

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

Madam Chairperson, Distinguished Commissioners and State Delegates,

FIDH and the World Organisation Against Torture (OMCT), 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.

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 has been undergoing 30 elections, including 18 presidential elections in 21 African countries this year, human rights violations and escalation of violence have been increasing, putting civil society organisations at the forefront of repression. In other countries, issues related to economic, social and cultural rights remain another major challenge, fuelling the repression against their defenders.

1. Political pressure and ongoing use of the judicial arsenal to silence dissenting voices in the framework of electoral contexts

In a constantly growing number of African countries, already known for repressing dissenting voices, the criminalisation of human rights defenders in relation to their peaceful activities, including in the framework of electoral contexts, is highly concerning.

Our organisations remain particularly worried by the human rights situation in **Burundi** since April 2015, following President Pierre Nkurunziza's third term bid. Within the first year of presidency, we estimate that almost all representatives of human rights organisations have fled the country by fear of reprisals. Similarly, no media is allowed to broadcast free and independent information. Those who remain in Burundi face increased intimidation, harassment, physical attacks and in the most worrying cases, enforced disappearance.

The Observatory is particularly concerned by the enforced disappearance of Ms. **Marie-Claudette Kwizera**, Treasurer of the Iteka League, since December 10, 2015. To date,

Burundian authorities have refused to provide any information about her fate or whereabouts.

Likewise, Mr. **Jean Bigirimana**, journalist for the Burundian independent press group *Iwacu*, who was arrested without a warrant by the National Intelligence Service (NIS) on July 22, 2016, has been missing ever since.

The Observatory is also extremely concerned by reprisals against human rights defenders who cooperate with the international human rights system to denounce rampant violations in Burundi. For instance, in the aftermath of the review by the United Nations (UN) Committee Against Torture (CAT) of the country's human rights crisis, the Government requested to disbar four human rights lawyers who had participated in the CAT session, at the end of July 2016.

In **Angola**, although the Observatory welcomes the release and acquittal of Mr. **José Marcos Mavungo**, who had been arbitrary detained since March 2015, many of his fellow human rights defenders remain in a precarious situation, constantly exposed to judicial harassment.

Amongst them, 17 pro-democracy activists jailed for participating to a book club in June 2015 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. **Manuel Chivonde Baptista Nito Alves**, have been provisionally released on June 29, 2016 but are prevented from leaving the country and have to appear before the Luanda Provincial Court every month. In that respect, the Observatory would like to recall the decision of the UN Working Group on Arbitrary Detention on June 29, 2016, which found that the "these individuals were arrested and detained because of the exercise of their freedom of assembly, opinion and expression" in violation of Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR). It also stated that their right to a fair trial had not been respected and that their deprivation of liberty was arbitrary.

In **Chad**, 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*"), Mr. **Kaina Nadjo**, Coordinator of the youth movement "Iyina" ("We are tired" in local Arabic), Mr. **Younouss Mahadjir**, Vice-President of the Union of Chadian Trade Unions (*Union des syndicats du Tchad - UST*) and Ms. **Céline Narmadji**, Spokesperson of the civil society movement "Enough is Enough" ("*Trop c'est trop*") were sentenced on April 14, 2016 to a suspended four years jail term after being detained for several weeks, on grounds of planning to organise peaceful demonstrations to protest against Idriss Deby's bid for re-election for a fifth mandate.

Besides, Dr. **Allazam Albissaty Saleh**, Spokesperson a.i. of the "It's Enough" coalition, was arrested April 4, 2016, and placed in detention at the Am Sinéné prison, on accusations of "incitement to an unarmed gathering", "disturbing public order" and "disobeying a lawful order". He was subsequently sentenced to four months' suspended imprisonment and released.

In addition, Mr. **Assingar Dobian**, Honorary President of the LTDH and FIDH's representative before the CEMAC, has been the target of several acts of reprisals, including

through his dismissal as head of the administrative and financial department of the *Office national du développement rural* (ONDR) on June 26, 2016, for publicly calling for the respect of human rights in Chad.

In the **Democratic Republic of Congo (DRC)**, the Observatory welcomes the long-awaited release on August 29, 2016 of 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, who had been arbitrary detained since January 2015, but deplores the deterioration of his health status while in detention.

Besides, while two members of the Filimbi citizens' initiative, which promotes youth participation in electoral and democratic process, i.e. Messrs. **Yves Makwambala** and **Fred Bauma**, also a member of the LUCHA (*Lutte pour le changement*) movement, have been provisionally released on August 29, 2016, after 18 months in detention, charges against them have not been dropped and their judicial harassment is likely to resume at any moment. In addition, on September 9, 2016 Mr. **Jean de Dieu Kilima**, coordinating member of the collective "Front Citoyen 2016" in Tshopo, as well as member of the Filimbi citizens' initiative, who had been released four days before, was summoned to appear before the Peace Tribunal of Lemba in Kinshasa, on charges of "attempting to incite disobedience" and "troubles to public order". His lawyers challenged the territorial competence of the Kinshasa Tribunal, alleging that the facts reproached to Mr. Kilima as well as his arrest took place in Kinsangani, and not in Kinshasa. As of issuing this written intervention, the proceedings on the question of the territorial competence were ongoing.

Over the past months, threats and harassment in the DRC have also hit judicial operators, as in June 2016, Mrs. **Chantal Ramazani Wazuri**, President of the Lubumbashi Peace Tribunal, was forced, upon order of the General Administrator of the National Intelligence Agency (*Agence nationale de renseignement - ANR*) and in presence of the President of the Lubumbashi Appeal Court as well as a dozen of elements of the Congolese Republican Guard, to sign a ready-made judgement aiming to condemn Mr. Moïse Katumbi Chapwe, former Governor of the Katanga province and candidate to the 2016 presidential election, to three years in prison with immediate arrest and a fine. After being forced to sign the judgment, Mrs. Wazuri fled the country and wrote an open letter to the Congolese Minister of Justice and Human Rights, to the President of the Republic, and to a number of international organisations, highlighting how she was threatened and forced to sign the judgement, and requesting the annulment of her signature, while describing the interference of top executive authorities in the judicial system of the DRC. The Observatory is highly concerned about this interference and pressure exercised on the judiciary in the country, and recalls that an independent judicial system is crucial to function as a safeguard where the executive power tries to hinder the work of human rights defenders.

2. Economic, social and cultural 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 **Cameroon**, nine members of the Esu Youth Development Association (EYDA), namely Messrs. **Abue Philip Kpwe**, **Divine Biame**, **Cyprian Azong**, **Bernard Fuh**, **Redemption Godlove**, **Ephraim Kagha Mbong**, **Emmanuel Wung**, **Ivo Meh** and **Williams Meh**, are facing increasing judicial harassment on grounds of "depredation by band", in relation to their opposition to land-grabbing undertaken on the land of the Esu community. If convicted, they face 10 to 20 years in prison. After being all arrested earlier this year, the first four remain detained to this day, while proceedings are ongoing before the Mezam High Court in

Bamenda. The last hearing took place on October 12, 2016, while the next one is scheduled for October 27, 2016. Besides, **HRH Fon Kum Achuo II**, chief of the village, is also facing charges for opposing land-grabbing on the community's land.

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. In particular, MALOA leaders Mr. **Sylvester Kebbie** and **James Blango**, together with nine MALOA supporters Messrs. **Ibrahim Sengeh, Sumaila Murana, Ishmael Bockarie, Abu Moiwo, Sao Rogers, Vandy Sumaila, Foday Setua, Foday Mansaray** and **Mustapha Sengeh**, are still facing judicial harassment following an alleged shooting incident at the Bamba village in Malen's district on January 14, 2015. They are being prosecuted on trumped-up charges of "destroying growing plants" and "carrying offensive weapons", although the two MALOA leaders have denied their presence on the scene. They are due to appear before the Bo Magistrate court on October 28, 2016.

In **Mauritania**, latest developments in the continued judicial harassment of members of the abolitionist movement IRA (*Initiative pour la résurgence du mouvement abolitionniste*) have seen the arrest and detention throughout the summer of Messrs. **Moussa Biram**, Vice President of Sbeka's office, **Adballahi Abou Diop**, member of Riadh's office, **Amadou Tidjane Diop**, IRA Vice-President, **Adballahi Matallah Seck**, President of Sebkhia's office, **Hamady Lehbouss**, adviser to the President and National Communication Officer, **Balla Touré**, National Bureau External Relations Officer, **Ousmane Anne**, President of Tevragh Zeina's office, **Jemal Samba Beylil**, member of Riadh's office, **Mohamed Daty**, Secretary General of Nouakchott's coordination, **Ahmed Mohamed Jarroullah, Ousmane Lo**, both member of the Executive Bureau, as well as **Khatiri Rahel Mbareck**, National Peace Coordinator, and **Ahmed Hamdy Hamar Vall**, Treasurer. As of October 10, 2016, all were detained in Zouérat, where they were waiting for their appeal trial hearing, after which they are expected to be transferred to Bir-Moghrein prison, in the Northern part of the country. This transfer is a particularly concerning attempt by Mauritanian authorities to prevent the detainees from accessing their families and lawyers. The prison is located in a desert and difficult of access region, where terrorist groups reportedly operate. The Bir-Moghrein prison is also a particularly rough penitentiary centre, which raises grave concerns for the health of the detainees, who already suffer medical condition.

In addition, another IRA member Mr. **Yacoub Inalla**, has been recently arrested, detained and released for holding a speech in which he called for the respect of fundamental freedoms. He is now facing trial for "inciting violence", "violence towards police officers", "rebellion", "belonging to an unregistered organisation" and "disturbing public order and prayer".

3. Restrictions to freedom of association and assembly, and reprisals against freedom of expression defender

The worldwide trend undertaken by some States to restrict freedom of association and hinder the work of human rights defenders by enacting an arsenal of restrictive laws has been particularly spreading across Africa, where authorities increasingly aim to control, paralyse or even eradicate independent civil society, in blatant breach of basic human rights principles.

The most recent illustration of this trend of repression occurred over the past few days in **Burundi**, as on October 24, 2016, the Ministry of Interior and Patriotic Training published an

order to suspend provisionally a number of non-profit associations, such as **SOS-Torture/Burundi**, the **Ligue Burundaise des Droits de l'Homme « ITEKA »**, the **Coalition de la Société Civile pour le Monitoring Electorale (COSOME)**, the **Coalition Burundaise pour la CPI (CB-CPI)** et the **Union Burundaise des Journalistes (UBJ)**. A week earlier, on October 19, 2016, the same Ministry had passed a similar order to permanently remove 5 other NGOs from the Ministry's List of Associations operating in Burundi, i.e. The **Forum pour le renforcement de la société civile (FORSC)** the **Forum pour la conscience et le développement (FOCODE)**, the **Action chrétienne pour l'abolition de la torture (ACAT)**, **l'Association burundaise pour la protection des droits humains et des personnes détenues (APRODH)** and the **Réseau des citoyens probes (RCP)**. These two orders are the latest illustrations of a long series of violations of freedom of expression and association targeting Burundian defenders, and stem from a repressive campaign conducted relentlessly by the Burundian government against its civil society for a year and a half now.

In **Ethiopia**, where independent human rights work in the country remains almost impossible, the repression targeting human rights defenders has increased over the past months. On August 14, 2016, Ethiopian authorities arrested Mr. **Tesfa Burayu**, Chairperson of the West Ethiopian Regional Executive Committee of the Human Rights Council (HRCO), at his home in Nekemte, Oromia. Mr. Burayu, who had been monitoring the Oromia protests aiming to resist peacefully over a plan to expand the boundaries of the city of Addis Ababa into the Oromia region, was denied access to his family and his lawyer, and released on August 17 without charge. Two days earlier, on August 12, Mr. **Abebe Wakene**, also a member of HRCO, was arrested and taken to the Diga district police station in Oromia. He was eventually released on a bail of 5,000 Birr on August 23, 2016. In addition, on August 13, Mr. **Tesfaye Takele**, human rights monitor in the Amhara region, was arrested in the North Wollo zone, before being released shortly after due to his very bad health condition. On July 8, Mr. **Bulti Tesema** - another active member of HRCO - was arrested in Nejo, Oromia. He had been working with HRCO to monitor and document the violent repression of the protests in Oromia. His whereabouts remained unknown for several weeks after his arrest, until it was revealed that he had been transferred to the capital's Kilinto prison, and charged with terrorist offences. To date, he remains detained and has not been given access to either his family or his lawyer.

In **Rwanda**, independent civil society organisations have become extremely weak as a result of years of State intimidation and infiltration. On May 28, 2016, Mr. **Epimack Kwokwo**, former Executive Secretary of the *Ligue des droits de la personne dans la région des Grands Lacs (LDGL)*, subsequently appointed to a position of programme manager within LGDL as part of a "mediation" that followed the takeover of the organisation by members closed to the Rwandan authorities, was summoned before the immigration office in Kigali and informed of his status of *persona non grata* in Rwanda and of his immediate deportation to the DRC without being able to warn his family or collect his personal belongings.

In **Sudan**, the Observatory denounces the continued judicial harassment against five human rights defenders working at the Centre for Training and Human Development in Sudan (TRACKs), namely Mr. **Al Hassan Kheiry**, a computer technician, Ms. **Arwa Elrabie**, the Administration Manager, Ms. **Imani-Leyla Raye**, a student volunteer, Mr. **Khalafalla Al-Afif Mukhtar**, the Director, and Mr. **Midhat A Hamdan**, a trainer, as well as against the Director of Zarqa Organisation for Rural Development (ZORD), Mr. **Mustafa Adam**, who had delivered training for TRACKs. The last three remain in arbitrary detention. All are being tried on trumped-up charges including "undermining the constitutional system", "waging war against the State", "espionage" and "belonging to a criminal and terrorist organisation". Their harassment exposes the very precarious situation in which the Sudanese civil society is left, when their work is more crucial than ever.

The Observatory also deplores the continued acts of harassment, both physical and judicial, against LGBTI rights defenders and their community in **Uganda**. On August 4, 2016, at 11:30 pm, the police raided at an event organised at the occasion of Ugandan LGBTI Pride celebrations in Kampala's Venom nightclub. Ms. **Clare Byarugaba**, Equality & Non-Discrimination Coordinator at Chapter Four Uganda, and two leaders of the Sexual Minorities Uganda (SMUG), Messrs. **Pepe Julian Onziema** and **Franck Mugisha**, were arrested together with other activists, and were questioned at the police station for three hours. They were all released without charges but reported that during their detention, they were slapped and pushed around by officers. The other 200 people attending the pride show were locked up in the building for two hours and humiliated. The police, who sexually assaulted several of them by touching parts of their body to "confirm their identity", particularly harassed Transgender women.

Besides, on May 22, 2016, four unknown assailants scaled the fence of the premises of the Human Rights Awareness and Promotion Forum (HRAPF), and suffocated the security guard to death. After breaking into the premises, the assailants ransacked the offices of HRAPF Executive Director, Mr. **Adrian Jjuuko**, and of the Deputy Executive Director, Mr. **Edward Mwebaza**, and took a number of documents and files, including copies of the memorandum of association, while leaving other valuable items such as laptops and other electronic material on the spot. While the Kampala Metropolitan Police Spokesperson subsequently announced that police investigators had been sent to the crime scene, no information could be obtained to date regarding the status of the investigations.

In recent months, civil society in **Egypt** has also faced an unprecedented wave of attacks by the authorities. Many NGO workers have been detained and ill-treated, charged with offences under the draconian counter-terrorism law, or subject to a judicial request to ban them from travel and freeze their assets. Scores of human rights organisations and defenders have 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. In this context, on September 17, 2016, the Cairo Criminal Court ordered the freezing of the assets of Messrs. **Gamal Eid**, Director of the Arabic Network for Human Rights Information (ANHRI), **Hossam Bahgat**, founder of the Egyptian Initiative for Personal Rights (EIPR), **Abdel Hafiz Tayel**, Executive Director of the Center for the Right to Education (CRE), **Moustafa El Hassan**, Director of the Hisham Mubarak Law Center (HMLC), and **Bahey Eldin Hassan**, Director of the Cairo Institute for Human Rights Studies (CIHRS), as well as those of the CRE, the CIHRS and the HMLC.

Alongside the judicial harassment of human rights defenders, authorities are now trying to pass a new NGO law, which would lead to the eradication of existing human rights groups and prevent the setting-up of new ones. A handful of the most worrying provisions of this bill include giving the Ministry of Social Solidarity authority to approve or reject NGOs' licensing, establishing a security/governmental committee called the "Coordinating Committee", which would include General Intelligence Services (GIS) and representatives of the Interior Ministry, to approve foreign funding of Egyptian NGOs, to give international NGOs licenses to work and to approve the opening by Egyptian NGOs of new branches nationally and abroad. The Observatory strongly condemns the ongoing attempts of Egyptian authorities to hinder and paralyse the work of civil society.

Last but not least, in **Tunisia**, on August 3 at around 1am, blogger **Lina Ben Mhenni**, who has been active since the 2011 revolution, including by documenting the protests and by reporting them online, has been arrested together with a member of the "Manich Msamab" movement, to which she is also part, while they were strolling through downtown Tunis. A police agent stopped them and required to search their bags. They were carrying posters and glue from the "Manich Msamah" campaign. Subsequently, they were arrested and taken

to Bab Bhar police station for allegedly putting up posters and tagged a wall, although the tag was already there and that they were not tagging or putting up posters at the time of their arrest. In addition, on September 19, 2016 Ms. Lina Ben Mhenni appeared before the Médenine Investigating Judge on charges of “insulting a police officer” as a defendant, although she had initiated the complaint against the official. The facts date back to August 2014, when Ms. Ben Mhenni was insulted and aggressed by security agents in Djerba's capital Houmet Souk under the pretext that her car was not rightly parked. Her parents and her bodyguard (Ms. Lina Ben Mhenni's name features on a list of persons at risk) were also aggressed in the course of that evening. As of October 2016, the case remained pending.

4. Impunity over killings and killing attempts targeting human rights defenders

Impunity for killings and killing attempts targeting human rights defenders is another worrying trend that maintains civil society in Africa in a climate of fear and encourages perpetrators to commit further acts of violence against human rights activists.

In **Kenya**, on, July 1, 2016, the bodies of human rights lawyer Mr. **Willie Kimani**, his client Mr. Josephat Mwenda and their taxi driver were recovered from the OI-Donyo Sabuk River in Machakos Country. They had been missing since June 23, 2016, at around 12 pm, as they were traveling home after filing a complaint against a police officer in a corruption case. The post-mortem report into their deaths showed that they were brutally beaten and tortured before being killed. On July 18, 2016, four officers, Messrs. Frederick Leliman, Leonard Mwangi, Stephen Chebulet and Ms. Sylvia Wanjiku, denied the charges when they appeared in front of High Court Judge Jessie Lessit, who remanded them in custody pending investigation. Their bail application is scheduled to be heard on October 31, 2016.

In **Lesotho**, on July 9, 2016, Mr. **Lloyd Mutungamiri**, a Zimbabwean journalist and Editor of the *Lesotho Times*, was shot four times by unknown gunmen upon arrival to his home at Ha Thamae, in Maseru. At the end of June, he had published an article about alleged human rights violations committed by Lieutenant General Tlali Kamoli, the current commander of the Lesotho Defence Force (LDF).

5. 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 all 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.

Banjul, October 2016

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