

WRITTEN INTERVENTION – THE OBSERVATORY

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

48th ordinary session

Banjul, The Gambia

November 2010

**Contribution of
The World Organisation against Torture (OMCT)
and the International Federation for Human Rights (FIDH)**

**Within the framework of their joint programme
The Observatory for the Protection of Human Rights Defenders**

**Under the agenda item:
“Situation of Human Rights Defenders”**

The World Organisation against Torture (OMCT) and the International Federation for Human Rights (FIDH) within their framework of their joint programme, the Observatory for the Protection of Human Rights Defenders express their extreme concern about the situation of human rights defenders who continue to carry out their work in a hostile and risky environment.

In Africa, the men and women who are in the front line of the defence of rights for all are, in some cases, better protected today than following the United Nations Declaration on Defenders, they are also more threatened given the advances they have made: with the help of specific programmes, such as the Observatory which has accompanied them for more than 13 years, defenders have been able to make their voices heard at the heart of fora, international and regional organisations and, of course, in their own countries. They have also invested in new areas, including social, economic and cultural rights, LGBT rights and the fight against corruption. On the African continent, their victories have enabled considerable advances to be made in recognising the primary importance of human rights in the exercise of power and in conflict resolution.

The African Human and Peoples' Rights Commission (CADHP) has significantly contributed to this progress, particularly in the adoption of several resolutions in favour of the promotion and protection of human rights defenders in Africa and in making this subject a constant concern in their work and on their agenda. However, the Observatory expresses its deepest concern in relation to the decision of the Commission to deny the observer status to the Coalition of African Lesbian (CAL). This decision, which constitutes a serious impediment to the promotion and protection of human rights for all on the continent, is questioning the capacity of the Commission to fulfill its mandate of protection and promotion of human rights in accordance with Article 45 of the African Charter on Human and Peoples' Rights. The Observatory therefore calls on the Commission to reconsider its decision as soon as possible.

There are still enormous challenges in terms of promoting and protecting defenders and it is important to note that they are still the object of serious persecution in numerous countries.

Alarming deterioration in the situation of human rights defenders in the Democratic Republic of Congo (DRC)

Kidnappings, disappearances and assassinations of human rights defenders

On June 2, 2010, the lifeless body of Mr. **Floribert Chebeya Bahizire**, Executive Director of Voice for the Voiceless (*Voix-de Sans-Voix - VSV*), was found in his car on a road on the outskirts of Kinshasa. Mr. **Fidèle Bazana Edadi**, member of and driver for VSV, who was accompanying Mr. Chebeya Bahizire, is missing since that day. The Deputy Executive Director of VSV was only given authorisation to see the body of Mr. Chebeya Bahizire on June 3, 2010 in the company of the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC).

In the afternoon of June 1, 2010, Mr. Floribert Chebeya Bahizire had received notice to meet with the General Inspector of the Congolese National Police (IG/PNC), General John Numbi Banza Tambo, for a reason which was to be explained to him at the time.

Accompanied by Mr. Bazana Edadi, Mr. Floribert Chebeya Bahizire therefore went to the IG/PNC offices in the Lingwala district of Kinshasa around 17.00. Those close to them never saw them again after that.

Today, in spite of the announcement of the arrest of an unspecified number of police officers and the suspension of General John Numbi Banza Tambo after June 6, 2010, no information about advances in the investigation has been made public and Mr. Fidèle Bazana Edadi

continues to be missing. The irregularities noted since the discovery of Mr. Floribert Chebeya Bahizire's body – very limited access to the body for his family, contradictory statements concerning the cause of death – indicate furthermore, an attempt to hide the truth and raise serious concerns. The investigation has been closed and the opening of a trial against five defendants has been announced.

Furthermore, Mr. **Sylvestre Bwira Kyahi**, civil society president in Masisi territory (Northern Kivu) was kidnapped on August 24, 2010 before being found on Tuesday August 30 close to Sake, some 30 kilometres west of Goma. He was taken by armed men, dressed in uniforms of the Armed Forces of the Democratic Republic of Congo (FARDC) in the Nhosho neighbourhood of Goma, in Northern Kivu province. Presented by the Goma provincial authorities to the press and his colleagues the day after his reappearance, Mr. Bwira was visibly weak, his face was swollen and his arms bore marks from the ropes with which he said he had been tied during his detention.

In the months previous to this, Mr. Bwira had been the object of acts of intimidation and threats linked to his activities as a human rights defender. He had been living in hiding since the end of July, after writing and signing an open letter addressed to the Congolese President, Joseph Kabila on July 30, requesting the withdrawal of all army and police units from Masisi territory, comprised of former members of armed groups who had recently joined the Congolese army and police. This open letter also denounced the abuses recently committed by the troops of General Bosco Ntaganda, an ex-commander of the rebel group the National Congress for the defence of the people (CNDP), currently a general in the Congolese army, wanted by the International Criminal Court (ICC) under an international arrest warrant.

Acts of intimidation against defenders who support the rights of victims of sexual violence in North Kivu

On the evening of September 19, 2010, Mrs. **Zawadi Leviane Musike**, programme manager for the NGO "Female solidarity for peace and comprehensive development (*Solidarité féminine pour la paix et le développement intégral* - SOFEPADI), has been the victim of threats and harassment in Beni. In a food shop, she came across men in military attire, who would have been members of the Armed Forces of the Democratic Republic of Congo (FARDC) and who were drinking beer in the company of three young girls. One of the men recognised Mrs. Zawadi Leviane Musike and warned his colleagues that she was a member of SOFEPADI; organisation that they claim is responsible for the condemnation of members of the military for sexual crimes. The men then called other colleagues who had stayed in their Jeep. The group started to provoke and threaten Mrs. Zawadi Leviane Musike by walking round her. Mrs. Zawadi Leviane Musike was able to escape thanks to the help of two civilians in the shop. The soldiers then found out where she lived and went there to find her. During the time this took, Mrs. Zawadi Leviane Musike was driven to a secure place and was able to warn SOFEPADI. The group that intimidated Mrs. Zawadi Leviane Musike has still not been identified. The SOFEPADI facilitators remain particularly vulnerable in the climate of impunity that prevails in Northern Kivu. The Observatory recalls that the members of SOFEPADI had previously been the object of threats and harassment in February and May 2010.

Finally, on October 4, 2010, Mrs. **Clémence Bakatuseka**, coordinator of the NGO Great Lakes Human Rights Program (GLHRP), was victim of an assassination attempt in Beni, Northern Kivu province, DRC. Six armed men, dressed in military uniform, broke into her home and fired two rounds of bullets at the lock on her bedroom door, ordering her to open it and to give them the money received from an international NGO to fund her legal advice work. When the victim refused to comply with this demand, the aggressors threatened Mrs. Bakatuseka fired a third round and fled. The attack took place in the presence of Mrs. Bakatuseka's children.

Arbitrary detentions

On September 29, 2010, Miss **Nicole Bondo Muaka**, member of the NGO Black Gowns (*Toges Noires*) was arrested by the Congolese police special service (DGRSS) in Kinshasa, when she was working on her broken down car. Her arrest would be linked to the fact that she had filmed the brutal arrest of an individual by the President's bodyguards accused of having thrown a stone at the President's cortege. Miss Nicole Bondo Muaka was taken to the offices of the DGRSS along with a friend who was with her, where they were detained without the right to see their families or their lawyers. Following the publication of a press release on the evening of September 29 by the Black Gowns, Mr. **André Marie Mwila Kayembe**, also a member of the Black Gowns went to where Miss Nicole Bondo Muaka was detained at around 15.30 on September 30. He was also arrested by the same special services. His computer, USB and mobile phone were violently taken from him. His lawyer who arrived to assist him was not given authorisation to meet with him. He was released without charge at 17.40 and his personal effects were returned to him. On October 6, 2010, Miss Nicole Bondo Muaka was released by the Congolese authorities after eight days of detention. No charges against her have been made. Although tired, Miss Nicole Bondo Muaka is in good health and says that she was not mistreated. The friend who was with Miss Nicole Bondo Muaka on the day of her arrest was released on October 5, 2010.

Legislation aimed at criminalising human rights defence in Tunisia and the continuation of acts of intimidation and defamation against Tunisian defenders.

On June 15, 2010, the Tunisian parliament passed legislation aimed at directly criminalising awareness raising activities carried out by Tunisian human rights defenders. This law aims complement the provisions of article 61bis of the Criminal Code by incriminating "any persons who shall, directly or indirectly, have contacts with agents of a foreign country, foreign institution or organisation in order to encourage them to affect the vital interests of Tunisia and its economic security". This incrimination foresees a five to twenty year custodial prison sentence (article 62 of the Criminal Code related to internal security). This amendment allows the authorities to prosecute and imprison human rights defenders supported by foreign or multilateral organisations.

In recent months, Tunisian defenders have been victims of acts of intimidation. In May 2010, the offices of lawyers, Mr. **Abderraouf Ayadi**, Mr. **Ayachi Hammami** and Mr. **Mohamed Abbou**, as well as that of Ms. **Radhia Nasraoui** were the object of police cordon for several weeks in order to discourage their clients from visiting them. Whilst the cars and motorbikes of plain clothes policemen were conspicuously permanently stationed in front of Mr. Ayadi, Mr. Hammami and Mr. Abbou's offices in Tunis, the police also took several people in for interview when they visited the offices of the abovementioned lawyers. These practices, which aim to prevent these lawyers from exercising their profession by intimidating their clients, deprive them of their source of income and add to the pressure on the owners of the offices to push them towards unilaterally terminating their lease contract. In addition, on the night of April 30 to May 1, 2010, the office of Ms. Radhia Nasraoui was the object of a burglary when her computer hard drive was stolen. This breaking and entering took place following a telephone conversation between Ms. Radhia Nasraoui and one of her clients about a dispute involving a figure close to the Tunisian government.

On May 18, 2010, the *Al-Hadath* and *Ach-Chourouk* newspapers published virulent unsigned articles against Mrs. **Sihem Bensedrine**, spokeswoman for the National Freedom Council in Tunisia (*Conseil national pour les libertés en Tunisie*), Mr. **Khémaïs Chammari**, honorary member of the Euro-mediterranean Human Rights Network (*Réseau euro-méditerranéen des droits de l'Homme* - REMDH) and former vice-President of the FIDH, and Mr. **Kamel Jendoubi**, President of REMDH and member of the OMCT Executive Council,

calling them “traitors”, “agents” and “mercenaries” “who should be tried” (sic) for having “been in contact with the European Union to sabotage the country” on the grounds that the latter had demanded that the government respect its international human rights obligations.

Restrictions to the right to peaceful assembly in Algeria

In Algeria, the – already reduced – space for freedom of human rights defenders is even more reduced. A large number of human rights NGOs have effectively still not been successful in obtaining legal registration and are unable to carry out their work in good conditions even though they have been given a receipt by the local authorities.

At 11.00 on May 3, 2010, on the World Press Freedom Day, a peaceful assembly was organised in front of the national television offices in order to demand the right to freedom of expression in Algeria and to denounce censorship. Before the assembly started, a considerable police presence had been put in place to block all access to the buildings and preventing the assembly from taking place there. Four of the organisers, Messrs. **Mustapha Benfodil**, **Adlane Meddi** and **Saïd Khatibi**, facilitators for the “Bezzzeff” (“Assez!”) group, which reports attacks on freedoms in Algeria through peaceful public actions, as well as Mr. **Hakim Addad**, secretary general of Action and Youth Assembly (*Rassemblement action et jeunesse* - RAJ) were arrested by the police forces for “non-authorised gathering” and taken to the boulevard des Martyrs police station in Algiers. During their detention, they were subjected to an interrogation about the assembly, before being freed at 14.30.

On May 12, 2010, the Algerian administrative authorities notified the owner of the Algiers Trade Union offices (*Maison des syndicats*), legally occupied by the Autonomous national public administration trade union (*Syndicat national autonome des personnels de l'administration publique* - SNAPAP), of the closure of their offices, primarily because of “public order problems caused by the occupants of the offices” and “transformation of the offices into a meeting place for young women and men from different regions of the country”.

This ban took place on the day before the Maghreb trade union forum, organised by SNAPAP, was due to take place on May 14 and 15 at the Trade Union offices. Consequently, the autonomous trade unions and independent civil society organisations were deprived of this private office which had been used as a place to meet and debate, in a context where requests for authorisation to hold meetings in public places are systematically refused. Furthermore, the notification of the ban, addressed to the owner and not to the organisation renting the Trade union offices, followed by the sealing of the room, deprives the trade unionists of their right to jurisdictional recourse, thereby contravening Article 14 (5) of the International Covenant on Civil and Political Rights.

Every Wednesday since 1998, families of the disappeared have met in front of the National Consultative Commission on the promotion and protection of human rights (*Commission nationale consultative pour la promotion et la protection des droits de l'Homme* - CNCPPDH) in Algiers, the usual meeting place for the families to demand truth and justice for the fate of their loved ones who disappeared during the 1990s. This weekly meeting was suddenly banned on August 4, 2010, the massive deployment of police officers having cordoned off all access routes. Since then, the families have tried to continue to meet each week. However, the meeting has been systematically repressed by the police. On August 11, several activists joined the families on a march to express their solidarity. Among them were at least four human rights defenders who belong to the Algerian League for Human Rights Defence (*Ligue algérienne pour la défense des droits de l'Homme* - LADDH), including the President, **Moustafa Bouchachi**, and the human rights lawyer, **Amine Sidhoum**.

Law enforcement officers prevented some 40 family members of disappeared persons and the defenders from holding a peaceful protest in front of the offices of the CNCPPDH in

Algiers. No official reason regarding why they were prevented from holding their peaceful protest has been communicated to the families; the police officers limited themselves to stating that “the order came from on high”.

The police used violence to break up the protestors by pushing them and randomly hitting them, according to witnesses of the incident. State agents did not spare the mothers or grandmothers of the disappeared. The police officers also beat several human rights defenders and lawyers who were trying to intervene to prevent the family members of the disappeared from being injured. **Fatma Lakhali**, wife of a victim of forced disappearance and **Hassan Farhati**, member of the Association SOS-Disappeared (*SOS-Disparus*) were hospitalised. After having put an end to the protest, the police forced the other protestors to get into a bus which took them away from the assembly site. Four protestors, two of whom were members of the LADHH, were arrested and detained, apparently with the aim of intimidating them and dissuading them from taking part in other, similar, protests. The four people arrested were released without charge several hours later. To this day, assemblies continue to be repressed.

Arbitrary detentions and legal harassment against defenders in Zimbabwe, Tunisia, Gambia and Uganda.

In **Zimbabwe**, on June 3, 2010 Mr. **Farai Maguwu**, director of the Centre for Research and Development (CRD) was arrested and accused of “communication and publishing false information against the State with the intention of harming security or the economic interests of the country” contravening Section 31 of the Criminal Code. He was held under preventive detention until July 12, 2010, before being released on bail. Mr. Maguwu has been accused, which he denies, of having transmitted a CRD report on human rights violations in the mining area of Chiadzwa on the Kimberley Process Monitor during their visit to Zimbabwe in May 2010.¹ This report includes cases of arrests and arbitrary detentions, torture and extrajudicial executions carried out by members of the police, army and private security companies, in collusion with legal or illegal diamond mining companies. On October 21, Mr. Maguwu was finally acquitted, as the charges against him were dropped.

In Tunisia, on July 6, 2010, the Gafsa court of appeal confirmed the four-year prison sentence handed down at the trial court against Mr. **Fahem Boukaddous**, a journalist and correspondent for *Al Hiwar Al Tounisi* satellite television and for the *Al Badil* website for “participation in an agreement aimed at preparing and committing attacks against persons and property”. Mr. Boukaddous, hospitalised in the town of Sousse for respiratory problems was unable to attend the hearing. His lawyers, therefore, requested the hearing be adjourned. This decision was made at the end of proceedings initiated in 2008, following which Mr. Boukaddous was sentenced in absentia in December 2008 to six years in prison following publication by the journalist of a series of articles and reports shedding light on the repression of the pacific social movement that had risen up in the region of Gafsa-Redeyef in 2008. The trade unionist, **Hassan Ben Abdallah**, is also serving a four-year sentence for having participated in the peaceful protest social movement in the Gafsa mining basin.

In Uganda, on September 15, 2010, Mr. **Mbugua Mureithi**, a Kenyan lawyer representing the family members of defendants suspected of having been involved in the terrorist attack in Kampala on July 11, 2010 and Mr. **Al-Amin Kimathi**, executive coordinator of the Kenyan Muslim Human Rights Forum (MHRF) were arrested by Ugandan government agents on arriving at Entebbe international airport. Mr. Mureithi and Mr. Kimathi were transferred to the headquarters of the Ugandan police Rapid reaction unit and detained. They were interrogated by plain clothes individuals about their alleged contact with the activities of Al-

¹ The CRD is a member of the Civil Society Coalition of the Kimberley Process Monitor, an official observer of this international mechanism. The Kimberley Process Monitor is a certification mechanism for rough diamonds which aims to eradicate conflict diamond trade, which is responsible for feeding conflicts.

Shabaab, an Islamic group which claims responsibility for the terrorist attack in Kampala. On September 20, 2010, Mr. Al-Amin Kimathi was specifically accused of terrorism and attempted assassination linked to the attack on July 11. He was put in preventive detention in a high security prison in Luzita. A hearing took place on October 22 and his detention was extended whilst he awaits trial.

Mr. Mureithi and Mr. Kimathi had just attended a hearing linked to the July 11 attack. The sentencing was planned for September 16 and Mr. Mureithi was to represent the civilians transferred from their country to Uganda for their alleged participation in the attack. Mr. Kimathi and the MHRF are known for their denouncement of human rights violations committed within the framework of the fight against terrorism in East Africa and the Horn of Africa.

In Gambia, on October 11, 2010, Mrs. **Touray**, executive director of the Committee on traditional practices affecting the health of women and children (GAMCOTRAP) and Mrs. **Bojang-Sissoho**, programme manager for the same organisation, were arrested and detained before being transferred to the main prison "Mile Two" the following day. They were detained until October 20, 2010 when they were released on bail. In May 2010, an inquiry commission created by the Gambian president with the aim of carrying out an investigation into the amount in question had already concluded that the accusations against GAMCOTRAP were unfounded.

Expulsion and refoulement of defenders

In **Burundi**, in a letter addressed to the Human Rights Watch researcher, **Neela Ghoshal**, on May 18, 2010, the Minister for Foreign Affairs and International Cooperation informed her of the retraction of her approval to work as a representative for Human Rights Watch in Burundi. He requested that she immediately ceases her activities and to leave the country by June 5, 2010. This ban occurred only a few days prior to the start of a series of elections, including presidential elections, in a context where the ruling power was trying to silence any criticism of their period of government and the conditions under which the elections were taking place.

Recommendations:

1) Related to the persistent human rights violations against defenders in the States parties to the African Charter on Human and Peoples' Rights, the Observatory calls on the States to:

- **Put an end to all forms of repression against human rights defenders and their organisations;**
- **Guarantee for human rights defenders the rights and freedoms recognised in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on Human Rights Defenders;**
- **Recognise the essential role of human rights defenders in the implementation of the United Nations Universal Declaration of Human Rights and other human rights instruments, including the African Charter on Human and Peoples' Rights, as well as in the prevention of conflicts and achieving the implementation of the Rule of Law and democracy;**
- **To conform to the provisions of the United Nations Declaration on Human Rights Defenders, specifically Article 1 which provides that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and Article 12.2 which provides that "The State shall take all**

necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”, to the protocol of the African Charter on Human and Peoples' Rights related to women's' rights, the Universal Declaration of Human Rights, as well as the provisions set out in international human rights instruments to which they are party;

- To facilitate the mandate of the ACHPR Special Rapporteur on human rights defenders in Africa, by openly inviting him to visit their countries and putting sufficient financial and human resources at his disposal in order that he may comply with his mandate;
- To facilitate the mandate of the United Nations Special Rapporteur on Human Rights Defenders, particularly by openly inviting her to visit their countries.

2) The Observatory also appeals to the ACHPR Special Rapporteur on the situation of defenders in Africa to:

- Fully implement his mandate, particularly, through the publication of press releases, showing concern for the protection of human rights defenders and independent civil society and the promotion of their activities.
- Make public and publish on the ACHPR website reports on his activities.
- take the contribution of the Observatory fully into account in the study of the law and practices related to freedom of association, provided for in resolution CADHP/Res.151(XLVI)09
- Denounce the situation of defenders in Tunisia and Algeria, related to the systematic character of the repression against them in these two countries.

3) The Observatory also appeals to the African Commission on Human and People's Rights to:

- Reconsider its decision denying the observer status to CAL;
- Reinforce the means of the ACHPR Special Rapporteur on the situation of defenders in order to assist him in continuing with his actions related to the promotion and protection of human rights defenders in Africa;
- Continue with and deepen the collaboration with the United Nations Special Rapporteur on Human Rights Defenders, as well as other regional mechanisms for the protection of human rights defenders.
- Adopt a resolution on the situation of human rights defenders in DRC, specifically focussing on the need to elucidate the case of Floribert Chebeya and Fidèle Bazana.