

**39<sup>th</sup> FIDH Congress**  
**23th-27th of August 2016,**  
**Johannesburg, South Africa**

**Urgent Resolution on Justice in Africa**

*Introduced by Association Malienne des Droits de l'Homme (AMDH), la Ligue Ivoirienne des Droits de l'Homme (LIDHO), le Mouvement Ivoirien des Droits Humains (MIDH), Association Africaine des Droits de l'Homme (ASADHO), Ligue des Electeurs (LE), Groupe Lotus (GL), la Ligue sénégalaise des droits Humains (LSDH), Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO), Ligue Centrafricaine des Droits de l'Homme (LCDH), Organisation Guinéenne des droits de l'Homme et du Citoyen (OGDH), Ligue Tchadienne des droits de l'Homme (LTDH), Ligue ITEKA*

**Recalling** the provisions of the Constitutive Act of the African Union, mandating the organization to promote and protect human and peoples' rights, democratic principles and good governance, peace and security, and to condemn and reject impunity;

**Recalling** the provisions of the African Charter on Human and Peoples' Rights (African Charter), ratified by all African Union Member States, and recognizing rights and freedoms enjoyed by individuals and people on the African continent including the rights to life, integrity and dignity;

**Welcoming** the ratification of the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights by 30 African States, **noting** the deposition by 7 of them of the declaration granting individuals and NGOs direct access to the Court; and **acknowledging** the development of the jurisprudence of this Court during its first years of functioning as an important contribution to strengthening the African human rights system as a whole and the protection of rights consecrated by the African Charter in particular;

**Noting** the adoption by the African Union of a Protocol on Amendments to the Protocol on the Statute of the African Court on Justice and Human Rights to extend the Court's authority to criminal jurisdiction over individuals and legal persons responsible for crimes that include war crimes, crimes against humanity and genocide; **deploring** that this Protocol includes a clause of immunity for sitting heads of States and senior State officials, does not explicitly guarantee victims' rights to participate at all stages of the proceedings, and considerably restricts the possibility for individuals and NGOs to directly seize the Court ;

**Recalling** that 34 African States are parties to the Rome Statute of the International Criminal Court (ICC), and therefore have voluntarily committed to supporting its investigations and prosecutions for international crimes and rejected immunity for responsible for such atrocities;

**Welcoming** the recent judgements issued by the ICC which represent crucial steps in the fight for justice of victims of international crimes in Democratic Republic of Congo and Central African Republic; and **in particular emphasizing** the importance of the judgment against Jean-Pierre Bemba as the first military commander to be found guilty of war crimes and crimes against humanity, including sexual crimes, by the ICC;

**Deeply concerned** on the other hand by the impossibility for the ICC to bring justice to victims in other situations where it has jurisdiction, in particular in Kenya where cases were dropped due to the lack of available evidence due to the absence of cooperation with the State and subornation of witnesses by national authorities, and in Sudan where individuals under arrest warrants for years, including the head of State and several ministers, are still on the run due to a gross lack of cooperation from States, including States parties to the ICC. **Deeply concerned** equally by the growing trend of mistrust towards the ICC expressed by the African Union, including its January 2016 resolution deciding upon the development a comprehensive strategy of collective withdrawal from the Rome Statute, **but noting** that this strategy was not confirmed by the July 2016 African Union summit;

**Welcoming** the landmark judgment against former dictator of Chad Hissène Habré issued by the Extraordinary African Chambers on 30 May 2016; and **emphasizing** that this unprecedented trial marked the first time a former African head of state was judged on the African soil before another State's jurisdictions, and showed the commitment of the African Union and its Member States to fight against impunity on the continent and to provide justice and reparations to victims of the gravest crimes;

**Recalling** the importance of the strengthening of national authorities' capacities to address international crimes and violations of the African Charter, and noting that in accordance with the principle of complementarity, regional and international jurisdictions have jurisdiction only when national authorities are unwilling or unable to genuinely investigate and prosecute those international crimes;

Therefore **welcoming** the forthcoming trial before Malian jurisdictions of Haya Sanogo and 17 others leaders of the former military junta that took power in Mali in 2012, indicted for the execution of 21 soldiers and **calling** for a public and fair trial on this occasion; however **concerned by** the limited resources allocated to the judicial system and the lack of political will and by the limited resources allocated to the judicial system allowing many perpetrators in the North to avoid prosecution;

**Welcoming** the commitment of the authorities in Guinea-Conakry to set the conditions for a fair trial of the alleged perpetrators of the 28 September 2009 massacre including Moussa Dadis Camara, head of the former military junta, and **highlighting** that such a trial would represent a milestone in the fight against impunity in Guinea and for the victims' right to access truth, justice and reparation.

**Noting** the indictment by national jurisdiction of Côte d'Ivoire of numerous alleged perpetrators of the 2010-2011 post-electoral crimes including high-level military of both pro-Ouattara and pro-Gbagbo sides but **recalling** the need for a fair, complete and comprehensive judicial process ensuring the rights of the defence and the victims.

**Outraged** by the grave human rights violations ongoing in different areas of the African continent, including sexual and gender-based violence, that may amount to war crimes, crimes against humanity and/or genocide, and **Deeply concerned by** the endemic impunity that continues to benefit their authors;

**Deeply concerned** by the situation in South Sudan, where serious crimes amounting to war crimes and crimes against humanity are committed since the outbreak of the conflict in December 2013, **Recalling** that civilians remain the main targets of such atrocities; and **recalling** that the August 2015 Peace agreement provides for the establishment of mechanisms of justice including a Hybrid Court;

**Deeply concerned** by the situation in Central African Republic, where serious crimes amounting to war crimes and crimes against humanity are committed since 2012 by various armed factions; **Recalling** that civilians remain the main targets of such atrocities; **Deeply concerned** by the allegations of rape and other sexual and gender-based crimes committed by MINUSCA personnel against women and children; **and Calling upon** the prompt establishment of the Special Criminal Court established by the June 2015 law to try international crimes perpetrated in Central African Republic since 2003 and supported by the United Nations;

**Deeply concerned** by the situation in Sudan, where serious crimes possibly amounting to war crimes and crimes against humanity continue to be perpetrated in the regions of Darfur, Blue Nile and South Kordofan and civilian populations are prevented to access humanitarian assistance; and **Recalling** that President Al-Bashir is under arrest warrant by the ICC since 2007 for the crimes of genocide, crimes against humanity and war crimes committed in Darfur but remains at large since then;

**Deeply concerned** by the situation in Burundi, where serious crimes that may possibly amount to war crimes and crimes against humanity have been increasingly perpetrated against civilians since April 2015; and **recalling** that the prosecutor of the ICC has opened a preliminary examination into the situation in the country in April 2016;

**Deeply concerned** by the situation in Democratic Republic of Congo, where serious crimes amounting to war crimes and crimes against humanity continue to be perpetrated in the East of the country, including

recent massacres of civilians in the city of Beni; and *recalling* that the Democratic Republic of Congo is under investigation by the ICC since 2004;

### **The FIDH at its 39<sup>th</sup> Congress, Johannesburg, South Africa:**

#### **Call on African States to:**

- Guarantee the rights to access the truth, justice and reparation for victims of the most serious human rights violations and international crimes, including sexual and gender-based crimes, and the effective implementation of these rights into domestic legislation;
- Ensure that such crimes are promptly and effectively investigated in a independent, comprehensive, credible and impartial manner and that those responsible are prosecuted before domestic courts in accordance with internationally recognized fair trial standards;
- Fully support the African human rights system, including by ratifying the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights, and by depositing the Special Declaration under its Article 34(6) allowing for individuals and NGOs to submit complaints directly to the Court, if they have not yet done so;
- Fully support the work of the International Criminal Court, by ratifying the Rome Statute if they have not yet done so, by incorporating the Rome Statute's provisions into their domestic law, and by cooperating with the Court in its efforts to investigate and prosecute those responsible for international crimes, including through the implementation of arrest warrants;
- The Security Council should react to the ICC reports addressing the situation in Darfur and take all necessary measures following the decisions of non-cooperation delivered by the ICC.

#### **Call on the African Union to:**

- Reiterate its commitment to fight against impunity for the most serious human rights violations and international crimes, and to reject all immunities regarding the perpetration of those;
- Establish a hybrid court for crimes perpetrated in South Sudan since December 2013 with no further delay, as recommended by the African Union Commission of Inquiry and as provided for in the August 2015 Peace Agreement;
- Acknowledge that the International Criminal Court and the African Union have common interests with regards to the fight against impunity for international crimes in Africa and that a majority of its Member States have ratified the Rome Statute, and therefore cooperate with the Court;
- Fully support the Government of the Central African Republic and the United Nations in the establishment of the Special Criminal Court in Central African Republic for crimes perpetrated since 2003;
- Assist its Member States in the fight against impunity for the most serious human rights violations by ensuring a political, technical and financial support to ongoing or future national proceedings related to international crimes, in accordance with the principle of complementarity with the International Criminal Court;

#### **Call on the United Nations to:**

- Strongly condemn all human rights violations and international crimes on the African continent, and

support national, regional and international initiatives to bring justice and reparations to victims of these crimes;

- Support, in coordination with the government of Central African Republic, the establishment of Special Criminal Court provided for crimes committed since 2003 in the country and give all financial and technical support it needs to be fully operational with no further delay ;
- Support the African Union in establishing the hybrid Court for South Sudan and enabling it to be fully operational with no further delay;
- Create a Commission of inquiry to investigate crimes perpetrated in Burundi since April 2015, mandated by the Secretary General of the United Nations and supported by the African Union;
- Call for the effective and prompt investigation and prosecution of crimes perpetrated in Sudan in the regions of Blue Nile and South Kordofan;

**Call on the International Criminal Court to:**

- Enhance its efforts to promote and ensure universality of its jurisdiction as well as complementarity between the ICC and national jurisdictions, as in Côte d’Ivoire, Mali, Guinea or Central African Republic ;
- Effectively and promptly investigate international crimes committed in the situation of the Democratic Republic of the Congo, including recent crimes perpetrated in Beni ;
- Effectively and promptly conclude its preliminary examination and open an investigation into the situation of Burundi;
- Enhance its efforts to promote and ensure cooperation with all States parties to the Rome Statute, and in particular with regards to the implementation of arrest warrants related to the situation in Darfur, Sudan.