

WRITTEN INTERVENTION - THE OBSERVATORY

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

In the framework of their joint programme,
The Observatory for the Protection of Human Rights Defenders

Madame Chairperson, Distinguished Commissioners and State Delegates,

The World Organisation Against Torture (OMCT) and FIDH, within the framework of the Observatory for the Protection of Human Rights Defenders, thank the African Commission on Human and Peoples' Rights (ACHPR) for this opportunity to raise some of the key issues with respect to the situation of human rights defenders in Africa.

While States have the duty to protect human rights defenders and to ensure that they operate in a safe and enabling environment, attacks, threats, judicial harassment, restrictive laws, smear campaigns against the latter continue to perpetuate an environment of hostility for their activities. Impunity for violations such as extra-judicial killings and enforced disappearances is another worrying trend that maintains civil society in Africa in a climate of fear.

Throughout the African continent, the space for civil society and human rights defenders is shrinking, due to three major challenges tied together. First of all, the lack of alternation of power in some African countries has driven the authorities to exercise greater control on civil society. In addition, as the African continent is undergoing 30 elections, including 18 presidential elections in 21 African countries this year, human rights violations and escalation of violence are likely to increase, putting civil society organisations at the forefront of repression. In other countries, the question of natural resources remains another major challenge, fuelling the repression against land and environmental rights defenders.

In such contexts, State representatives and non-State actors commonly resort to political, economic, cultural, religious and security pretexts to undermine human rights principles, their universality, their indivisibility and their monitoring bodies, resulting in increased vulnerability for human rights defenders.

Human rights defenders are routinely portrayed as "obstacles to development", enemies and traitors, criminals who must be combated. Such discourse is contrary to the spirit and letter of the African Charter on Human and Peoples' Rights as well as the United Nations (UN) Declaration on Human Rights Defenders. It promotes the repression of human rights defenders. It justifies their criminalisation.

1. Ongoing use of the judicial arsenal to silence dissenting voices in the framework of electoral contexts

In many African countries known for repressing dissenting voices, we are concerned that human rights defenders are criminalised in relation to their peaceful activities, including in the framework of electoral contexts.

Our organisations are particularly worried by the serious and ongoing deterioration of the human rights situation in **Burundi** since April 2015, following President Pierre Nkurunziza's third term bid. Protests were violently crushed while the rights to freedoms of association, of assembly and of expression were heavily undermined before, during and after the elections in July 2015. The Burundian authorities have since silenced independent media, and hundreds of human rights defenders have fled the country by fear of reprisals. Many of those who remain in Burundi continue to be subject to intimidation, harassment and physical attacks.

The Observatory is particularly concerned by the enforced disappearance of Ms. **Marie-Claudette Kwizera**, Treasurer of the Iteka League, since December 10, 2015, when she was abducted near the central polyclinic of Bujumbura and forced into a vehicle of Burundian National Intelligence Service (NIS). Since that date, Burundian authorities have refused to provide any information about her fate or whereabouts.

While taking note of the fact-finding mission carried out by the African Commission to Burundi from December 7 to 13, 2015, the Observatory respectfully calls on the Commission to publicly release the detailed conclusions of its investigation, to continue to closely monitor attacks on human rights defenders and their families, and to urge the Government of Burundi to immediately end such violations and to bring those responsible before independent and impartial courts.

In **Angola**, Mr. **José Marcos Mavungo** remain arbitrary detained since March 2015, following his sentencing, in September of the same year, to six years in prison for organising a peaceful demonstration against human rights violations and bad governance in the province of Cabinda. Mr. José Marcos Mavungo is a former member of the human rights organisation Mpalabanda - banned by the authorities in 2006.

On March 28, 2016, the Luanda Provincial Tribunal sentenced the 16 pro-democracy activists who were arrested in June 2015 for organising peaceful protests against the 35-year regime of Angolan President Eduardo Dos Santos to jail terms ranging from two years and three months to eight years and six months for the alleged crimes of "preparatory acts of rebellion" and "association of criminals". The 16 activists, namely Messrs. **Henrique Luaty Beirão, Nuno Alvaro Dala, Nelson Dibango Mendes Dos Santos, Alfonso Joao Matias ("M'banza Hamza"), Sedrick de Carvalho, Fernando António Tomás, Hitler Chiconda ("Samussuku"), Italiano Arante Kivuvu, Benedito Jeremias ("Dito Dali"), Albano Evaristo Bingobingo, José Gomes Hata, Inocêncio De Brito, Manuel Nito Alves** and Ms. **Rosa Kusso Conde**, Ms. **Laurinda Manuel Gouveia**, journalist Mr. **Domingos da Cruz**, as well as Mr. Osvaldo Correia Caholo, a reserve military officer acquainted to one of the 16, were sent to different prison facilities. Both the prosecution and defence lawyers stated that they would appeal the verdict and sentences before the Supreme Court.

In **Chad**, as of April 8, 2016, five human rights activists were detained at Am Sinéné prison in N'Djamena: four of them are facing trial for planning to organise peaceful demonstrations that had been scheduled for March 22 and 29, 2016 to protest against President Idriss Deby's bid for re-election for a fifth mandate. Mr. **Mahamat Nour Ibedou**, President of the Chadian Convention for Human Rights (*Convention tchadienne pour les droits de l'Homme*) and member of the civil society organisations coalition "It's Enough" ("*Ça suffit*"), was arrested on March 21, 2016. On March 22, 2016, Mr. **Kaina Nadjo**, Coordinator of the youth

movement “Iyina” (“We are tired” in local Arabic), and Mr. **Younouss Mahadjir**, Vice-President of the Union of Chadian Trade Unions (*Union des syndicats du Tchad* - UST), were in turn arrested. Ms. **Céline Narmadji**, Spokesperson of the civil society movement “Enough is Enough” (“*Trop c’est trop*”), was arrested on March 23. The four were charged with “incitement to an unarmed gathering”, “disturbing public order” and “disobeying a lawful order”. On April 7, the Prosecutor of the Republic requested six months imprisonment against the latter. A verdict is expected for April 14, 2016. Besides, on April 4, 2016, Dr. **Allazam Albissaty Saleh**, spokesperson a.i. of the “It’s Enough” coalition, was heard and placed in detention in the premises of the Criminal Police Department, ahead of a peaceful march planned on April 5 within the framework of the coalition. On April 7 in the afternoon, he was eventually transferred to the Am Sinéné prison. Dr. Saleh is currently facing accusations of “incitement to an unarmed gathering”, “disturbing public order” and “disobeying a lawful order”. Before his arrest, he was acting as the substitute of Mr. Nour Ibedou, detained since March 21. On another related note, on April 4, Mr. **Bertrand Solo**, a representative of “Iyina”, was summonsed by phone by the Head of Criminal Cases but refused to show up alleging that the summons had not been made in due form. In addition, proceedings were reportedly launched in view of arresting lawyer **Midaye Guerimbaye**, President of the Chadian League for Human Rights (*Ligue tchadienne des droits de l’Homme* - LTDH), affiliated to “It’s Enough”.

In the **Democratic Republic of Congo (DRC)**, human rights defender **Christopher Ngoyi Mutamba**, President of the NGO Congo Culture and Development Synergy (*Synergie Congo culture et développement*) and Coordinator of the Platform Civil Society of Congo, has remained arbitrarily detained since January 2015. His arrest followed his participation in protests held in Kinshasa against proposed amendments to the Electoral Code Law. He is also a member of the Let’s Save Congo (*Sauvons le Congo*) Network, a coalition of opposition parties and civil society organisations opposed to amendment of the Constitution or any other laws in a bid to extend the term of President Kabila beyond December 2016. Mr. Christopher Ngoyi Mutamba was charged with “incitement to racial hatred”, “arson” and “pillage”. On February 24, 2016, Ms. **Rebecca Kavugho**, Mr. **Serge Sivyavugha**, Mr. **Justin Kambale Mutsongo**, Mr. **Melka Kamundu**, Mr. **John Anipenda** and Mr. **Ghislain Muhiwa** six members of the Struggle for Change (*Lutte pour le Changement* - LUCHA) youth movement, were sentenced to two years in prison on charges of “attempting to incite disobedience”. The six were arrested on February 16 in Goma, before a general strike held in protest against delays in organising the 2016 general elections. They remain detained at Muzenze prison in Goma. Similarly, two members of the Filimbi citizens’ initiative, which promotes youth participation in electoral and democratic process, Messrs. **Yves Makwambala** and **Fred Bauma**, also a member of the LUCHA movement, have remained detained since March 2015.

2. Land and environmental rights defenders particularly at risk

Throughout the African continent, our organisations remain concerned by the scale of attacks against economic, social and cultural rights defenders, in particular land and environmental rights defenders, in countries such as in **Cameroon**, **Sierra Leone** and **South Africa**, where Mr. **Sikhosiphi Bazooka Rhadebe**, Chairperson of the Amadiba Crisis Committee, was murdered on March 22, 2016 for leading his community in resisting attempts from Australian-owned mining company MRC and its local subsidiary TEM to access its titanium-rich Xolobeni coastal dunes, which would result in disruption of the community’s way of life.

In **Cameroon**, the Observatory remains alarmed by the judicial harassment against prominent environmental activist Mr. **Nasako Besingi**, Director of the NGO Struggle to Economize Future Environment (SEFE), a local environmental organisation based in Mundemba, N’dian division. On January 21, 2016, Mr. Besingi was sentenced to pay 25,000 FCFA in fines and more than 400,000 FCFA in court charges or face one year in prison. Mr.

Besingi was convicted for “unlawful assembly”, after a number of court adjournments. The charges were related to the distribution of T-shirts against the company Herakles Farms and the project of his local subsidiary to build a large-scale palm oil plantation, which would lead to massive deforestation and threaten the livelihoods of residents in an area home to vital biodiversity. On November 3, 2015, Mr. Besingi had already been sentenced by the Mundemba Court in the southwest region of Cameroon to a fine of one million FCFA (approx. 1,520 Euros) for “false publication” and “defamation”. In addition, Mr. Besingi was condemned to pay damages of 10 million FCFA (approx. 15,200 Euros) to the two civil parties (workers of Herakles) and around 200,000 FCFA (approx. 304 Euros) of legal costs.

The Observatory is also concerned by the continued judicial harassment against several members of the Malen Land Owners and Users Association (MALOA) in **Sierra Leone**. For the past three years, MALOA has been monitoring and denouncing the negative human rights impact of the activities of Socfin Agricultural Company Sierra Leone Ltd (SAC) in Malen's district, in particular acts of land grabbing. On February 4, 2016, Messrs. **Shiaka Sama**, MALOA Spokesperson, **Sima Mattia**, **James Blango**, **Lahai Sellu**, **Musa Sellu** and **Foday Musa**, MALOA members, were found guilty of “destruction of growing plants belonging to SAC”, “destruction of growing plants”, “conspiracy” and “incitement” for allegedly brushing palm oil plants belonging to SAC. As MALOA's Spokesperson, Mr. Shiaka Sama was sentenced to pay a fine of 60,000,000 Leones (approx. 13,000 Euros) or face six months of imprisonment. The five other activists were sentenced to pay a fine of 30,000,000 Leones (approx. 6,500 Euros) each or face five months of imprisonment. While Messrs. Shiaka Sama, Sima Mattia and James Blango were subsequently released, Messrs. Lahai Sellu, Musa Sellu and Foday Musa are currently in detention pending payment of the fine.

3. Restrictions to freedom of association

In some African countries authorities continue to exercise greater control on civil society.

In recent years, authorities in **Ethiopia** have passed a host of laws attacking the media and civil society that have made independent human rights work in the country almost impossible.

Moreover, in **Rwanda**, independent civil society organisations have become extremely weak as a result of years of State intimidation and infiltration. The only remaining effective Rwandan human rights group, the Rwandan League for the Promotion and Defence of Human Rights (*Ligue rwandaise pour la promotion et la défense des droits de l'Homme* - LIPRODHOR), was taken over by members sympathetic to the government in 2013.

Last but not least, the Observatory is extremely concerned by the unprecedented crackdown on human rights organisations and defenders recently observed in **Egypt**, where the authorities have summoned human rights workers for questioning, banned them from travel and attempted to freeze their personal funds and family assets. Scores of human rights organisations and defenders have reportedly been enlisted in the case known as the “foreign funding case No. 173”, a five-year-old investigation into the funding and registration of independent human rights groups. Organisations targeted include Nazra for Feminist Studies, the Cairo Institute for Human Rights Studies (CIHRS) the United Group, a law firm that has published reports on torture, the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP), the Land Center for Human Rights (LCHR), the Egyptian Democratic Academy (EDA), the Hisham Mubarak Law Center (HMLC), the Arabic Network for Human Rights Information (ANHRI), the Egyptian Initiative for Personal Rights (EIPR), El Nadim Center for the Rehabilitation of Victims of Violence and Torture, the Egyptian Center for Economic and Social Rights (ECESR), the Arab Penal Reform Organization, the Egyptian Center for the Right to Education, El-Haq, the Egyptian Association for Community Participation Enhancement (ACPE), the Appropriate Communications Technologies (ACT), among others.

In the context of the “foreign funding case”, on March 29, 2016, Ms. **Mozn Hassan**, Executive Director of Nazra for Feminist Studies, was summoned for questioning as a defendant. The interrogation was then adjourned until further notice. On the same day, three staff members of the Andalus Center for Tolerance and Nonviolence Studies were also summoned for interrogation in the same case. On March 19, 2016, a Cairo criminal court heard a request from the investigating judges to freeze the assets of Mr. **Hossam Bahgat**, a journalist and founder of the Egyptian Initiative for Personal Rights who currently writes for the Egyptian news website *Mada Masr*, and Mr. **Gamal Eid**, a lawyer and the Director of the Arab Network for Human Rights Information. A Cairo criminal court had already issued an order in February to bar Messrs. Bahgat and Eid from travelling outside Egypt. Besides, on March 13 and 14, 2016, two staff members of CIHRS and three staff members of Nazra for Feminist Studies were notified by telephone of a summons to appear on March 16 before the Investigating Judge. On February 17, 2016, officials of the Ministry of Health (MoH) issued an administrative order to close the El Nadeem Center for the Rehabilitation of Victims of Violence and Torture, on the basis that it was performing unlicensed work. On April 5, 2016, the MoH sent a delegation to El Nadeem Center to implement the order and close the Center. El Nadeem directors refused to comply and leave the premises, as the MoH representatives did not present the original document of the closure order, as required by law. At the same time, El Nadeem Center’s staff was informed via the media that the Azbakeyya district Governorate had filed a complaint against them at the Azbakeya police station for not allowing the closing team to execute the closing order. The Center has been licensed as a medical clinic since 1993 and has provided hundreds of torture victims with vital services, including counselling and legal assistance.

4. Recommendations:

1) In view of the above-mentioned elements, the Observatory reminds States Parties of their obligation to comply with all the provisions of the African Charter, in particular those relating to the protection of human rights defenders. In that regard, States should immediately and unconditionally:

- Implement all the provisions of the 1998 United Nations (UN) Declaration on Human Rights Defenders, especially by guaranteeing in all circumstances their physical and psychological integrity and their capacity to operate in a safe and enabling environment;
- Release all defenders who are arbitrarily detained for their activities of promotion and protection of human rights and fundamental freedoms, in particular freedoms of expression, peaceful assembly and association;
- Develop differentiated measures for the protection of the most vulnerable groups of human rights defenders such as land and environmental rights defenders, defenders working in rural areas, woman human rights defenders or defenders working on LGBTI issues;
- Put an end to all acts of harassment - including at the judicial level - against human rights defenders;
- Order immediate, thorough, transparent investigations into allegations of violations of the rights of human rights defenders, in order to identify all those responsible, bring them before an independent tribunal, and apply them the sanctions provided by the law;
- Refrain from adopting any provisions that do not comply with international and African standards with respect to the exercise of the right to freedom of expression, peaceful assembly and association, and abrogate or revise any such provisions that may be in force;
- Send a standing invitation to the UN and ACHPR’s Special Rapporteurs on Human Rights Defenders and facilitate their country visits.

2) The Observatory also calls upon the ACHPR to:

- Highlight the legitimate work carried out by human rights defenders, and the need for their protection from harassment and attacks;
- Systematically raise the question of the situation of human rights defenders as well as denounce and condemn all human rights violations they face during the examination of the periodic reports of States parties to the ACHPR, and on the occasion of all visits conducted in a State party;
- Denounce the impunity that prevails with regard to these violations, and urge States to hold those responsible to account;
- Increase its capacities to respond to urgent situations faced by human rights defenders;
- Ensure the effective implementation of its resolutions, concluding observations and decisions on communications in order that everyone, including human rights defenders, be able to effectively enjoy all the rights and freedoms recognised by the ACHPR, the Universal Declaration of Human Rights and the UN Declaration on Human Rights Defenders;
- Continue to strengthen the collaboration with the UN Special Rapporteur on the Situation of Human Rights Defenders, as well as with the other regional mechanisms dedicated to the protection of human rights defenders.

Thank you for your attention.

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To contact the Observatory:

- Email: Appeals@fidh-omct.org
- Tel and fax OMCT: + 41 22 809 49 39 / + 41 22 809 49 29
- Tel and fax FIDH: + 33 1 43 55 25 18 / +33 1 43 55 18 80