



Fédération internationale des ligues des droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,  
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation  
for Human Rights

Federación Internacional  
de los Derechos Humanos

الغدرالية الدولية لحقوق الإنسان

## Notes and recommendations to the Heads of State and Government for the 14th Summit of the African Union

Addis Ababa – January 2010

On the occasion of the 14th Ordinary session of the Summit of Heads of state and government of the African Union in Addis Ababa, the FIDH would like to present its analysis, its preoccupations and its recommendations on the main issues that will be addressed by heads of state and government: the issues of peace and security in Africa, the fight against impunity in Africa and, especially, the role of international justice on the continent.

### I – Political crisis and conflicts

During the 13th AU Summit in July 2009, heads of state decided to launch in January 2010 the year of Peace and security in Africa. This campaign is based on the "Tripoli Declaration on the elimination of conflicts in Africa and the promotion of sustainable peace". This declaration calls on the African civil society to continue playing an important role for the promotion of peace, security and stability as partners of governments and the AU. To this particular end, the FIDH calls out to heads of state and governments on the stakes of a busy electoral year in Africa and the potential or actual risks of political crisis or conflicts it entails.

#### 1 - 2010: An electoral year in Africa: the potential risks of political instability, resurgence or intensification of conflicts

The year 2010 will be marked with the organisation of various elections on the African continent. Presidential, parliamentary or local elections are, indeed, planned to be held in almost all sub-regions, with important risks of political instability, resurgence or intensification of conflicts. As we have witnessed, the will to rise or to maintain oneself in power, often disregarding constitutional obligations- as it has been the case recently in Niger, Guinea or Mauritania- or disregarding international human rights' law provisions - like in Kenya or in Zimbabwe- can have serious consequences on the political stability and the security of a state or a sub-region.

Election periods are often the scene of a greater restriction of fundamental freedoms and of unparalleled repression against political opponents or any voice of dissent, usually embodied by human rights defenders and journalists. Therefore, the FIDH calls on the international community to insist on the necessity of freedom of expression, complete conformity to a fair electoral process and to increase its vigilance on the potential risks of an escalation of violence during the upcoming polls, the stakes of these important dates being both multiple and complex: consolidation of political stability and national unity in **Côte d'Ivoire** and **Madagascar**, no repetition of the crimes perpetrated during previous elections in **Togo** and **Ethiopia**, consolidation of peace processes in **Burundi**, **Sudan**, **Central African Republic (CAR)** or **Chad**. The

international community must not remain impassive when facing human rights violations committed in the context of the various upcoming elections and must call for the establishment of all necessary conditions favorable to the organisation of free and transparent polls.

## **A – Potential crisis**

### **Côte d'Ivoire** ( Elections postponed to end of February/beginning of March)

- Since the 19th of September 2002, Côte d'Ivoire is living a "neither war nor peace" situation detrimental to the entire country and to the stability of the sub-region.
- The FIDH conducted a mission of investigation on the electoral process and the Human rights situation in Côte d'Ivoire in 2008. This mission has allowed to identify many obstacles to the electoral process: population census, absence of the state and of state services in the North of the country, activities of the militias in the West, deficiencies in the constitutions of official registry offices, etc...
- In February 2009, FIDH has met with President Blaise Compaoré, mediator of the Ivorian crisis, who has confirmed the reality of these obstacles while reaffirming his own involvement in the electoral process. He hoped this process would be completed in November 2009 with the holding of the presidential election.
- The delays in the publication of the provisional voters list and the technical and financial difficulties evoked by the Independent Electoral commission have, once again, led to the postponement of the election, to the end of February or beginning of March 2010;
- The challenges raised in the report of the FIDH are still on the agenda. The Ivorian President called for a stronger presence of the blue helmets for the forthcoming polls, making the issue of security a priority. Besides the calls for the completion of preparations for the presidential election, the UN secretary General has also expressed concerns about the unfinished aspects of the Ouagadougou political Agreement, especially the provisions relating to the reunification of the country, the disarmament of former combatants of the Forces Nouvelles, the reunification of the Ivorian defense and security forces and the effective redeployment of state administration throughout the territory;
- The recent opening of a judicial inquiry against the Independent Electoral Commission concerning alleged frauds is also significant as part of the difficulties faced by the electoral process.

**Requests/claims:** To put an end to the political crisis taking place in Côte d'Ivoire since 2002, contribute to the effective reunification of the country and prevent potential conflicts, the international community must:

- Maintain its demands for the holding of the presidential election (postponed six times since 2005) as soon as possible but in the right conditions so that the election can not be disputed by the parties;
- Support the mediation of president Blaise Compaoré

### **Togo (Presidential elections on the 28th of February 2010)**

- The presidential election is supposed to be held on the 28th of february 2010;
- The 2005 elections were flawed and characterized by the perpetration of violence that killed hundreds of people, mostly unarmed civilians;
- In the context of FIDH's support to the political process in Togo, our organization has actively supported the establishment of the Truth, Justice and Reconciliation Commission (TJRC), as well as projects of institutional reforms relating to good governance, the respect for life and individual freedoms, etc.. The FIDH and its member organization in Togo, LTDH, have been particularly active in the abolition of the death penalty in Togo;
- The FIDH has met in February 2009, President Blaise Compaoré who confirmed his availability to involve himself again in the process of political dialogue in Togo in order to reach a consensus on the electoral framework and to make sure the TJRC goes smoothly;

### **Requests/Claims:**

- Support the political process and the mediator, president Blaise Compaoré, so that consensual solutions be found on the electoral framework and other necessary institutional reforms for the establishment of the rule of law in Togo (reform of justice,etc...)
- Support the sending, by the Economic Community of West African States (ECOWAS), of civilian and military observers during the elections
- Politically and financially support the Truth, Justice and Reconciliation Commission to allow Togo to face its past, fight against impunity of the perpetrators of the most serious human rights violations and to speed

up the institutional reforms so as to prepare Togo to a different future.

### **Madagascar (Parliamentary election in March 2010, presidential election in October 2010)**

- The FIDH has condemned the coup in Madagascar, led by Mr. Andy Rajoelina, who is now president of the High Transitional Authority ;
- The provisions of the African Charter on Human and Peoples' Rights, the Constitutive Act of the African Union and the African Charter on Democracy, Elections and Governance, prohibit all actions to seize power through unconstitutional means;
- Following the bloody repression on an opposition demonstration on February 7, 2009, the FIDH has called for an investigation and for those responsible to be brought to justice;
- An International Contact Group (ICG) was formed to conduct a mediation between Andy Rajoelina, Marc Ravalomana, Albert Zafy and Didier Ratsiraka;
- These negotiations led to the Maputo Agreement of August, 9 2009 and the Addis Ababa Agreement of November 6, 2009, providing for the establishment of a transitional government in charge of the organisation of elections by the end of 2010; and for the 4 main political movements to share ministerial portfolios ;
- Since then, Andy Rajoelina has challenged the consensus Prime Minister Eugene MANGALAZA, has announced parliamentary elections on March 20 and is hoping for the quick vote of a new constitution that would establish a Fourth Republic.

### **Requests/Claims:**

- Continue the consultations and put pressure for the organisation of elections within a reasonable time and in conditions acceptable by all political movements, in accordance with international standards in this field;
- Ensure the free participation of all Malagasy political actors to the election and the participation of international partners as observers (AU, France, EU, UN, OIF) to ensure transparency and fairness of the polls;
- Obtain from local authorities the guarantee that they will act in full compliance with constitutional dispositions and fundamental freedoms;
- Support the mediation of the International Contact Group, and, particularly, the chief mediator, former Mozambican President Joachim Chissano as well as the Commissioner for Peace and Security of the African Union, Ramtane Lamamra;
- Call for the fight against impunity for crimes committed during the bloody repression on the demonstration of February 7, 2009;
- Raise these concerns and make all of these recommendations to the Malagasy authorities at the 7th session of the Universal Periodic Review that will be held in February 2010.

### **Ethiopia (Parliamentary elections in May 2010)**

- The federal and regional elections held in 2005 led to the contested victory of Meles Zenawi's Ethiopian People's Revolutionary Democratic Front (EPRDF) . The vote was followed by a violent crackdown against opposition members, human rights defenders and journalists. Killings, arbitrary detentions, secret detentions, torture, harassment and disappearances were perpetrated by security forces in Addis Ababa and other cities. Nearly 187 protesters were killed and more than 10 000 people were detained by security forces;
- Before the 2008 local elections, several instances of human rights violations have been listed in the country, including arrests and detentions without charges or judicial procedures against dissenting voices. The many acts of violence and intimidation that preceded the elections have led members of the United Ethiopian Democratic Forces (UEDF) and the Oromo Federalist Democratic Movement (OFDM) to withdraw and led to the landslide victory of the EPRDF;
- In view of the 2010 elections, the ruling party is trying, once again, to silence any opposition voice by various means;
- On January 6, 2009, the Ethiopian Parliament passed a new law on freedom of association, called the *Law on Charities and Societies*, which creates a highly restrictive environment for human rights' defenders

and seriously undermines their independence. The goal is to impose control and strict monitoring of civil society, particularly in the context of the forthcoming elections. The text extends the definition of foreign NGOs to all NGOs that receive more than 10% of their funding from abroad, and prevents them from conducting a large number of activities relating to human rights. The text also strengthens the ability of the Government in refusing the registration of associations, in dissolving them and in getting involved in their activities;

- In July 2009, the Ethiopian parliament adopted a drastic anti-terrorist piece of law providing for a very broad definition of what a terrorist act is. This law, which grants broad discretionary powers to security forces, is seen by opposition members and human rights organizations as a mean to harass and intimidate all dissenting voices, including journalists, ahead of the forthcoming elections;
- The election law, amended in 2007, limits the activities of human rights organizations in the electoral process. Organizations wishing to organize the observation of elections must now obtain a specific license from the Ethiopian National Board;
- In November 2009, opposition members declared that nearly 450 of their members had been detained to prevent them from standing for election.

#### **Requests/claims:**

- Call on the Ethiopian authorities to put an immediate end to the acts of harassment and intimidation against political opponents and human rights defenders, especially ahead of the forthcoming elections;
- Call on the Ethiopian authorities to ensure, in all circumstances, freedom of opinion and freedom of expression as well as the right to organize peaceful demonstrations;
- Call on the Ethiopian authorities to proceed to the immediate release of arbitrarily detained political opponents and human rights defenders;
- Call on the Ethiopian authorities to bring to justice those responsible for killings, torture and other serious violations of human rights;
- Call on the Ethiopian authorities to repeal the *Law on Charities and Societies*;
- Call on the African Commission on Human and Peoples' Rights to respond to the serious human rights violations perpetrated in this country.

### **B – The risks of resurgence or intensification of conflicts**

#### **Central African Republic (CAR) (Presidential and parliamentary elections in mars 2010)**

- Since the mid-1990s, the Central African Republic (CAR) is shaken by politico-military conflicts, including clashes between government forces and rebel groups. The continuing armed struggles for power are accompanied by gross violations of human rights and international humanitarian law, plunging the civilian population into total physical and economic insecurity;
- Since the second half of 2005, clashes between the Army and the Central African rebel groups based in the North are accompanied by summary executions of civilians, sexual violence, torture, systematic looting, forcing more than 100 000 people to move, out for fear for their lives;
- However, in accordance with the provisions of the peace agreements, the Central African National Assembly adopted on September 29, 2008 a general amnesty law, promulgated on October,13 by the President of the Republic. This amnesty law is directed to all protagonists of the conflict in CAR since the coup of General Bozize (2002-2003), but covers also crimes committed in 1999. Once again, the victims are disregarded by CAR authorities. According to these authorities, the law has been designed to allow the inclusive political dialogue held in December 2008 to take place;
- Ange-Félix Patassé, the former president and army chief, who was in power when serious crimes, including mass rapes, were committed against the civilian population in 2002/2003, is now back in Central African Republic (CAR) after 6 years of exile in Togo.

#### **Requests/claims:**

- Call on CAR authorities to punish and prosecute any member of the armed and security forces responsible for violations of human rights, whatever his rank may be;
- Call on the French authorities to shed light on the circumstances of the death of their national,

Master Goungaye Wanifyo, former president of LCDH;

- Support Human Rights NGOs.
- Call for in depth investigation, prosecution and condemnation of the serious crimes including mass rape spearheaded during Ange-Félix Patassé reign as president.

### **Sudan (Presidential and parliamentary elections on April, 11 2010)**

- On March 4, 2009, the International Criminal Court (ICC) has issued an arrest warrant against the Sudanese President Omar al-Beshir for war crimes and crimes against humanity committed in Darfur. This decision confirms the assumption that the entire state apparatus is implicated in the perpetration of crimes and that Sudan has not engaged in a genuine process of justice, consistently refusing to cooperate with the ICC;
- Instead, Sudan has not hesitated to carry out arbitrary arrests and torture against human rights defenders and others suspected to cooperate with the Court;
- On October 29, 2009, the report of the Panel of Experts on Darfur, headed by former South African President, Thabo Mbeki, has been submitted to the African Union Peace and Security Council . The experts recommend the initiation of legal proceedings against those responsible for human rights violations perpetrated in Darfur, the establishment of a hybrid court, the creation of a Truth and Reconciliation Commission and the strengthening of national justice ;
- The CPA (Comprehensive Peace Agreement) of 2005 provided for the holding of elections before the end of 2009. The criticisms expressed by the civil society concern, notably, the composition of the Independent Electoral Commission (whose President is also candidate for election) and the broad powers granted to this body;
- In view of the next elections, repression against political opponents and human rights defenders that are considered too critical of the government (arbitrary arrests, intimidation, restriction on freedom of expression, restriction on freedom of demonstration, etc) has increased;
- A law on the Southern self-determination referendum has been adopted. The referendum should normally take place in 2011.

### **Requests/claims:**

- Call on the Sudanese authorities to put an immediate end to harassment and intimidation against political opponents and human rights defenders, especially in view of the forthcoming elections;
- Call on the Sudanese authorities to ensure, in all circumstances, freedom of opinion and freedom of expression as well as the right to organize peaceful demonstrations;
- Support the recommendations of the African Union High Level Panel, including those calling for the prosecution of those responsible for the violation of human rights in Darfur;
- Cooperate fully with the International Criminal Court (ICC), including through the rapid adoption of a Memorandum of Understanding between the AU and the ICC.

**Burundi** (Elections of city councillors on May 21, 2010, Presidential election on June 28, 2010, Parliamentary elections on July 23, 2010, Senatorial elections on July 28, 2010, elections of hill councillors on September 7, 2010)

- In the wake of the Arusha Peace Agreement (2000), Burundi is trying to heal its wounds after 13 years of civil war. The Declaration signed between the government and the FLN on December 4, 2008 falls into this process with the demilitarization of the FLN movement;
- Insecurity is still profound - weapons remain in circulation. Crimes and political murders are committed with total impunity;
- Freedom of expression and freedom of association of political parties and human rights defenders are restricted by the authorities of the ruling party, CNDD-FDD;

- This situation could worsen considering the prospect of presidential elections on June 28, 2010. The Burundi enters a critical year for consolidating peace and the rule of law;
- Continued insecurity can be attributed, in general, to several factors including the existence of a large number of small arms, the conflicts over land and the limited opportunities for socio-economic reintegration of demobilized soldiers and ex-combatants, returnees, IDPs and other vulnerable groups;
- It was found that the "Imbonerakure", the members of the younger branch of the CNDD-FDD, the party in power, who participated in patrols at the community level, provided security of premises and accompanied officials of the Government and police during arrests, were acting as militias with the alleged consent of the authorities;
- League Iteka is concerned that criminals continue to commit crimes with total impunity. Some would act under the cover of state officials who have the duty to protect the population;
- On November 23, 2009, the Ministry of Domestic Affairs of Burundi issued the ordinance No. 530/1499 "laying aside the Ord. No. 530/514 of 26.05.2006 approving the creation of the non-profit organization called Forum for the strengthening of civil society "FORSC". Therefore, the FORSC is now considered an illegal organization. The Interior Ministry has justified this decision claiming that the FORSC was formed of associations whose approval was not his responsibility but that of the "Ministry of Civil Service, Labor, Security [...] and Social Justice ".

#### **Claims:**

- Call on the authorities of Burundi to put an immediate end to harassment and intimidation of political opponents and human rights defenders, especially in view of the forthcoming elections;
- Call on the Burundi authorities to ensure, in all circumstances, the respect of the freedom of opinion and freedom of expression, as well as the right to organize peaceful demonstrations;
- Call on the Burundi authorities to proceed with the immediate release of political opponents and human rights defenders that are arbitrarily detained;
- Call on the Burundi authorities to take all necessary measures, in compliance with international standards, to ensure the safety of the various forthcoming elections;
- Support the establishment of the Truth and Reconciliation Commission;

#### **Chad (parliamentary elections in November 2010)**

- The politico-military crises following one another in Chad, and whose first victims are civilian populations, are the result, among others, of the lack of democratic space that has been plaguing the country for many years.
- Chadian civil society, meeting within the Monitoring Committee to call for Peace and National Reconciliation in Chad called, as off 2002, for the establishment of an inclusive political dialogue among all political actors in the country with the aim of 'initiating the necessary constitutional reforms including the reform of the electoral code";
- The adoption in 2005, following a referendum marred with irregularities, of a constitutional amendment allowing Idriss Deby to aspire to a third presidential term, has largely contributed to the discontent of the opposition parties and jeopardised the holding of a truly free and transparent ballot in May 2006;
- The disputed re-election of Déby did not give the slightest hint of a possible exit to the political crisis. On August 13, 2007, the signature of a comprehensive political agreement between Chadian political parties has allowed people to believe to the resumption of a meaningful dialogue, but the arrests of political opponents that occurred during fighting in February 2008 have largely undermined the terms of this Agreement;
- Nearly two years after the attempted coup of February 2008, the Chadian authorities have not given answers about the fate of the opponent Ibni Mahamat Saleh, who was kidnapped by armed forces on February 3, 2008. They still have not started the investigation and prosecution of state officials responsible for this disappearance and those who were responsible for serious human rights violations during the attempted coup;
- Impunity continues to prevail for the perpetrators of human rights violations despite the conclusions

of the Commission of Inquiry into the events of February 2008;

- The attitude of the Chadian authorities largely explains the blocking of political talks between the various political and politico-military actors and encourages the risk of new attacks against the regime of Idriss Deby Itno with their share of human rights and international humanitarian law violations;

#### **Claims:**

- Call on Chadian authorities to continue negotiations with all political parties for the purpose of ensuring the holding of free, honest and transparent polls for the parliamentary elections of November 2010 and the presidential election of 2011;
- Call on Chadian authorities to continue negotiations with all armed opposition so as to reach a comprehensive peace agreement based on the political agreement of August 13, 2007;
- Call on Chadian authorities to take all necessary measures for the establishment of the truth about certain matters, especially on the emblematic case of disappearance of the opposition leader Ibni Oumar Mahamat Saleh;
- Suggest to the UN Secretary General to send , jointly with the African Union , a representative to monitor and coordinate the inclusive political dialogue;
- Support continuing investigations and fair trial for those responsible of human rights violations .

### **C- Current political crisis in Africa**

#### **Guinea-Conakry**

- On December 23, 2008, only a few hours after the announcement of President Conté's death, after 24 years in office, soldiers of the National Council for Democracy and Development (CNDD) took power disregarding the constitutional provisions, and appointed the captain Moussa Dadis Camara as head of state.
- On September 28, 2009, a massacre was orchestrated in Conakry at the « September 28 Stadium » when security forces fired, with no hesitation, real ammunition at participants of a peaceful demonstration. The demonstrators wanted to legitimately express their opposition to the candidacy of Moussa Dadis Camara to the next presidential election. The bloody repression led to the deaths of over a hundred people and left more than a thousand injured. Once again, women have been targeted, as the repression also resulted in the perpetration of numerous rapes.
- On October 28, 2009, the UN Secretary General, Mr. Ban Ki-Moon decided to establish an International Commission of Inquiry in charge of establishing the facts and circumstances of the events of September 28, 2009 in Guinea and their immediate consequences to determine, if possible, the nature of the crimes committed, establish responsibilities, identify the authors as well as to make recommendations.
- During a mission of investigation undertaken from November 29 to December 6, 2009, FIDH and its member organization in Guinea, the Guinean Organization for Human Rights (OGDH) collected extensive testimony and evidence on the massive and serious violations of human rights perpetrated against civilians in Guinea, on September 28, 2009 and during the subsequent weeks. The information collected provides a reasonable basis to believe that crimes within the jurisdiction of the International Criminal Court (ICC) have been committed by elements of the security forces, including rape, summary executions and forced disappearances.
- In its report, the International Commission of Inquiry has also concluded "that Guinea had violated several provisions of international conventions it has ratified." The Commission said it was "reasonable to conclude that the crimes of September 28, 2009 and subsequent days may be characterized as crimes against humanity";
- On December 3, 2009, Dadis Camara was gunfire attacked. The acting president is now Sékouba Konate. On January 15, 2010, the Ouagadougou Declaration was signed between Dadis Camara, Sékouba Konate and Blaise Compaoré, the mediator. This declaration confirms Sékouba Konate in his role as acting president and plans to hold a presidential election in the next six months. On January 18, 2010, Jean-Marie Dore, spokesman for the Forces Vives was appointed as Prime Minister of the Transitional Government.

#### **Claims:**

- Call on the Guinean authorities to take all necessary measures in compliance with international standards to fight against impunity of the perpetrators of the massacres of September 28, 2009 regardless of

their position or level of responsibility. This requirement of justice is an essential condition to put an end to the crisis and to establish a legitimate power and lasting peace in Guinea and in the sub-region;

- Supporting the recommendations of the International Commission of Inquiry including those calling for referral to the International Criminal Court;
- Accompany Guinea in the reform of the army and the judiciary sectors;
- Remind the Guinean government's obligations to protect victims and witnesses;
- Support the transitional government in organizing free, transparent and independent elections under the control of regional and international observers and evaluate the need for deployment of an African mission of peace enforcement under UN mandate, responsible for ensuring a smooth and safe process;
- Call for the immediate dismantling of militias and the establishment of a disarmament, demobilization and reintegration process for militias;
- Raise these concerns and make all of these recommendations to the Guinean authorities at the 8th session of the Universal Periodic Review to be held in May 2010.
- Support the thorough investigation and prosecution of those found guilty of the alleged crimes against humanity and especially the september 28<sup>th</sup> massacre and sexual violence .

## **Niger**

- In recent months, the democratic political and institutional situation in Niger has seriously declined. According to the electoral timetable, a presidential election was to be held organised in December 2009.
- President Mamadou Tandja, who was elected to a first presidential term of 5 years in 1999 and to a second term in 2004, could not stand for election in accordance with Article 36 of the Constitution of July 1999;
- While the population of Niger and all the observers of the political scene nourished the hope of a democratic changeover, the President of the Republic had decided otherwise. He inspired the movement Tazarché (continuity) to legitimize his desire to remain in power and initiated and implemented a project to extend its mandate, in violation of constitutional provisions that limit the number of presidential terms to two (2), without any possibility of review;
- Tandja has used every means, including unconstitutional means, to allow him to hold a referendum: dissolution of the National Assembly, dissolution of the Constitutional Court, granting of full powers, ect.
- On June 29 , Mr. Marou Amadou, president of the United Front for the protection of Democracy (FUSAD), of the Independent Committee on Reflection and Orientation for the protection of Democracy (CROISADE) and a representative of civil society to the Independent National Electoral Commission (CENI) was arrested by the police, accused of "incitement to disobedience of defense and security forces" ,of "plotting against state authority" and of " demoralization of the army ". He had called, during a television program, on the Nigerian army to refuse to obey to any illegal order under section 13 of the Constitution.
- The Nigerian Association for the Defense of Human Rights (ANDDH) and FIDH have demanded the authorities in power, through several press releases and declarations , to comply with the provisions of the Constitution of August 4, 1999 according to which the President of the Republic is elected for a term of five years renewable once. Much of the Nigerian civil society and the international community reiterated this call. However, it has not been acted on.
- Within this context, on August 4, 2009, the constitutional referendum which marks the advent of the Sixth Republic took place, without the participation of the opposition (who called for a boycott), . This referendum established a presidential system with no limitation on the number of terms and, above all, provided an extension of three (3) years for President Mamadou Tandja's term.
- The ANDDH, with its experience of the electoral system, has decided to observe the conditions under which the August 4 referendum and the parliamentary elections of October 20 were organised by sending observers to the 8 administrative regions of the country. Its report highlighted many irregularities that occurred during these two elections

## **Claims:**

- Support ECOWAS in its exercise of negotiation to establish a consensual transition process, including:
- Conducting negotiations between the Nigerian authorities and the opposition parties to establish a transition process leading to consensus, as quickly as possible, on the organization of transparent presidential and parliamentary elections
- Considering individual sanctions in case of obstacles to negotiations

- Remove the current sanctions against Niger only in the case of the restoration of the constitutional order.
- Return to constitutional order, including recommending the Nigerian authorities to :
- Respect strictly the provisions of international and regional treaties for the protection of human rights, particularly those relating to freedom of assembly, expression and manifestation;
- Ratify the African Charter on Democracy, Elections and Governance;
- Respect the provisions of the UN Declaration on the Protection of Defenders adopted by the UN General Assembly in 1998 by ceasing all threats, harassment, arbitrary arrests and detentions of human rights defenders, and, especially to stop judicial harassment against Mr. Marou Amadou unfairly arrested, detained and prosecuted;
- Suspend the Constitution of the Sixth Republic established by an anti constitutional referendum, at the basis of today's institutional, political and social crisis;
- Negotiate with opposition parties to establish a transition process leading to a consensus, as quickly as possible, on the organization of transparent presidential and parliamentary elections
- Dissolve the electoral code review committee;
- Cancel all non-consensus changes operated, in the current electoral code, from 2008 to 2009;

### **Democratic republic of Congo (DRC)**

- Despite the integration program, some elements of the National Congress for People's Defense (CNDP) said to be integrated continue to exercise control over some territories they administered before, without supervision of the army ;
- Despite the offensives against armed groups, they retain a significant harming capacity and continue to commit serious human rights violations against the civilian population. Ex: Resurgence of FDLR attacks in September;
- During military operations (Umoja Wetu and Kimia II, Rudia II, Iron Stone), some elements of the FARDC, including child soldiers, have committed serious crimes against the civilian population, summary executions, rape, looting. These abuses were highlighted in the 28th and 29th reports of the UN Secretary General (June and September 2009) and the Group of Experts (May 2009);
- In view of the serious violations of human rights against the civilian population, including the massive perpetration of sexual crimes, there are too few arrests and trials ;
- The amnesty provided by the agreements of March 23, 2009 and granted to militias of the Eastern part of the country (North and South Kivu) have encouraged an increased sense of impunity. The amnesty covers acts of war committed since 2003, but not war crimes and does not apply to crimes committed by foreign rebel groups;
- The presence of Bosco Ntaganda, who has been targeted by an arrest warrant of the International Criminal Court (ICC), amongst the FARDC is seen as a denial of justice and as a lack of involvement of the Congolese authorities in the fight against impunity. His joint actions with MONUC in the offensive against the FDLR do not serve the image of the United Nations;
- Local elections, that have been postponed several times and should complete the election cycle started in 2006, should be held in 2010. If they occur, it will be a test for the Congolese authorities who are supposed to hold general elections in 2011;
- The UN group of experts on DRC has established that the FDLR had an extensive international network in the diaspora who participates in the daily management of the movement, the coordination of military operations and arms trafficking, and the management of financial activities.

### **Claims/requests:**

- Call on the Congolese authorities to take all necessary measures in compliance with international human rights law, to end impunity for the perpetrators of serious human rights violations;
- Call on the Congolese authorities to take all necessary measures in compliance with international human rights law, to guarantee the respect for international human rights law and international humanitarian law by armed forces officers;
- Engaging the Congolese authorities into an effective reform of the army;
- Support the provision by the MONUC of a logistical support for the organization of local elections, comprising the steps that need to be undertaken by the Government of the DRC. This support should not

diminish the action of MONUC for strengthening the rule of law, including contributing to the reform of justice.

- Call on the Congolese authorities to take all necessary measures aimed at organizing and holding elections. These essential measures include the development of a timetable for elections, an electoral law and the completion of the census of population on electoral lists;
- Communicate all necessary information to the UN Panel of Experts for DRC concerning the FDLR representatives living abroad and support the efforts made to dismantle the network of people financing the war.
- Calls on the Congolese authorities to investigate the claims on the UN report and prosecute the grave crimes against humanity, and especially summary execution and sexual violence in particular rape of women and children.
- Call on the Congolese authority to comply with the ICC warrant of arrest for Bosco Ntaganda to ensure justice and rule of law prevail in attempt to fight impunity.

### **The protection of human rights defenders'**

- The FIDH brings together 155 human rights organisations worldwide, including nearly 50 in Africa.
- It works to support the daily activity of women and men struggling for the respect of human rights in their country.
- This activity is increasingly hazardous (assassination, death threats, arrests and arbitrary detentions, unfair trials), especially in countries in situation of conflict or experiencing major political crises like the Democratic Republic of Congo, Central African Republic, Sudan, Zimbabwe, Somalia. The defenders are seen as traitors to the nation and as supporters of the political opposition or various armed groups. In this context, the reporting of serious violations of human rights, as well as the fight against impunity for these crimes, expose the defenders to great danger.
- The situation is extremely difficult in countries with authoritarian and / or "illegitimate" regimes, like Cameroon, Mauritania, Ethiopia, Djibouti, etc.. The defenders are seen as supporting the opposition and face very restrictive legislation which violates fundamental freedoms. Moreover, too often, national courts lack independence preventing any reaction against the oppression of national authorities.

### **Claims:**

- Recognize, in the Declaration, the important roles of human rights defenders in the prevention and resolution of conflicts and their substantial contribution to peace and security in Africa.
- Be especially attentive to the situation of human rights defenders in Africa. Their protection must be a guiding thread of all bilateral and multilateral discussions.
- condemn/forbid the systematic and arbitrary harassment, detention, arrest and torture or prosecution of human rights defenders.
- Ensure due process of the court and respect of the rule of law in cases of alleged criminal or civil offenses by human rights defenders.

## **II – International justice : Victims are supporting the action of international justice. Why not the African Union?**

Several issues relating to international justice will be on the agenda of the 14<sup>th</sup> Summit of the African Union that will be held from January, 25<sup>th</sup> to February, 2<sup>nd</sup> 2010 in Addis Ababa, Ethiopia.

Affirming that the prosecution of international crimes defined and punished by international conventions protecting human rights falls within national courts' jurisdiction, but convinced that in the absence of willingness or ability of these national institutions to fight against impunity, extra-national and international justice is necessary for the respect of the rights of the victims, and represents the basis for long-lasting conflict resolution and the consolidation of national reconciliation processes;

Recalling the principles mentioned in article 4 of the Constitutive Act of the African Union calling on State

Parties to respect democratic principles, human rights, rule of law and good governance; the resolutions of the African Commission on Human and Peoples' Rights calling for the ratification of the International Criminal Court Statute; the decisions made by heads of state and government of the AU calling for the fight against immunity for the most serious crimes;

Recalling that various African states are about to, or have already harmonized, their domestic law with their international obligations by defining international crimes in their criminal code.

Recalling that African states are amongst the most numerous to have ratified the Rome Statute.

### **FIDH recommends that the African Union, during its Summit in Addis Ababa:**

#### **Regarding the International Criminal Court (ICC):**

- Takes into account that the ICC only intervenes when national jurisdictions are unwilling or unable to fight against the impunity for perpetrators of international crimes;
- Affirms that the action of the ICC is a response to the need for justice for victims of the most serious crimes, especially African victims of conflicts and political crisis;
- Signs the Cooperation Agreement with the ICC;
- Reaffirms the independence of the ICC;
- Abstains from requesting the use of article 16 of the Rome Statute by the UN Security Council to suspend the proceedings before the Court for a one-year period;
- Requests that all concerned states cooperate with the ICC, including by transferring the persons under a warrant of arrest to The Hague;
- Supports and facilitate the implementation and the work of the ICC's Liaison Office to the AU;
- Calls on Member States to adopt an adaptation law of the Rome Statute that defines the most serious international crimes within their domestic law, allowing national courts to fight against impunity and that includes provisions for the concerned states to cooperate fully with the ICC;
- Calls on Member States that are not parties yet to ratify or accede the Rome Statute;
- Calls on the implementation of the Mbeki report;
- Recommends that the ICC better communicate on its action;
- Calls on the ICC to respond to its universality principle;
- Calls on the Security Council of the UN to refer the situation of Guinea to the ICC, according to the recommendations of the UN International Inquiry Commission's report on the massacres perpetrated on September, 28<sup>th</sup> 2009 and submitted to the UN Secretary General on December, 17<sup>th</sup> 2009;
- Commends the initiative of the mediator Kofi Annan and the Prosecutor of the ICC, supported by civil society organizations, to fight against impunity for the most serious crimes committed in Kenya during post-electoral violence in 2007/2008;
- Calls on concerned Member States to take all necessary measures to end threats and intimidation against all victims, witnesses and members of the civil society cooperating with the ICC;

#### **Regarding the Review Conference of the Rome Statute that will be held in Kampala in May 2010**

- Calls on Member States parties to the Rome Statute to contribute actively to the preparations of the Review Conference, including discussions about the definition of the crime of aggression and stocktaking processes
- Abstains from proposing amendment and other propositions that could undermine the entire Rome Statute or the independence of the ICC
- Urges the ICC to adopt a communication strategy around the Review Conference, and helps in implementing this strategy in order to communicate about the scope and importance of this event, given that it is held on the African continent.

#### **Regarding the Principle of Universal Jurisdiction**

Considering the Commission's Progress Report on the implementation of Decision (Assembly/AU/Dec.199(XI), adopted during the Sharm El-Cheikh (Egypt) Conference in July 2008 and decision (Assembly.AU/Dec.213 (XII) adopted in February 2009 on the abuse of the Principle of Universal Jurisdiction

Considering the report of the AU-EU Technical ad hoc Expert Group on the principle of Universal Jurisdiction

- Recalls that universal jurisdiction is based on international law and international human rights law.
- Calls on Member States to adopt a domestic legislative framework giving their courts jurisdiction to

try international crimes and to reform and strengthen their national judicial systems so as to give them full independence.

- Rejects any terminology relating to « misuse » of the principle of universal jurisdiction ; in the case of an unfounded complaint based on this principle, it will be rejected by any independent justice
- Requests Member States to publicize the information sent to the UN Secretary General on their observations regarding the principle of universal or extra-territorial jurisdiction for international crimes and its implementation, in the context of the UN Secretary General's report (A/RES/64/117).

### **Regarding the case against Hissène Habré**

Considering the decision of July, 2<sup>nd</sup> 2006 ,mandating the AU to try Hissène Habré in the name of Africa. Taking into account the constitutional and legislative reforms undertaken by Senegal giving jurisdiction to its national courts to try international crimes.

Considering the voluntary contributions made by the European Union, the African Union and others like France and the United States to organize the trial in Senegal.

Considering the Commission 's Activity Report on the implementation of the Decision Assembly/AU/Dec.240 (XII) adopted in February 2009 in Addis Ababa (Ethiopia) by the Conference on the case against Hissène Habré

- Calls on Senegal to take all necessary measures to start the trial against Hissène Habré as soon as possible.
- Calls on the EU and other potential voluntary contributors to support financially the organization of the trial
- Brings its own financial contribution to the organization of the trial

### **Regarding the jurisdiction of the African Court on Human and Peoples' Rights**

Considering the Decision Assembly/Dec. 213 (XII) adopted in February 2009 and giving responsibility to the Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, to examine the implications of giving jurisdiction to the Court to try cases of serious international crimes like genocide, crimes against humanity and war crimes, which would complement the action of national courts and systems in place to fight against impunity.

- Considers that granting such powers to the African Court is not viable given the institutional and financial implications
- Considers that granting such powers to the African Court will only add, and not replace, another supranational judicial mechanism that complements national courts in their fight against impunity.
- Calls on Member States to ratify the Protocol to the African Charter establishing the African Court on Human, and Peoples' Rights by making a declaration under article 34.6 allowing individuals and NGOs to refer directly to the Court.
- Calls on Member States to ratify the Statute of the African Court of Justice and Human Rights.