close down the Iraq Historic Allegations Team which risks narrowing down avenues for an independent, impartial and thorough investigation of alleged crimes.<sup>61</sup>

Further, while EU member states continue to make positive statements in support of the ICC, many EU member states have put continued pressure on the Court's budget, hampering the ICC's ability to pursue a number of investigations.<sup>62</sup> Budget constraints have thus interfered with the Prosecutor's ability to exercise her mandate independently. Recent media reports<sup>63</sup> suggesting that France and the UK sought to direct the former Prosecutor of the ICC in his independent decision-making, also causes great concern, and these – as yet unverified – claims must be firmly investigated and explained by the member states involved and by the EU.

Amnesty International makes the following recommendations for consideration at the EU-AU Summit:

- AU member states should take concrete measures to address impunity for gross human rights violations committed by parties to conflicts as well as by AU peacekeepers. As a matter of urgency, the AU should expedite the establishment of the HCSS as well as an independent oversight mechanism responsible for investigating alleged human rights violations by AU peacekeepers

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<sup>55</sup> See <http://www.eurojust.europa.eu/Practitioners/networks-and-fora/Pages/genocide-network.aspx>

<sup>56</sup> See e.g. <http://information.tv5monde.com/info/crapules-et-vacances-amnesty-international-denonce-avec-humour-l-impunite-des-criminels-de>

<sup>57</sup> See e.g. on accountability mechanism limited to DAESH: <https://www.gov.uk/government/speeches/daesh-resolution-to-the-un-security-council-statement-by-alistair-burt>

<sup>58</sup> See on 'Special Mission' Immunities in UK - Amnesty International and REDRESS as Intervenors - <https://www.blackstonechambers.com/news/freedom-and-justice-party-others-v-fco-and-director-public-prosecutions-amnesty-international-and-redress-intervening/>

<sup>59</sup> Paragraph 119 of the ICC Office of the Prosecutor's Preliminary Examinations Report 2016, with specific reference to Romania, Poland and Lithuania [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf). Other EU member states have also been implicated in the torture programme; see <https://www.amnesty.org.uk/exposed-torture-and-cia>.

<sup>60</sup> OTP Preliminary Examinations Report 2016 at paragraphs 75 - 108 [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf)

<sup>61</sup> "Iraq war claims unit to be shut down, says UK defence secretary," *The Guardian* 10 February 2017, <https://www.theguardian.com/world/2017/feb/10/iraq-war-claims-unit-to-be-shut-down-says-uk-defence-secretary>

<sup>62</sup> Amnesty International, "States shouldn't use ICC budget to interfere with its work," 23 November 2016, <https://www.amnesty.org/en/latest/news/2016/11/states-shouldnt-use-icc-budget-to-interfere-with-its-work/>, citing in particular EU member states France, Germany, Italy, Poland, Spain and UK in 2016.

<sup>63</sup> "A former ICC chief's dubious links," 5 October 2017, <http://www.spiegel.de/international/world/ocampo-affair-the-former-icc-chief-s-dubious-libyan-ties-a-1171195.html>

- The EU and its member states must give sustained financial and technical support as well as political backing to emerging accountability mechanisms in South Sudan and CAR
- EU and AU member states should commit to strengthening their national level legislation and capacity to exercise universal jurisdiction to investigate and prosecute crimes under international law and recommit to investigate and prosecute all suspected perpetrators of crimes under international law within their jurisdiction
- AU and EU member states must end the practice of granting immunities to those reasonably suspected of having committed mass atrocity crimes and other crimes under international law
- AU and EU states must continue to support the work of the ICC, in particular ensuring that the ICC is provided with all the necessary political support and adequate resources as it moves forward with new investigations
- AU and EU member states should ensure full cooperation with the ICC's preliminary examinations and investigations and ensure that they take measures to actively investigate any alleged Rome Statute crimes allegedly committed on their territory or by their nationals.





**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

# SHAPING PARTNERSHIP TO DELIVER ON HUMAN RIGHTS OBLIGATIONS

EUROPEAN UNION (EU) – AFRICAN UNION (AU) SUMMIT  
29-30 NOVEMBER 2017

As European Union (EU) and African Union (AU) leaders meet for the 5th EU-AU Summit on 29-30 November 2017 in Abidjan, Côte d'Ivoire, Amnesty International calls on AU and EU leaders to place human rights at the centre of their discussions. The Summit is proclaimed to be a critical opportunity for leaders of the two continents to respond to the “evolving context and reshape and deepen the Africa-EU partnership.” However, this Summit is happening amidst a context of growing human rights concerns in many countries across Africa and Europe. As such, the EU-AU Summit needs to respond to these concerns with concrete actions.