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***PROPOSAL ON THE BETTERMENT OF THE PROTECTION OF RIGHTS OF  
ILLETARATE PERSONS THAT APPEAR IN FRONT OF THE ICC***

*Submitted to the attention of the ICC – Eighth Session of the Assembly of the State Parties*

***I. Consolidating the Protection of Fundamental Rights of Illiterate Persons under Criminal Law***

**Background.** Criminal law plays a critical role in the protection of human rights and fighting discrimination. Thus, the most dangerous of the violations of social values fall under the scope of criminal law, which lays down the harshest of sanctions, resulting in incarceration and, even in the suppression one's life. Despite worldwide efforts, illiteracy remains high. According to UNESCO, 16.5% of the world population over 15 years of age is illiterate<sup>1</sup>. This means that **more than 800 million people are at particular risk of having their fundamental rights infringed, minority groups being overrepresented.**

The principle of equal treatment means that persons in similar situations should be treated in similar manners, whilst persons in different situations should be treated in different manners. As a consequence, as it is clear that illiterate persons are in a very different situation than literate persons, as regards criminal justice, specific action needs to be designed. **A traditional approach that just limits itself to register the reasons the person can't sign or write the declaration, discriminates against illiterate persons, as similar measures are applied for persons that are in different situations.** Furthermore, domestic and international legislation and case-law reflects the need to guarantee procedural rights as an integral part of human rights.

Procedural rights are paramount to administration of justice, particularly in criminal cases. Ensuring and respecting an adequate procedural framework generate a better protection of fundamental rights of participating individuals and it increases the trust peoples place in courts. **Ensuring adequate procedural protection of rights of illiterate persons does not benefit just the persons that appear before the ICC, but the very interest of justice.** The change to the ICC statute is an immense opportunity to lead to way for the betterment of fundamental rights of the almost one billion illiterate persons throughout the world.

Taking note of the particularly vulnerable position of illiterate persons being part in criminal proceedings, Romani CRISS kindly submits the following

**RECOMMENDATIONS**

- **Changes to the statute of ICC must ensure adequate protection of fundamental rights of illiterate persons. Inter alia, such changes might provide that declarations of illiterate persons that appear before the ICC should only be taken in the presence of a lawyer and/or human rights NGO representative and that they be registered audio-video, regardless of the standing the person has in the proceedings;**

<sup>1</sup> See <http://www.uis.unesco.org/en/stats/statistics/literacy2000.htm>.

- *State parties make a written proposal that the UN issue a legally-binding document aimed at ensuring adequate protection of fundamental rights of illiterate persons;*
- *State parties make a written proposal that the member states of the United Nations adopt similar guaranties, pursuant to their domestic criminal law.*

## ***II. Legal Standing of Human Rights Organizations under Criminal Law***

In proposing this measure the following considerations must be made:

- Fighting crimes against humanity and gross human rights violations is particularly difficult and of particular importance to all;
- Victims of human rights violations find themselves, clearly and constantly, in a state of disadvantage in relation to the perpetrators (that are public officials);
- In many situations, certain pressures are being exercised against the victims or against human rights defenders<sup>2</sup>;
- Victims have a poor knowledge of their rights, and sometimes they are illiterate.

Reports of international organizations<sup>3</sup> show that misconduct of law enforcement officials continues to occur and result in human rights violations. Such violations take the form of, but do not limit to: torture, illegal use of firearms, excessive use of force, racist abuse. International reports show that law enforcement officials feel immune to any sanctioning. Often, such violations are improperly investigated (if at all) and go unpunished, thus creating mechanisms of ensuring a state of impunity for the perpetrators.

The crimes that fall under the jurisdiction of the ICC are violations that far exceed the interests or rights of certain persons, groups or states. Such violations threaten values that are fundamental to humankind itself. Offering NGO the possibility to bring action against such heinous crimes before the ICC is paramount. Indeed, in no other circumstances can a decision to grant active legal standing be more justified.

Stressing once again the fact the promotion and respect of human rights are common goals to both human rights NGOs as well as to the UN member states, Romani CRISS makes the following

### **RECOMMENDATIONS**

1. *Changes to the statute of ICC must include new provisions granting human rights NGOs active legal standing in all trials related to crimes that fall under the jurisdiction of the ICC.*
2. *State parties make a written proposal that the United Nations issue a legally-binding document granting human rights NGOs active legal standing in criminal trials related to human rights violations and crimes against humanity. This should include, inter alia: genocide, torture, illegal use of firearms, criminal racist abuse etc. Human rights NGOs should also be granted the possibility to name representatives to act as observers or witness-assistants, in such trials;*
3. *State parties make a written proposal that the member states of the United Nations grant similar procedural safeguards, pursuant to their domestic criminal law.*

<sup>2</sup> E.g. Romani CRISS report on N.B. vs. Tg. Carbutesti police.

<sup>3</sup> See, inter alia, the reports of the UN Human Rights Council, Amnesty International, Human Rights Watch, as well as the case-law of various international and domestic courts.