

ORAL INTERVENTION - THE OBSERVATORY

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

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

Under agenda item 9: "Situation of human rights defenders"

Madam President,
Madam the Special Rapporteur for Human Rights Defenders,
Madam and Sir Commissioners,
Madam and Sir Delegates,

The FIDH and the OMCT, in the framework of the Observatory for the Protection of Human Rights Defenders, once again expresses their grave concern about the situation of human rights defenders in Africa.

Since the last session of the Commission in October 2012, the Observatory has not observed an improvement in their situation on the continent.

Violations of human rights targeting defenders have continued, notably in **Algeria, Cameroon, Chad, Democratic Republic of Congo (DRC), Djibouti, Egypt, Gambia, Sudan** and **Zimbabwe**.

Judicial harassment based on false accusations, accompanied by arbitrary arrests and detentions, remains the most common harassment technique, especially in **Algeria** and **Zimbabwe**, but also in **Cameroon, Djibouti, Egypt, The Gambia** and **Sudan**. In several countries, including The **Gambia** and **DRC**, defenders have also been subjected to threats and smear campaigns. In late December 2012 / early January 2013, the presence in Goma in the Kivu region of non-State armed groups notably led to increased threats against local defenders, forcing many of them to hide or flee into exile.

The targeted defenders are, *inter alia*, members of NGOs and lawyers (**Chad, DRC, Zimbabwe**), journalists (**Djibouti**), trade unionists fighting against impunity (**Algeria, Djibouti, DRC, Zimbabwe**) or defending land rights and the right to a healthy environment (**Cameroon**); defenders of the right to work (**Algeria**) and the right to health care (**Sudan**); advocates for the abolition of the death penalty (**The Gambia**), women's rights (**DRC, The Gambia**), and free and fair elections (**Zimbabwe**); and activists campaigning against arbitrary detention (**Egypt**).

1. Pursuit and intensification of harassment of defenders in certain countries

Impunity and deficient justice

In many countries where impunity prevails, justice continues to be denied to human rights defenders who have been victims of human rights violations. For example, the judiciaries concerned have so far refused to take into account relevant and credible elements of investigations indicating the responsibility of leading figures in assassinations that targeted defenders in the **DRC** in 2012 and **Burundi** in 2009. Indeed, the appeal proceedings in the **DRC** relating to the trial for the murder of Messrs. **Floribert Chebaya Bazire**, President of Voice of the Voiceless (*Voix des sans voix* - VSV) and a member of the OMCT General Assembly, and VSV member **Fidèle Bazana Edadi**, on the one hand, and to the trial in **Burundi** for the murder of Mr. **Ernest Manirumva**, the Vice-President of the Observatory for the Fight Against Corruption and Economic Embezzlement (OLUCOME) in 2009, on the other hand, are being implemented without any of the leading figures mentioned in the formal investigation documents being held to account.

Judicial harassment

The Observatory also noted that judicial harassment of human rights defenders is continuing in many countries, with the situation in this respect particularly worrying in **Algeria, Sudan** and **Zimbabwe**.

In some countries, such as **Algeria**, the extent of this harassment of defenders can unreservedly be qualified as systematic. The harassment victims are particularly active defenders and include: Messrs. **Yacine Zaid**, a trade unionist and Chairman of the Laghouat section of the Algerian League for the Defence of Human Rights (LADDH); **Abdou Bendjoudi**, one of the leaders of the Independent Youth Movement for Change (MJIC); **Athman Ouameur**, member of the Network for Freedom and Dignity (RDLD); **Lakhdar Bouziani** member of the National Independent Union of Public Servants (SNAPAP); Messrs. **Abdelkader Kherba**, member of the National Committee for the Defence of the Rights of the Unemployed (CNDDC) and of LADDH, **Belgacem Rachedi**, local committee member of the Coalition of Families of the Disappeared (CFDA) in Relizane, and **Mourad Thicko**, member of SNAPAP, who all had their appeal trial postponed; and Messrs. **Mohamed Rag, Aissa Tadj, Mohamed Bendjillali, Mustapha Ternoukha and Ahmed Akouche**, almost all of whom have been arrested, detained and subjected to unfair trials.

In **Sudan**, two young activists, Messrs. **Hatim Ali Abdalla** and **Khalid Omer Yousif**, were harassed by the intelligence services after they supported a protest movement. Mr. **Hatim Ali Abdalla** was still being held in secret detention at the time of this intervention.

With the approaching elections in **Zimbabwe**, increasing numbers of human rights defenders are being arrested, arbitrarily detained and subjected to unjustified judicial procedures. Among those targeted are Messrs. **Fidelis Mudimu, Zachariah Godi, James Zidzimu, Tafadzwa Geza** and **Penn Bruno** - all members of the Counselling Services Unit (CSU); **Okay Machisa, Nunurai Jena, Dorcas Shereni, Leo Chamahwinya, Farai Bhani** and **Tatenda Chinaka** from Zimrights, and, more recently, Ms. **Beatrice Mtetwa**, a member of the Zimbabwe Lawyers for Human Rights (ZLHR) Board.

In addition to being victims of judicial harassment, several defenders have also been convicted, notably in **Egypt**. For example, Mr. **Hassan Mustafa**, who defends the rights of detainees and works on issues such as economic rights and police violence, was sentenced to two years in prison on March 12, 2013. He remains in custody pending his appeal hearing set to take place in April 2013.

In **The Gambia**, the acquittal on November 12, 2012 of Dr. **Isatou Touray** and Ms. **Amie Bojang-Sissoho**, respectively Executive Director and Programme Coordinator of the Gambia Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP), after two years of litigation and 66 hearings, is to be welcomed.

GAMCOTRAP is an organisation that advocates for women's sexual and reproductive health as well as for the basic rights of women and their children,

Threats

Defenders are also victims of assault, harassment, threats and smear campaigns of all kinds. While they are frequently targeted by non-State agents, violence against them is very often tolerated, encouraged or directly perpetrated by State agents, especially by security forces who are supposed to provide protection. The impunity for perpetrators of human rights violations that continues to prevail in many sub-Saharan countries is contributing to the cycle of violence against defenders.

The Observatory has in particular observed cases in the **DRC** and **The Gambia**. Two journalists in **The Gambia**, Mr. **Abubacarr Saidykhan**, who often investigates and reports on cases of human rights violations, and Mr. **Babucarr Ceesay**, first Vice-President of the Gambia Press Union (GPU), both received death threats. Dozens of defenders in the **DRC's** Kivu region were forced into hiding during the M23 rebel offensive against the Congolese army, particularly after M23 forces took successive control of the towns of Rutshuru, Goma and Sake. Mr. **Gautier Muhindo Misonia**, CREDDHO Coordinator, and Mr. **Joshua "Blaise" Mukubwa Karume**, President of the South Kivu section of the African Association for Human Rights (ASADHO), were the target of threats and harassment. In January 2013, Ms. **Philomena Muamba**, President of the Association for the Defence of the Rights of Oppressed Children and Women (ADDEF), based in Tshikapa (West Kasai province), was threatened after she conducted activities to combat sexual violence in Tshikapa perpetrated in particular by the police and military. Local lawyers Messrs. **Jean-Marie Kabengela Ilunga** and **Peter Ngomo Milambo** were also threatened.

2. Shrinking space for human rights defenders to operate

Since the last session of the ACHPR, the Observatory has also observed obstacles to freedom of association in several countries. In Arab countries, the hopes raised by the popular protest movements have given way to tensions gripping the new authorities, who are anxious to impose tight controls over the active forces of civil society, particularly NGOs and human rights defenders. The issue of access to finance is one of the points that crystallize the uneasiness of these authorities. Indeed, the issue of access to foreign financing is being manipulated by the authorities of those countries who are seeking to stifle defenders and to isolate them from both their respective bases and all international solidarity, accusing them of betraying the host country by engaging in politics or supporting the interests of foreign powers. Laws and practices that condone such action violate the provisions of the 1998 United Nations Declaration on Human Rights Defenders, Article 10 of the African Charter on Human and Peoples' Rights, and Article 22 of the International Covenant on Civil and Political Rights.

Access to funding is essential for NGOs. All NGOs, regardless of their size, need funding and their right to access sources of local, regional, foreign and international financing must be protected. Without funding, NGOs would not be able to come to ACHPR sessions. Without funding, NGOs would not be able to interview victims, conduct investigations, or draft and print reports. Without funding, NGOs would not be able to take legal action. Without funding, NGOs would not be able to conduct human rights training for government officials and citizens.

The promotion and protection of human rights do not only constitute a right but also an international obligation. Respect for the right to freedom of association includes the obligation of States to support, directly or indirectly, the financing of civil society activities, in particular by creating an enabling environment, without compromising their Independence¹.

¹ For more information, see Observatory Annual Report 2013 on restrictions on human rights defenders' access to funding, in all regions of the world.

In **Algeria**, on November 29, 2012, the National Association for Combating Corruption (*Association nationale de lutte contre la corruption* - ANLC) was informed that the Ministry of Interior had refused its application for registration without giving any reason for the decision. The ANLC founders then appealed to the Administrative Court of Algiers to demand the annulment of the decision and by the end of March 2013 the ANLC was still awaiting the Court ruling. This situation confirms the restrictive scope of the new law regulating freedom of association in the country.

The right to freedom of association of NGOs in Algeria is now regulated by Law No. 12-06 of January 12, 2012, which gives the authorities extensive powers to suspend or dissolve NGOs and further reinforces the restrictions on their registration and financing. Following are some of the provisions of this law:

- Membership of an unregistered NGO is punishable by imprisonment and a fine;
- The scope of NGO activities is limited to the following areas: professional, social, scientific, religious, educational, cultural, sports, environmental, charitable and humanitarian;
- An NGO can be suspended if the Government considers that it is interfering in the internal affairs of the state;
- NGOs must obtain permission from the government to become affiliated with an international NGO;
- Access to foreign funds is prohibited except in cases where "official relations of cooperation" - a term not defined by law - exist.

Thus, several provisions of the law contain general restrictions that are contrary to the spirit and letter of Algeria's commitments regarding freedom of association. These provisions are in addition to the pursuance of restrictive practices. On March 25, 2013, for example, 96 human rights defenders, comprising members of SOS Disappeared, LADDH, CNDDC, and SNAPAP independent trade unionists were prevented from leaving Algeria to attend the 13th World Social Forum held in Tunis from March 26 to 30.

In **Egypt**, a restrictive draft law that aims to regulate associations is currently being discussed in the Shura (Upper House of Parliament). If adopted, the scope of action for human rights defenders will be severely curtailed and the interference of security services in NGO activities will be legalised. The main points of concern if the draft law is adopted are:

- NGOs will only be authorised to pursue activities in the humanitarian and development fields while and conduct of certain other activities, including field research work, will be subject to approval by the relevant authorities;
- Membership of an unregistered NGO will be punishable by imprisonment and a fine;
- Existing NGOs operating under statutes other than those applicable to associations will be shut down and their assets seized;
- Foreign NGOs must obtain permission from a committee comprising representatives from various ministries and the internal security agency (coordination committee) to conduct an activity or implement a project;
- Egyptian NGOs must obtain permission from the coordination committee to receive foreign funding;
- Failure to comply with the provisions of this law is punishable by a minimum one-year prison sentence and a heavy fine;
- The authorities enjoy wide powers to interfere in the internal decisions of NGOs and unlimited powers of inspection;
- Administrative courts may dissolve NGOs based on vague and imprecise pretexts.

The Report is available on the following links:

http://www.fidh.org/IMG/pdf/obs_2013_human_rights_defenders_english.pdf

http://www.omct.org/files/2013/02/22162/obs_annual_report_2013_uk_web.pdf

At the end of 2012, the authorities in **Sudan** closed four organisations promoting democracy and human rights. Members of these organisations were arrested, their families threatened, and the government banned all protest against its decisions².

The Observatory further recalls that in Ethiopia, the regulation of NGOs, in particular the provisions on financing from foreign sources adopted in 2009, forced Ethiopian NGOs working on human rights issues to reduce their activities and lay off staff in some cases, they had to cease all activities in relation to human rights. This alarming fact is also reflected in the low representation of Ethiopian defenders at ACHPR sessions.

Recommendations:

The Observatory therefore reminds States Parties of their obligation to fully comply with all the provisions of the African Charter, especially those relating to the protection of defenders. In particular, these States must:

- Acknowledge the legitimacy and the fundamental role played by human rights defenders in the establishment and strengthening of a society based on justice and respect for human rights;
- Implement the provisions of the United Nations Declaration on Human Rights Defenders, in particular by imperatively ensuring their physical and psychological integrity;
- Release all defenders detained for merely exercising their right to fundamental freedoms, in particular freedom of expression, peaceful assembly and association;
- Put a stop to judicial harassment targeting defenders;
- Bring to justice the perpetrators of violations of defenders' rights while ensuring them a fair trial that meets the requirements of speed and efficiency;
- Refrain from adopting any provisions that do not comply with international and African standards on the right to freedom of expression, peaceful assembly and association, and abrogate or revise any such provisions that may exist accordingly;
- Implement the resolution adopted on March 21, 2013 by the UN Council of Human Rights, in particular its provisions on the obligation of United Nations member states to ensure compliance of the laws and practices affecting the activities of human rights defenders - including in relation to the issue of their funding sources - with international human rights law;
- Establish national mechanisms to protect human rights defenders in cooperation with the defenders and the Special Rapporteur of the ACHPR;
- Send a standing invitation to Special Rapporteurs of the ACHPR and the United Nations on Human Rights Defenders and facilitate their visits.

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² See African Centre for Justice and Peace Studies - ACJPS.