

WRITTEN INTERVENTION - THE OBSERVATORY

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

55th ordinary session

Luanda, Angola

April 28 - May 12, 2014

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,

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

Since the last session of the Commission in November 2013, the Observatory has reported, with great concern, multiple violations of human rights defenders' rights and freedoms all across the continent, especially in **Angola**, where the Observatory carried out a fact-finding mission in 2013, **Burundi**, **Cameroon**, the **Democratic Republic of Congo (DRC)**, **Djibouti**, **Egypt**, **Kenya**, **Rwanda**, **Sudan**, **Swaziland** and **Uganda**.

Judicial harassment based on false accusations, accompanied by arbitrary arrests and detentions, remains the most common harassment technique, especially in **Angola**, **Cameroon**, **Djibouti**, **Egypt**, **The Gambia** and **Sudan**.

In several countries, including the **DRC** and **Djibouti**, human rights defenders have also been subjected to threats and defamation campaigns.

Acts of intimidation have been particularly directed against lesbian, gay, bisexual, transgender and intersex (LGBTI) rights defenders in **Cameroon**.

Major obstacles to freedom of association were also reported, as for instance in **Algeria**, **Angola**, **Burundi**, **Kenya**, **Rwanda** and **Uganda**.

Violations were suffered, among others, by members of non-governmental organisations (NGOs), lawyers, journalists, bloggers, land and environmental rights activists, civil society organisations who defend the rights to freedoms of expression, association and peaceful protest, denounce human rights abuses by the State or powerful companies, and fight for the respect of the rights of LGBTI people and for fundamental freedoms in general.

I. Continuation and intensification of the judicial harassment of human rights defenders

Judicial harassment, arbitrary arrests and detention of human rights defenders remain widespread practices in many countries, and the situation in this respect is particularly worrying in **Angola, Egypt, the DRC, Cameroon, Sudan and Swaziland**.

In **Angola**, charges remain pending against Mr. **Rafael Marques de Morais**, well-known for his publications denouncing corruption and human rights abuses in the Angolan diamond industry, after he was charged in March 2013 with 11 criminal counts for allegedly libelling Generals together with business entrepreneurs. The case was referred to the National Directorate of Investigation and Penal Action (DNIAP). The charges pending against Mr. Marques, the lack of access, by him and his lawyer, to all the documents related to the case, the transfer of the case to DNIAP upon request of the Attorney General, constitute serious infringements to Mr. Marques' right to due process and illustrate the authorities' willingness to hamper his freedom of expression and undermine his documenting and reporting activities. Moreover, on February 7, 2014, Mr. **Queirós Anastácio Chilúvia**, Director of the *Despertar* radio, was sentenced to six months' suspended imprisonment for expressing his concerns about conditions of detention in a Luanda prison.

In **Egypt**, members of the "No to Military Trials for Civilians" group have been regularly targeted by Egyptian authorities for denouncing Article 198 of the draft constitution that allows for civilian trials before military courts, and more generally for criticising human rights abuses committed by security forces and the army under rule of the Supreme Council of the Armed Forces (SCAF) and afterwards. On November 26, 2013, at least nine members of the "No to Military Trials for Civilians" group were arrested as they were demonstrating near Tahrir Square in Cairo. Police forces beat them up and sexually harassed both men and women. Two days after the protest, Mr. **Alaa Abdel Fatah**, member of the "No to Military Trials for Civilians" and a famous civil and political rights activist, was arrested at his home by security forces. On January 5, 2014, along with Ms. **Mona Seif**, co-founder of the movement, and Mr. **Ahmed Abdallah**, member of the 6 April Youth Movement and co-founder of the Egyptian Commission for Rights and Freedoms, Mr. Fatah was sentenced to one-year imprisonment, suspended for three years, on charges of "arson", "theft", "damage to property", "violence" and "danger to public safety". The convictions are based solely on the evidence of so-called eyewitnesses who were either agents of the government or persons with criminal records or with criminal investigations pending against them. On March 23, 2014, the 16th terrorism circuit of South Cairo Criminal Court ordered the provisional release of Mr. Alaa Abdel Fatah on a bail of LE 10,000 (approximately EUR 1,042). The second hearing of Mr. Abdel Fatah's trial was held on April 6, 2014, when his lawyers obtained an adjournment of the trial pending a review of Judge El-Fikki's involvement in the case.

Egyptian authorities have also been harassing members of the Egyptian Centre for Economic and Social Rights (ECESR). On December 18, 2013, more than 60 heavily armed operatives of Azbakeya and Abdin police stations and the Homeland Security Agency stormed the headquarters of the ECESR in Cairo. Without any search or arrest warrants, they brutally manhandled and arrested Mr. **Moustafa Eissa**, Head of ECESR Documentaries Unit, Mr. **Mahmoud Belal**, ECESR lawyer, and Mr. **Hosam Mohamed Nasr**, Mr. **El Sayed Mahmoud El Sayed**, Mr. **Sherif Ashour** and Mr. **Mohamed Adel**, all four ECESR volunteers. All were working on a documentary about an ongoing strike of the Iron and Steel Workers' Union, in preparation for its screening at a press conference the following day. Apart from Mr. Mohamed Adel, all were released the following morning but were reportedly beaten several times during their detention. Moreover, on April 7, 2014, Mr. Mohamed Adel was sentenced in appeal to three years' imprisonment for "organising a protest on November 26 without notifying the Ministry of Interior", and "assaulting security forces in charge of securing the Abdeen court on November 30". The November 26 demonstration had been held to protest against the military courts.

Arbitrary detentions and judicial harassment of human rights defenders also occur regularly in the **DRC**. Mr. **Abedi Ngoy** and Mr. **Gervais Saidi**, members of the Maniema Farmers Alliance (*Alliance paysanne du Maniema - ALLIPAM*), were arrested respectively on December 2 and 16, 2013 for defending farmers whose houses in Kasongo were burnt in 2008. Both defenders have been held with 20 prisoners in a cell conceived for 10 persons, without aeration, bed, access to sanitary facilities and medical services. They have also been deprived of food and have to pay 10 \$USD to their jailers to be able to receive food sent by their families. While Mr. Ngoy was released on bail, Mr. Saidi remains detained to date.

In the territory of Tshikapa in Western Kasai, Mr. **Albert Fwamba Kabasele**, Territorial President of the National Farmers' League of Human Rights (*Ligue nationale paysanne des droits de l'Homme - LINAPEDHO*), has been arbitrarily detained since his arrest on February 14, 2014, after a meeting held between the Vice-Governor of Kasai Province and civil society actors to discuss the exploitation of Mpokolo diamonds quarry. Mr. Kabasele has been defending Kamonia population's rights and encouraging them to resist to the exploitation of the mineral quarry, which is their sole source of income.

In October 2013, the Supreme Court of Justice of Kinshasa finally decided to grant bail to the nine members of the Association for the Advocacy of the Interests of the City of Bandundu (*Association pour la défense des intérêts de la ville de Bandundu - ADIVB*), who were detained since March 2013 for calling upon the population to take part in a peaceful demonstration to protest against the raise of the prices of electricity and water. Yet their release was subject to the payment of an exorbitant bail (500,000 Congolese francs each - over 400 euros) as well as to the condition not to leave Bandundu without the permission of the Attorney General to the Appeal Court.

In **Cameroon**, Mr. **Célestin Yandal**, President of the Collective for Young People of Touboro (*Collectif des jeunes de Touboro*), a local NGO defending youth's rights in the Adamaoua region, was arrested on November 23, 2013 and placed in provisional detention. Mr. Yandal was coming back from a meeting with members of the Network of Human Rights Defenders of Central Africa (*Réseau de défenseurs des droits humains de l'Afrique centrale*), which took place on November 19, 2013 in Douala. Mr. Célestin Yandal had denounced in particular the arbitrary arrest of 14 young people in Rey Bouba, ordered by Vice-President of the Cameroonian Senate. After being released by the Prosecutor of Tcholliré, he was immediately re-arrested as he was leaving the tribunal. He appeared for the first time before the North Appeal Court on January 16, 2014, which rejected the request for provisional release lodged by his lawyer. As of April 19, 2014, Mr. Yandal remained in detention in the central prison of Garoua.

In **Sudan**, a number of defenders of peaceful student activists have been arrested by the National Intelligence and Security Services (NISS), and detained incommunicado. For instance, Messrs. **Gazi Alrayah Al-Sanhouri** and **Abdulmonim Adam** were respectively arrested on March 12, 2014 and March 13, 2014 in Khartoum, in connection with a demonstration organised at the University of Khartoum on March 11 to denounce the human rights situation in Darfur. The protest was harshly repressed by the authorities, resulting in the killing of one student and in seven others being seriously injured. As of March 18, 2014, the whereabouts of Mr. Al-Sanhouri remained unknown, and Mr. Adam was detained within the NISS offices in Khartoum Bahri with no access to his lawyer and family members.

In **Swaziland**, Mr. **Thulani Rudolf Maseko**, a prominent Swazi human rights lawyer, senior member of Lawyers for Human Rights Swaziland and the Southern Africa Human Rights Defenders Network, and Mr. **Bheki Makhubu**, a columnist and Editor-in-Chief of *The Nation*, considered as the sole independent newspaper of the country, have been repeatedly harassed for denouncing abuses committed by the Swazi judiciary. The two human rights defenders were initially arrested on March 17 and 18, 2014 and kept in provisional detention for three weeks, on charges of "scandalising the judiciary" and "contempt of court". They were temporarily released on April 6, 2014 before being rearrested on April 9, 2014. Both are currently kept in the provisional detention centre of Sidwashini, Mbabane, pending trial.

In **Zimbabwe**, while police and security agents are often responsible for the arbitrary arrest, abduction, harassment or intimidation of human rights defenders, some positive developments have been noted with the acquittal of Mr. **Abel Chikomo** and Ms. **Beatrice Mtetwa**, on November 22, 2013 and November 26, 2013 respectively. Mr. Abel Chikomo is the Executive Director of the Zimbabwe Human Rights NGO Forum, a coalition of 20 Zimbabwean human rights organisations advocating against organised violence, torture and impunity in Zimbabwe. Ms. Beatrice Mtetwa is a human rights lawyer and board member of Zimbabwe Lawyers for Human Rights (ZLHR).

II. Threats and slandering campaigns against human rights defenders

On several occasions, human rights defenders have suffered threats or acts of intimidation in an attempt to silence them. Such acts were committed either directly by State agents or by non-State actors with the silent complicity of the authorities, therefore encouraging further acts of violence against human rights defenders.

In the **DRC**, Mr. **Mémé Awazi Nengo**, ALLIPAM Executive Secretary, Mr. **Angali Salumu Yemoko**, President of the Network of Associations for Human Rights in South Maniema (*Réseau des associations de défense des droits humains dans le sud Maniema - RADHOSMA*), and Ms. **Salufa Aziza**, President of ALLIPAM Women, have been threatened after having initiated proceedings against the Maniema Provincial Government. They were also publicly insulted and received death threats for defending farmers whose houses in Kasongo were burnt in 2008 (see above). On November 28, 2013 a group of non-identified armed men attacked the house of Mr. Awazi Nengo. Since this incident, the three defenders have been into hiding.

In **Djibouti**, repression and harassment of human rights defenders remain a general and widespread practice, which was condemned on January 22, 2014 by Ms. Reine Alapini Gansou, ACHPR Special Rapporteur for Human Rights Defenders. Mr. **Zakaria Abdillahi**, President of the Djiboutian League of Human Rights (*Ligue djiboutienne des droits humains - LDDH*), was arrested on January 24, 2014 before being eventually released on January 26, 2014. As the lawyer of many human rights defenders harassed by Djiboutian authorities, he was subject to intense pressure and received threats prior to his arrest. On the day of his release, the journalist **Maydaneh Abdallah Okieh**, working for *La Voix de Djibouti* newspaper, was arrested for covering it, before being released shortly after.

III. Intimidations and violence against LGBTI rights defenders

In **Cameroon**, the defenders of LGBTI people still face threats and judicial harassment. The Observatory conducted a mission from January 7 to 16, 2014, and could witness an environment marked by overall insecurity and intimidation against health rights and LGBTI rights defenders, in a country where homosexuality is also criminalised. To date, Cameroon is the country with the highest number of persons being prosecuted, sentenced and imprisoned for “consensual sexual relations with a person of the same sex” (Article 347bis of the Penal Code). The Cameroonian authorities are showing no perceptible signs of willingness to stop these persecutions, none of the persons responsible for blackmail or extortion has ever been arrested or troubled, and the complaints filed by the defenders have all been ignored. The investigation into the death of **Eric Ohena Lembembe**, Executive Director of the Cameroonian Foundation for AIDS (CAMFAIDS) and journalist who actively defended LGBTI rights, remains in a deadlock, as the only procedural act carried out by the investigating judge up to now was to summon six of the victim's friends to testify and to be questioned about charges of aggravated theft.

In **Uganda**, the anti-homosexuality bill promulgated on February 27, 2014 provides imprisonment in case of “promotion” of homosexuality and against anyone who would fail to denounce a homosexual act within 24 hours while having authority to do so. These provisions place human rights defenders, and in particular those whose organisations

provide healthcare, social and legal services to LGBTI persons, in a vulnerable situation and expose them to criminal prosecution. Such provisions constitute a grave violation of the principles and fundamental freedoms guaranteed by the African Charter, and notably the principle of non-discrimination, freedom of expression, freedom of association and freedom of assembly.

IV. Obstacles to the rights of freedoms of association, expression, movement and peaceful assembly in African countries

Since the last session of the ACHPR, the Observatory has continued to witness several obstacles to freedom of association, expression movement and peaceful assembly, as for instance in **Algeria, Angola, Burundi, Kenya, Rwanda** and **Uganda**.

In **Angola**, human rights organisations remain in a situation of vulnerability, due to the voluntarily maintained ambiguity of their legal status or the use of subtle acts of intimidation against their members, aimed at undermining their actions. The Association Justice, Peace and Democracy (*Associação Justiça Paz e Democracia*), Mãos Livres, Omunga or SOS-Habitat are among these organisations. It is also prohibited to report on the human rights violations committed in the Cabinda province, as exemplified by the ban of the NGO Mpalabanda in 2006 and the continued harassment of its members.

Despite its accession to the United Nations Human Rights Council in January 2014, **Algeria** remains the only country among its neighbours that generally restricts access to human rights organisations. The Algerian authorities have not agreed to visits requested by the UN Special Rapporteur on Torture and the UN Working Group on Enforced or Involuntary Disappearances, and have restricted access for other human rights observers. Algerian authorities have also refused to grant visas to international human rights NGOs for several years. At the domestic level, the right of Algerian NGOs to operate freely has been violated in many ways. In 2012, Algerian authorities have even adopted a new law on associations more repressive than the previous one. Law No. 12-06 forbids associations from receiving any foreign funding or cooperating with or seeking membership in foreign organisations without the government's agreement. The law also required all associations already registered under the previous law to submit organisational bylaws that comply with the new legislation, by January 15, 2014. All existing associations not successfully registered under the new law can be considered illegal, exposing their members to penalties of up to 6 months in prison and a 300,000 Algerian dinar (€2,800) fine.

Similarly, in **Kenya**, a new proposed bill submitted on October 30, 2013 was aiming to provide the government with the ability to control all funds coming into the country. The bill was aiming to limit to a maximum of 15% the proportion of foreign funding that an NGO would be allowed to receive from external donors, and to impose any funding to be channelled through a new "Public Benefits Organizations (PBO) Federation", rather than directly from donors. The text was further providing for the creation of a "PBO Authority", with a chairperson appointed directly by the President of the Republic, to "impose terms and conditions for the grant of certificates of registration, permits of operation, and public organisations status". While the bill was rejected by Parliament at the second reading – following strong national and international pressure – it gave an illustration of the political environment within which civil society organisations are operating in Kenya.

In terms of obstacles to freedom of expression, in December 2013, the Parliament of Kenya adopted two bills aimed at regulating the media sector, which provide for discretionary powers of the authorities over media houses and journalists. Both have been signed into law by President Kenyatta. The first text, titled "Information and Communication Act, 2013", creates a government-appointed Communications and Multimedia Appeals Tribunal with unfettered powers to impose penalties on media practitioners, including revocation of accreditation, seizure of property, and heavy fines of up to 1 million Kenyan shillings (US\$12,000) on journalists, and up to 20 million Kenyan shillings (US\$235,000) on media companies. The Act provides that such fines could be imposed on the basis of anonymous

complaints. The Act also restricts advertising revenues, a provision which could force some media houses to close down. The second text, entitled “Media Council Act, 2013”, establishes a Media Council of Kenya and a Media Council's Complaints Commission with powers to ban any media content that is “prejudicial to public or national interest” and impose penalties against the publishers of such content, while failing to clearly define “national or public interest”. Following the passage of these two laws, two different petitions were filed before the High Court in Nairobi to challenge their constitutionality. On January 31, 2014, the High Court, which decided to consolidate the two cases, ordered to halt the implementation of both laws pending its ruling on the merits of the case. To date, the Court has not yet rendered its decision on the merits.

In **Uganda**, the Public Order Management Act (POM Act), which was signed into law on October 2, 2013 by President Yoweri Museveni, restricts freedoms of expression and peaceful assembly and further deteriorates an already shrinking space for civil society and human rights defenders in the country. Although protecting public order is a legitimate concern recognised by international instruments, the scope and nature of the restrictions provided by the POM Act, which was passed by Parliament in August 2013, go well beyond the restrictions permitted under international and regional human rights law and therefore contradict Uganda's international and regional commitments. In particular, the POM Act fails to establish a presumption in favour of the exercise of the right to freedom of peaceful assembly as it fails to recall the duty on the State to facilitate peaceful assemblies. In circumstances where a public meeting is held contrary to the Act, participants in the meeting may be criminalised and are liable of an imprisonment not exceeding 12 months or a fine not exceeding 480,000 Uganda shillings (about 140 €) or both. The POM Act also grants the Interior Minister the power, subject to Parliamentary approval, to declare any area as “gazetted” where public meetings are absolutely prohibited, and prohibits public meetings at and around public institutions by designing them as “restricted areas”, where entry is prohibited with punishment of two years' imprisonment and/or a fine of 960,000 Uganda shillings or both. These areas notably include Parliament and Courts.

In **Rwanda**, the authorities continue to interfere in the internal affairs of independent associations, and impede in particular the legitimate board of the Rwandan League for the Promotion and Defence of Human Rights (*Ligue rwandaise pour la promotion et la défense des droits humains* - LIPRODHOR) to be reinstated. The LIPRODHOR was one of the few independent human rights organisations in Rwanda, until its board was ousted during a meeting convened on July 21, 2013 by the former LIPRODHOR President, unbeknownst to the members of legitimate board. At that meeting, the legitimate board that was in office at the time was replaced by people believed to be favourable to the Government. The meeting was later renamed as “extraordinary assembly”, in violation of the association's bylaws. A few days later, the Rwanda Governance Board (the public body in charge of the registration of associations) expeditiously recognised the new board. On July 24, bank accounts of the LIPRODHOR were frozen and the police cancelled a training workshop that was to be organised by LIPRODHOR about the UN Universal Periodic Review mechanism. The ousted legitimate board initiated proceedings to void the decision taken during the “extraordinary assembly” of July 21, 2013 so as to destitute the new, illegitimate, LIPRODHOR board. The first hearing took place on March 6, 2014, followed by a second hearing on April 10, where the judge again announced a postponement to May 15. The case of the LIPRODHOR is illustrative of the governmental interference in the functioning of independent civil society organisations, in violation of the right to freedom of association protected under the Rwandan Constitution.

In **Burundi**, some human rights NGOs still face pressure from the authorities that impede their proper functioning. On April 4, 2014 the Mayor of Bujumbura unilaterally rejected the notification submitted by the Observatory for the Fight against Corruption and Economic Embezzlement (*Observatoire de lutte contre la corruption et les malversations économiques* - OLUCOME) to organise a commemoration of the assassination of its Vice-President **Ernest Manirumva**, which has remained unsolved to date. The Burundian Prosecutor General has even made wrongful and fallacious public accusations against the current

OLUCOME President, Mr. **Gabriel Rufyiri**, accusing the latter - without any grounds - of being possibly involved in the assassination of Ernest Manirumva.

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 merely exercising their rights to fundamental freedoms, in particular freedoms of expression, peaceful assembly and association;
- 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 human rights defenders' rights, 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 freedoms of expression, peaceful assembly and association, and abrogate or revise any such provisions that may be in force;
- Send a standing invitation to the United Nations and ACHPR's Special Rapporteurs on Human Rights Defenders and facilitate their country visits.

2) The Observatory also calls upon the ACHPR to:

- Systematically raise the question of the situation of human rights defenders during the examination of the periodic reports of the States parties to the ACHPR, and on the occasion of all visits conducted in a State party;
- Adopt the Report of the ACHPR Study Group on Freedom of Association, entitled "Freedom of Association and Freedom of Assembly in Law and Practice in Africa";
- Ensure the effective implementation of its concluding observations in order that everyone, including human rights defenders, be able to effectively enjoy all the rights and freedoms recognised by the ACHPR and the Universal Declaration of Human Rights;
- Continue and strengthen the collaboration with the United Nations Special Rapporteur on Human Rights Defenders, as well as with the other regional mechanisms for the protection of human rights defenders.

Luanda, April-May 2014

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