

International Federation for Human Rights (FIDH)

Position paper

22nd Summit of the African Union: The urgency to Ensure Protection, Security and Justice to African Populations

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As the populations of the Central African Republic and South Sudan witness the commission of abhorrent atrocities, as those in Mali and Libya experience persistent insecurity and as those in Egypt face increasing restrictions upon their fundamental freedoms, FIDH calls upon the African Union, on the opening of its 22nd Summit in Addis Ababa, to work to ensure protection, security and justice for African populations.

"The African Union must take stock of the challenges posed by the perpetration of serious and massive human rights violations on the continent. The AU must provide a strong and coherent response to combat the rising number of conflicts that degenerate into ethnic or religious war, against the proliferation of terrorism, and against state collapse" declared **Karim Lahidji**, FIDH President. *"Such a response must include the deployment of robust peacekeeping forces, the documentation of violations, the identification and bringing to justice of those responsible, as well as supporting democratic political processes and taking concrete measures to strengthen the rule of law"* he added.

In the **Central African Republic (CAR)**, civilians continue to suffer serious abuses throughout the country against a backdrop of political instrumentalisation leading to religious clashes. In the face of this spiraling crisis FIDH calls for the urgent deployment of a UN peacekeeping operation, which presents the only viable means of deploying the human, logistical and budgetary resources required to adequately support the African Union mission in the CAR and guarantee the safety of the civilian population throughout the territory. According to **Mathias Morouba**, President of the Central African Observatory for Human Rights (OCDH), who is currently conducting an advocacy mission to the African Union together with FIDH, *"the worst is at work in the CAR and we fear that the situation will continue to deteriorate if the international community does not intervene accordingly. The chaos we face requires a peacekeeping operation able to ensure our protection and to get our country back on the track of political stability and security"*.

In **South Sudan**, violent clashes that erupted last December between two sides of the political power, within one month took on an ethnic character, led to the killing of thousands of people and forced nearly 400,000 others into internal displacement. FIDH had already alerted the international community to the danger of inter-ethnic violence in South Sudan and had called for the strengthening of the legal and democratic institutional human rights framework in the country. Today FIDH reiterates this call. To prevent further deadly clashes and to strengthen the rule of law in South Sudan, FIDH calls upon the AU to ensure the deployment, without further delay, of an Independent Commission of Inquiry mandated to shed light on the circumstances of the violence, to identify those responsible so that they can be brought before competent courts and to identify political and democratic solutions aimed at promoting sustainable peace in the country.

Despite the restoration of constitutional order in **Mali**, the security situation, particularly in the north of the country, continues to raise concern. Persistent terrorist attacks and banditry, against a backdrop of stalled peace talks between the Malian authorities and armed groups, requires an urgent strengthening of AU action in this country. The AU must ensure that the parties comply with their previous commitments to secure the return of sustainable peace and security in this region.

In **Libya**, the security situation has deteriorated considerably in recent months with violence being particularly marked in Benghazi and Tripoli. The government is unable to regain control of armed militias and a genuine process of transitional justice, providing for mediation and disarmament phases, is yet to be implemented. The AU should help accelerate the establishment of a national consultation process on issues related to security and governance and ensure that independent mechanisms are able to document human

rights violations and establish responsibilities.

The AU has also a role to play in ensuring respect for human rights and fundamental freedoms, particularly in states experiencing political instability. In **Egypt**, FIDH is concerned by the fact that the implementation of most of the rights and freedoms guaranteed by the Constitution, which has just been approved by referendum, are subject to the adoption of implementing law, whilst Egypt recently adopted restrictive laws. Similarly, serious concerns remain about respect for the freedoms of opinion, expression and association, in a context where several human rights defenders are still arbitrarily detained by the authorities. FIDH calls upon the AU to ensure that effective and independent mechanisms mandated to secure the implementation of constitutional provisions concerning fundamental rights and freedoms are put in place, that restrictive laws are repealed and that human rights defenders are released.

Amina Bouayach, FIDH Secretary General, who is also present in Addis Ababa states: "*In all these situations of conflict and crisis, lack of a strong legal and institutional framework for the protection of human rights, rampant impunity, the exclusion of certain communities and the breaking of political dialogue have all been ingredients for the worst situations. The African Union must act out its responsibility to stop the violence and insecurity and to fight against the instability installed in many parts of our continent.*"

As the African Union Peace and Security Council meets on 29 January 2014, enabling Heads of State and Government to discuss the prevailing situations in the CAR, South Sudan and Egypt, FIDH calls upon the PSC to make firm commitments to these three countries and to consider the recommendations of our organisation. FIDH also submits to the Heads of State and Government the following recommendations.

Concerning the situation in Central African Republic

FIDH is deeply concerned by the chaos prevailing in the Central African Republic (CAR) despite the reinforcement of MISCA troops and the intervention of the French army, as approved in UN Security Council resolution 2127 (5 December 2013).

Since the outbreak of the military-political crisis on 10 December 2012 and the coup perpetrated on 24 March 2013 by the Seleka rebels, Central African civilians have been suffering the worst crimes imaginable, including summary and extra-judicial execution, rape and other forms of sexual violence, enforced disappearance, the conscription of child soldiers, looting, destruction of property, and arbitrary arrest and detention. There are now over a thousand people dead, hundreds injured and more than a million internally displaced persons. A number of mass graves, gathering hundreds of victims, have also been found in several parts of the country.

Since the attack led by the Anti-Balaka against elements of the Seleka on 5 December 2013 in Bangui, inter-community violence in the capital has resulted in 752 deaths and more than 300 injured. Throughout the country there have been more than a thousand deaths and hundreds injured, raped, and houses set on fire, resulting in more than a million displaced persons in the CAR to date.

UNICEF has announced that 6,000 child soldiers are fighting in the ranks of the various armed groups. The disarmament of ex-Seleka rebels and the rise of anti-Balaka militias have changed the balance of power and tens of thousands of Muslims are leaving Bangui and several other regions of CAR to seek refuge in the northern regions of the country or in Chad. As columns of refugees protected by Chadian soldiers cross the country, attacks against civilians by armed groups from all sides continue in many areas, including more recently around Bouar, Boali, Sibut, and Bossembélé. These religious clashes between elements of the anti-Seleka and anti-Balaka may, if not halted urgently, claim more victims among the civilian population, generating a deep fracture in the CAR's society and undermining any prospect of return to lasting peace and reconciliation in this country.

Such a situation requires the urgent deployment of additional international troops to the CAR. As FIDH calls for the urgent strengthening of MISCA troops, for several months now our organisation has insisted on the importance of the early establishment of a UN peacekeeping operation in the CAR. Only such a mission can deploy the human, logistical and budgetary resources required to adequately support the African Union mission in the CAR and guarantee the safety of the civilian population throughout the territory. Aside from this security aspect, the establishment of a United Nations peace-keeping operation would constitute a holistic approach to responding to the crisis by encompassing the provision of necessary support to transitional institutions and human rights protection, particularly in combatting impunity for the most serious crimes.

FIDH calls upon the AU and the ECCAS to request the transformation of MISCA into a UN peacekeeping mission, whilst calling upon members of the UN Security Council to examine the report of the Secretary-General on the modalities of such a mission to ensure its deployment without further delay. FIDH calls upon the international community to mobilize massive support for the CAR, particularly at the donors meeting scheduled for 1 February 2014 in Addis Ababa. The need for such support is particularly acute given that the UN call for donations to fund humanitarian needs in the CAR has not received sufficient responses.

The United Nations Security Council has adopted resolution 2127 formalizing financial and logistical support to MISCA and the strengthening its mandate. Nevertheless, if the above elements remain urgently needed, such measures will be insufficient to stem the insecurity in the CAR. MISCA lacks both the capacity and the expertise to manage a situation characterized by the mass commission of international crimes and where inter-community violence is spiraling. In particular, such a situation requires a comprehensive UN approach to address the challenges posed by political transition, human rights protection and consolidation of the rule of law.

Finally, FIDH calls upon Central African actors and the international community, to promote a political

process of national dialogue. Such national dialogue, led by the transitional authorities, must aim at preparing for elections and building a political consensus for a unitary, republican CAR State that is respectful of all its citizens, irrespective of origin, religion or political belief. With an exceptional effort to prosecute the perpetrators of international crimes, peace in the CAR is possible. However, such advancement cannot be achieved without the involvement of Central Africans themselves, nor without the support of a large part of the international community, especially that in Africa.

Recommendations

FIDH recommends that the African Union:

On the restoration of peace and security in the CAR

- Support the transformation of MISCA into a UN peace-keeping operation in the shortest possible time, to ensure the effective protection of civilians, the restoration of national institutions and State authority, security and public order throughout the territory, as well as to ensure the effective cantonment and disarmament of armed groups and a process of security sector reform;
- Pending the transformation of MISCA into a UN peacekeeping operation, FIDH calls upon the AU to take all necessary steps to ensure that it has the material, technical and financial resources to fulfill its mandate under Resolution 2127 of the UN Security Council;
- Support the process of political transition and inclusive national dialogue and ensure the organisation of free, transparent and credible elections as soon as possible;

Regarding the documentation of human rights violations, the identification of responsibilities and the fight against impunity

- Support the establishment of an international commission of inquiry that is mandated to shed light on the human rights violations perpetrated since December 2012, to identify perpetrators and those may have been responsible for war crimes, crimes against humanity and/or genocide and to ensure their prosecution before national, mixed and/or international courts;
- Call upon the Office of the Prosecutor of the International Criminal Court to conduct a mission to the CAR as soon as possible to assess its jurisdiction over crimes committed since 10 December 2012;
- Ensure the census and identification of displaced persons with a view to their return, whilst guaranteeing the protection of their human rights, including their safety;
- Provide MISCA with a team of independent human rights observers, that include representatives from human rights organisations, mandated to document the violations committed across the country, and whose conclusions and recommendations should be made public;
- Adopt sanctions measures against individuals responsible for serious human rights violations, including by freezing their financial assets;
- Establish mechanisms to provide humanitarian assistance to populations in distress;
- Support the development of a human rights roadmap that includes security sector reform, the fight against impunity, transitional justice and national reconciliation, the protection of human rights defenders, the protection of women's rights, ratification of international conventions and their integration into national law (including in particular the African Charter on Democracy, Elections and Governance, the Protocol to the African Charter on the Rights of Women in Africa and a declaration under Article 34.6 of the Protocol to the African Charter on the African Court on Human and Peoples' Rights) ;
- Cooperate with human rights organisations in securing stabilisation and political transition in the CAR.

Concerning the situation in South Sudan

Violent clashes that erupted in South Sudan on 15 and 16 December 2013, within one month saw the death of thousands of people, forcing nearly 400,000 into internal displacement. The violence perpetrated in several parts of the country (particularly in Juba and Bor) took on an ethnic character as the Dinka community (of President Salva Kiir) was pitched against the Nuer (from the ethnic group of former Vice President, ousted Riek Machar). This politico-ethnic violence has not spared civilians and been characterized by massive and targeted killings, enforced disappearances, sexual violence, looting and destruction of property, recruitment of child-soldiers, and many other abuses that amount to international crimes.

Given the scale and nature of the violations, the AU Peace and Security Council (PSC) has called for the urgent deployment, in consultation with the African Commission on Human and Peoples' Rights (ACHPR), of a Commission of Inquiry to shed light on the circumstances and characteristics of these acts and to make recommendations on the best ways to ensure accountability and to promote reconciliation and appeasement between all South Sudanese communities. It has called for this Commission to submit a report within a maximum period of three months (PSC/AHG/COMM.1 (CDXI), 30 December 2013). FIDH welcomes the PSC's initiative and calls for the rapid deployment of this Commission of Inquiry, which must benefit from the expertise and technical and material means necessary to investigate such events effectively and independently. This Commission must be able to identify responsibilities, suggest measures to promote reconciliation and also measures to prosecute those responsible for international crimes before competent courts. Abuses of this magnitude must not go unpunished.

Recommendations

FIDH recommends that the African Union:

- Ensure the deployment, in the shortest possible time, of the Independent Commission of Inquiry recommended by the Peace and Security Council;
- Ensure that this Commission of Inquiry has the expertise and technical and material means needed to investigate such violations effectively and independently, and that it has a strong mandate to identify responsibilities, suggest measures to promote national reconciliation, suggest measures to prosecute those responsible for international crimes before competent courts and to ensure that victims get justice and reparation;
- Ensure that the process of political negotiation does not include immunity clauses for those responsible for international crimes;
- Support the process of strengthening of the rule of law in South Sudan by supporting the development of a human rights roadmap that includes measures to strengthen the administration of justice and the legal human rights framework, and secure security sector reform;
- Cooperate with human rights organisations in the process of stabilisation and transition in South Sudan;
- Establish mechanisms for humanitarian assistance to populations in distress;
- Ensure the census and identification of displaced persons with a view to their return whilst guaranteeing the protection of their human rights, including their safety.

Concerning the situation in Sudan

Demonstrations erupted throughout Sudan following President Omar Al-Bashir's announcement on 22 September to cut fuel subsidies, resulting in a sharp increase in the price of petrol and gas. In protest, thousands of demonstrators took to the streets of cities throughout the country including Wad Madani, Khartoum, Omdurman, Port Sudan, Atbara, Gedarif, Nyala, Kosti, and Sinnar. At least 170 people were killed by the Central Reserve Forces (CRF) and the National Intelligence and Security Services (NISS) and at least 800 people arrested. Among those detained were activists, members of political opposition parties and journalists. The authorities also suspended and censored several newspapers and other media. Despite the magnitude and severity of the repression, the African Union did not publicly condemn the violence nor call for an independent investigation mission to shed light on the circumstances surrounding these events or identify responsibilities.

Recommendations

FIDH recommends that the African Union:

- Support the deployment of an independent commission of inquiry to shed light on the repression of demonstrations, establish responsibilities and bring those responsible to justice;
- Call on the Sudanese authorities to put an end to the multiple infringements of freedom of expression and association, including by allowing journalists, human rights defenders and writers to conduct their activities without fear of harassment, imprisonment or acts of torture and by putting an end to the confiscation and closure of newspapers, in accordance with international and regional human rights instruments;
- Mandate an independent commission of inquiry into violations committed in the context of armed conflicts in South Kordofan, Blue Nile and Darfur and make its findings public as soon as possible, whilst reaffirming its commitment to seeing those responsible for international crimes being brought to justice and victims obtaining justice and reparation;
- Call for the Sudanese authorities to ratify regional instruments for the protection of human rights and in particular to make the declaration under Article 34.6 of the Protocol to the African Charter on the African Court on Human and Peoples' Rights;
- Cooperate with human rights organisations engaged with the situation in Sudan.

Concerning the situation in Mali

The presidential elections of 28 July and 11 August 2013, saw the victory of Ibrahim Boubacar Keïta, whilst the legislative elections of 24 November and 15 December 2013, led to the establishment of a new National Assembly – events that symbolise a legitimate return to constitutional legality, following the 22 March 2013 coup. However, if the political situation seems to have stabilized, the security situation nevertheless remains tense, especially in the north and between September and December 2013, which saw the assassination of Ghislaine Dupont and Claude Verlon, RFI journalists and the death of Senegalese MINUSMA soldiers.

Peace talks between Malian authorities and armed groups continue to trample several key provisions of the Ouagadougou Preliminary Agreement of June 2013 – in particular those relating to the cantonment of armed groups as a prerequisite for disarmament, the return of refugees and displaced persons, and the establishment of an international commission of inquiry. As such these provisions remain unenforced and the northern regions, particularly Kidal, but also Gao and Timbuktu, remain places of daily violence. Regular clashes between the Malian army and its allies and armed groups (MNLA, MIA, HCUA and informally Ansar Dine and even AQIM), take place under a backdrop of persistent abuses against civilians, terrorist attacks and banditry.

In such a security context, the international community, in particular the African Union and the United Nations, should strengthen its efforts and use its influence to ensure that all stakeholders comply with their commitments under the Ouagadougou Agreement. Moreover, as the protection of human rights and consolidation of the rule of law continue to be *sine qua non* conditions for a return to peace and security in Mali and the sub-region, the African Union and the United Nations should ensure effective documentation and monitoring of the human rights situation in Mali and the Sahel region. Publication of the findings and recommendations of mission reports from human rights observers, support for fight against impunity, transitional justice and national reconciliation should be priorities of AU and UN action in Mali.

FIDH and AMDH welcome the judicial progress made in Mali, particularly regarding perpetrators of the 22 March 2013 coup, and call upon the African Union to support this political will to fight impunity, especially regarding crimes perpetrated in the North. Judicial proceedings have been initiated at national level regarding human rights violations committed since the outbreak of hostilities by armed groups in the North in January 2012, and after the seizure of power by the military junta (note: an amnesty law was passed concerning the coup itself and the crimes committed on this occasion).

Judicial proceedings are being undertaken by the Malian justice system for crimes committed in the North during the occupation (killings, amputations, rape, torture, arbitrary detentions, destruction of the mausoleums), and in the case of the so-called "red berets" (enforced disappearances, torture), the massacre in Djabaly and the Kati camp mutiny, for which General Amadou Haya Sanogo, former head of the military junta, was arrested, charged and remanded in custody on 27 November 2013 regarding his alleged responsibility for the disappearance of at least 21 military "red berets" in April-May 2013. FIDH and AMDH are civil parties in both cases and represent victims and their families. Similarly, FIDH and AMDH have filed a complaint as civil parties representing the victims of the repression of the "30 September 2013 mutiny" in which dozens of persons close to General Haya Sanogo were executed on his orders. FIDH and AMDH call upon the African Union to support justice and reconciliation processes started by the Malian government to ensure that they are adequately conducted.

Recommendations

FIDH and the AMDH recommend that the African Union:

On the restoration of peace and security in the northern regions of Mali

- Promote the resumption of peace talks between the Malian authorities, northern communities and the signatories of the Ouagadougou preliminary Agreement of June 2013;
- Ensure in particular the effective confinement of armed groups as a precondition for their disarmament and ensure the redeployment of State authority in the north, especially in the Kidal

- region;
- Support the deployment, as soon as possible, of all troops allocated to MINUSMA (note: on 16 December 2013, of the 11,200 soldiers initially planned for deployment as part of this force, only 5,539 were sent to Mali);
- Support the security sector reform process in Mali;

Regarding the documentation of human rights violations, identifying responsibilities and the fight against impunity

- Ensure, in the shortest possible time, the deployment of an international commission of inquiry, as provided for by Article 18 of the Ouagadougou Agreement, mandated to investigate major “war crimes, crimes against humanity, crimes of genocide, crimes of sexual violence, crimes of drug trafficking and other violations of international human rights law and international humanitarian law” committed in Mali since 15 January 2012;
- Provide support to the International Criminal Court (ICC) investigation into crimes committed in the North - as recommended by the African Commission on Human and Peoples' Rights (ACHPR) - including by providing the Court with all the information necessary for its investigation, by ensuring access to witnesses and by ensuring the facilitation of transfer of persons for prosecution;
- Make public as soon as possible, the conclusions and recommendations of the investigation reports of the MISAHEL human rights observers ;
- Support judicial proceedings at national level, including through material and/or technical expertise provided to the Malian authorities;
- Support the process of transitional justice and national reconciliation declared as a priority by the Malian president and which is currently under development. Ensure that its mandate, composition and action are consistent with international principles on the matter whilst addressing the specificities of the country;
- Ensure full respect for human rights in the fight against terrorism;
- Support the Malian authorities in the development of a human rights roadmap that would include the protection of fundamental rights and freedoms, strengthening the administration of justice and the ratification and integration into national law of regional and international human rights instruments;
- Cooperate fully with human rights organisations in Mali during the ongoing process of transition and stabilization.

Concerning the situation in Libya

Security has increasingly deteriorated over the last few months throughout the three regions of Libya, with especially serious violence in Benghazi and Tripoli. The government has not been able to regain control over armed militia, and is taking an especially long time to establish a transitional justice process with mediation and disarmament phases.

As well as the fact that poor security entails serious human rights violations, it also prevents the Libyan justice system from operating, since it is impossible to guarantee the safety of its staff, victims, lawyers or human rights defenders. The governmental authorities have not regained control over all detention centres; many remain in the hands of local militia groups.

A process of dialogue on a new draft constitution is expected to start on 14 February 2014.

Hundreds of sub-Saharan migrants are still being arbitrarily detained in camps and detention centres under the authority of the Ministry of the Interior or under the control of independent armed groups. Furthermore, many migrants continue to die in the Mediterranean Sea after leaving Libya.

Recommendations

FIDH recommends that the African Union:

- Support acceleration of the establishment of a process of national dialogue on issues related to security and governance;
- Ensure that independent mechanisms – national and international – are able to document human rights violations perpetrated on Libyan territory and to identify responsibilities;
- Ensure that transitional justice processes that provide both mediation and disarmament phases are established as soon as possible;
- Ensure that the process of drafting the new Constitution guarantees the inclusion of provisions relating to human rights and fundamental freedoms.

Concerning the situation in Egypt

A new Constitution, drafted in 60 days, and submitted for referendum on 14 and 15 January 2014, has been approved under questionable conditions by 98% of the vote (with 38% participation). While its provisions could represent a positive move for the promotion of human rights and fundamental freedoms, we still have to deplore large-scale perpetration of human rights violations all over the country. Moreover, effective protection mechanisms have yet to be determined and we deplore that the text is not more explicit regarding the organisation of power and the definition of the nature of the regime, and that it does not include the social contract dimension that should underpin the consolidation of the Egyptian nation in this “post-revolutionary” period.

FIDH is concerned by the fact that the implementation of most of the rights and freedoms guaranteed by the Constitution are subject to the adoption of laws of implementation, whilst Egypt has recently adopted new laws restrictive of these rights and freedoms. The new law on peaceful assembly, which allows police services to intervene against demonstrations organised by political activists and human rights movements, perfectly illustrates this tendency towards the increasing restriction of rights and freedoms. Similarly, serious concerns remain about respect for the freedoms of opinion, expression and association, as several human rights defenders are still being arbitrarily detained by the authorities.

FIDH further regrets that no national inquiry into the serious human rights violations that followed the overthrow of President Morsi by armed forces on 3 July 2013 has taken place, despite more than 1,300 deaths reported by FIDH member organisations. Egyptian security forces involved in the abuses perpetrated against the Muslim Brotherhood and its supporters (ranging from the often deadly breaking up of public demonstrations to a massive wave of arrests and arbitrary detentions) continue to enjoy total immunity – a matter denounced by FIDH many times since 28 January 2011. The National Council for Human Rights, commissioned, via two Commissions of inquiry, to investigate the tragic events involving Rabaa El Adawiya on 14 August 2013, has openly admitted to being unable to conduct its investigation impartially and thoroughly. At the moment, therefore, the Egyptian authorities have no official report enabling them to establish criminal responsibility for the serious violations committed in July and August 2013 – violations that the authorities had claimed were justified in the context of counter-terrorism.

Finally, an alarming report¹ dealing once again with human trafficking in the Sinai region, has just been published. It highlights the absolutely tragic fate that befalls thousands of migrants, mostly Eritreans and Ethiopians, who are kidnapped, held hostage and brutally tortured in Egypt. According to the report, the victims are seized and forcibly transported to the Sinai – the seizures often taking place in Sudan, particularly its eastern region, near the Shagarab refugee camp. Once in Sinai, some victims are held in specially constructed “torture houses”. Traffickers then demand astronomical ransoms in US dollars. Between 2007 and 2013, around 25,000 to 30,000 people are thought to have been victims of this trafficking.² This situation mirrors that of Syrian refugees in Egypt who are confronting an increasingly hostile environment, which ranges from violent arrest to arbitrary detention and forced repatriation to Syria.

Recommendations

While Egypt remains suspended from African Union meetings, FIDH calls on the continental organisation to engage with its responsibility concerning the political and security situation in the country. FIDH recommends in particular that the AU:

- Ensure that effective and independent mechanisms responsible for ensuring the implementation of

¹ MEH van Reisen, M Estefanos, and CRJJ Rijke, [The Human Trafficking Cycle: Sinai and Beyond](#), (2013) Wolf Legal Publishers, Oisterwijk.

² The report accuses Eritrean border security units under the command of General Teklai Kifle (alias Manjus), of being heavily involved in this operation. The UN had already mentioned the involvement of the general and several of his senior officers in human trafficking, but this is the first time that first-hand eyewitness accounts have been published.

constitutional provisions relating to fundamental rights and freedoms are put in place in the shortest possible time;

- Ensure that restrictive laws, and in particular the new laws on peaceful assembly, whose provisions are contrary to Egypt's regional and international obligations, be repealed without delay, and ensure that Egypt complies with its obligations in respect to freedom of association, opinion and expression;
- Ensure that the authorities undertake the unconditional release of detained human rights and political prisoners and call on the Egyptian authorities to ensure that human rights defenders are able to carry out their activities without fear of harassment, including judicial harassment;
- Urge the interim government to take all necessary measures to shed light on the serious human rights violations perpetrated, first, from 28 June 2013, and then from 25 January 2011, to identify and prosecute those responsible with a fair trial, and to provide reparations measures for victims;
- Urge the interim government to pay particular attention to cases of sexual violence. Extensive research on the circumstances of such violence and its perpetrators must be undertaken without delay. The issue of sexual violence and more generally the issue of violence against women should also be at the center of the transition process;
- Urge the interim government to take all necessary measures to ensure the safety and protection of the rights of migrants, particularly in the Sinai region;
- Cooperate with human rights organisations in the context of its process of dialogue with the interim government.

Concerning the situation in Tunisia

After several months of inaction, the political situation in Tunisia seen considerable movement in the past few weeks with the implementation of several key provisions of the National Dialogue. Since 3 January 2014 the National Constituent Assembly (ANC) has proceeded with the adoption of articles of the draft Constitution, as one by one, members of the Instance supérieure pour l'indépendance des élections (ISIE) (Superior Authority for the Independence of the Elections) have been designated and a new chief of government, called the "government of competency", was tasked with forming its government on 10 January 2013. Intense debate and protests took place around several key constitutional provisions reflected mostly by progress.

The blockage characterising the last few months is indicative of the fragility of the situation. Recent debates on the constitutional text stoked antagonisms between the different actors. For example, following a strike by magistrates, constituents amended a provision concerning the administration of justice and guaranteeing the independence of the judiciary. Executive interference in judicial affairs both legally and in practice is regularly denounced.

The distrust of the Ennahdha government following the assassination of two opposition leaders (Chokri Belaid in February 2013 and Mohamed Brahmî in July 2013) earlier led to long and difficult negotiations that finally culminated in the process of National Dialogue. The main civil society actors (UGTT, the Bar Association, UTICA and LTDH) prepared a road map designed to end the crisis and revive the political transition process. If the time schedule is respected this time, general elections could be held in 2014.

Progress in legal proceedings regarding the assassination of the two political leaders has been seriously criticised, with questions being asked about the capacity, and even willingness of majority parties, especially the Ennahdha party, and also the judiciary, to thoroughly investigate these murders and determine the chain of responsibility.

The threat to security, posed mainly by radical Islamists is growing ever more intense.

Finally, the process of transitional justice is yet to be translated into concrete action. Rendering justice and shedding light on the crimes of the past remain major challenges. The delay in the implementation of a transitional justice process is another obstacle to a peaceful process of political transition. The issue of access to archives, so far largely impossible, is essential in this regard and must be managed by an independent mechanism to prevent tampering. It is also important that those responsible for past crimes are held accountable before an impartial and independent judiciary and that effective measures be taken to ensure that these crimes do not go unpunished, do not reoccur and that victims are entitled to reparation.

Recommendations

FIDH recommends that the African Union:

- Ensure that the Tunisian authorities harmonize national legislation, including the Criminal Code, the Code of Criminal Procedure and the Code of Personal Status, with the international human rights conventions ratified by Tunisia;
- Ensure that effective and independent mechanisms, responsible for ensuring the implementation of fundamental rights and freedoms, are established in a timely manner;
- Ensure that the Tunisian authorities are fighting political violence effectively and that they conduct independent and impartial investigations into acts of violence and political assassinations, as well as initiating proceedings against those responsible and issuing public information on these processes;
- Ensure that the Tunisian authorities guarantee a transitional justice process that is respectful of international standards and that the perpetrators of past crimes are held accountable before an impartial, fair and independent judicial process that entitles victims to reparations;
- Encourage reform of the judicial system in line with international standards, in particular regarding guarantees for the independence of the judiciary.

Concerning the situation in Kenya and International Justice

Following the AU Extraordinary Summit on the relations between Africa and the International Criminal Court (ICC) (October 2013), the AU adopted a declaration: 1) affirming that no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office, in the name of constitutional order, stability and the integrity of member states; 2) requesting the suspension of ICC proceedings against Uhuru Kenyatta (President of Kenya) and William Ruto (Deputy President of Kenya) until the end of their mandate and calling on the Kenyan authorities to submit such a request to the UN Security Council (art.16); 3) affirming that Uhuru Kenyatta will not appear before the ICC until the UNSC and the ICC take account of the concerns expressed by the AU; 4) calling on the States parties to present amendments under article 121 of the Rome Statute; and 5) asking the African Union Commission (AUC) to accelerate the process of extending the mandate of the African Court of Human and Peoples' Rights to include the prosecution of international crimes.

At the last session of the ICC's Assembly of State Parties (ASP) (November 2013), States parties decided to amend the ICC's procedural rules and raised the possibility, under rule 134 of the Rules of Procedure and Evidence, for high-ranking officials "*performing public functions at the highest national level*" to be absent from the courtroom during their trial at The Hague. States parties also decided to adopt a rule according to which the accused may participate at his/her trial via technical means of communication, including video, asserting that this represents a form of presence.

These developments occur as those responsible for crimes committed in the context of 2007/2008 post-election violence continue to enjoy complete impunity, including at the national level where judicial proceedings have so far provided poor results and where victims and witnesses involved in these cases continue to face various forms of intimidation.

Here, as Kenyan authorities mobilise against the ICC trials of Uhuru Kenyatta and William Ruto, human rights NGOs that openly advocate the fight against impunity at national and international levels have faced a campaign of intimidation, stigmatization and discrediting. A draft law on associations, which appeared to directly target such organisations, limiting their financial capacity (no more than 15% from foreign sources) and regulating their operations (via increased control by the authorities), was submitted to Parliament. Although this draft was not adopted, following the strong mobilization of civil society, it perfectly illustrates the political climate within which human rights organizations are now operating in Kenya.

Recommendations

FIDH and the Kenya Human Rights Commission (KHRC) recommend that the African Union:

- Publicly reaffirm its support of the victims of international crime and their right to obtain justice and reparations before competent courts;
- Publicly reaffirm the obligation of relevant national and international institutions to guarantee victims and witnesses party to criminal proceedings for international crimes their rights to effective protection;
- Reconsider its decision to request the suspension of all proceedings before the ICC against Uhuru Kenyatta and William Ruto until the end of their mandate, and to call upon the Kenyan authorities to address the United Nations Security Council on a request to that effect (Article 16);
- Call upon the Kenyan authorities to take all necessary measures to fight, at national and international levels, against the impunity of perpetrators of crimes committed during the 2007/2008 post-election violence, and in this context to cooperate fully with the ICC;
- Call on the Kenyan authorities to guarantee the right of human rights defenders, in particular those advocating for the fight against impunity, to conduct their activities without fear of harassment or reprisals, in accordance with relevant international and regional human rights instruments ratified by Kenya.

More generally, in the midst of persistent armed conflict and political crises on the continent, FIDH calls

upon the African Union to firmly commit to combating impunity, in particular by considering the following recommendations:

- Review its October 2013 decision affirming that no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government;
- Call on Member States to ensure that those responsible for international crimes are brought to justice at national and/or international levels ;
- Start a process of political, technical and material support for judicial proceedings allowing the prosecution, at national level, of those responsible for international crimes, in application of the principle of complementarity with the ICC ;
- Mobilise to strengthen the universality of the Rome Statute of the ICC, by calling upon AU Member States, and other States not yet party to the ICC, to ratify or accede to the Rome Statute, and to bring national laws into line with that treaty by legislating international crimes in a manner that would allow national courts to fight impunity. Such legislation should also include provisions ensuring the full cooperation of Member States with the ICC;
- Call upon concerned Member States to take all necessary measures to put an end to threats and harassment perpetrated against victims, witnesses and members of civil society cooperating or considered to be cooperating with the ICC;
- Strengthen its dialogue with the ICC, particularly in facilitating the establishment and work of the ICC liaison office at the African Union;
- Call upon the ICC Office of the Prosecutor (OTP) to conclude its preliminary analysis, still in progress, on situations such as in Colombia, where an investigation is warranted and necessary;
- Recognise that the extension of the jurisdiction of the African Court on Human and Peoples' Rights to include individual criminal responsibility should not impact on the mandate and work of the ICC in Africa ;
- If the jurisdiction of the African Court on Human and Peoples' Rights is extended to encompass individual criminal responsibility, the African Union should ensure that:
 - this court is independent;
 - the budget of the Court is appropriate for the actual pursuit of its new jurisdiction;
 - the Court's judges and staff, in particular the offices of the prosecutor and the registrar, are specialised in dealing with international crimes, including the management of trauma related to sexual violence, if these crimes fall under jurisdiction of the Court;
 - the definitions of the crimes under the its jurisdiction are compliant with human rights and international humanitarian law;
 - Opportunities for individuals and human rights organisations to access the Court, in particular its human rights section, are strengthened;
 - Victims can take part in all stages of the proceedings and that their rights are fully ensured, in particular regarding reparation and legal representation;
 - Functional immunity can never be invoked for international crimes which, due to their gravity, cannot be justified as any legitimate act of State;
 - Technical and financial support be provided to national criminal courts, in order to effectively combat the impunity of perpetrators of the most serious crimes; and
 - Any statute and rules of procedure of the Court are drafted in compliance with international human rights and humanitarian law.

Concerning death penalty in Africa

FIDH is concerned about the resumption of executions in a number of African countries and about **attempts to restore the death penalty in some others despite the regional trend towards abolition observed in recent years. Seventeen states have abolished the death penalty, including four in the last five years. Twenty states now observe a de facto moratorium, and 22 have voted in favor of the latest UN resolution calling for the establishment of a moratorium on executions (resolution 67/176). This trend is must strengthened in Africa, where the death penalty is maintained in the national laws of several states and sentences and executions continue to be imposed. In this context, FIDH calls upon AU Member States to:**

- Comply with UN General Assembly resolutions requiring the implementation of a moratorium on the use of the death penalty as a first step towards its final abolition;
- Commute all death sentences to sentences of imprisonment for a duration appropriate to the gravity of the offence;
- Refrain from resuming executions once a moratorium is in place;
- Support the efforts of the African Commission on Human and People's Rights, in particular the work of its working group on the death penalty in Africa, including by making public declarations of such support. This crucial work aims at enabling the African Union to adopt a protocol to the African Charter on Human and People's Rights on the abolition of the death penalty in Africa, as recommended by the working group in a study on the state of the death penalty in Africa; and
- **Support efforts for increased public awareness on issues surrounding the abolition of the death penalty.**