

SEMINAR ON JUSTICE

**Organised by FIDH and the United Nations
Office of High Commissioner for Human Rights**

**To the attention of the Permanent Representatives Committee, the African
Union Commission and the African Union Peace and Security Council**

13 and 14 December 2012

CONCEPT NOTE and PROVISIONAL AGENDA

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



I – The African Union and the fight against impunity of perpetrators of the most serious crimes

The fight against violations of human rights and international humanitarian law and against impunity of their perpetrators plays an important role in the mandate of the African Union (AU) and of many of its bodies and institutions. The AU Constitutive Act (2000) mandates the organization to promote and protect human and peoples' rights, peace, security and stability across the continent, democratic institutions and principles and good governance (articles 3.h and 4.m) and to condemn and reject impunity (article 4.o). More importantly, the AU is empowered, and even encouraged "*to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity*" (article 4.h).

The AU's **political commitment** to fight the impunity of those responsible for **international crimes**, reiterated in several Declarations, Decisions and Strategic plans, is being implemented in a variety of ways. The most recent and emblematic example of this commitment can be found in the agreement signed on 22 August 2012 by the AU and the Government of Senegal. Through this agreement, Extraordinary African Chambers will be embedded in the Senegalese judicial system to prosecute the person(s) most responsible for international crimes committed in Chad between 1982 and 1990, thus making it possible for **Hissène Habré** to be judged and for a model law on universal jurisdiction to be drafted. Similarly, 33 AU member states have ratified the Statutes of the **International Criminal Court (ICC)**, which transposition into national law, especially in countries such as Kenya and Uganda, are evidence of the conveyance of this commitment at the national level. Last, the plan to **expand the jurisdiction of the African Court on Human and Peoples' Rights** to enable it to prosecute and sentence those responsible for international crimes is further evidence of this momentum.

The **legal and institutional tools** developed by the African Union to fight the most serious crimes and to guarantee victims' access to justice, take this political orientation even further. **Many AU texts** – including the African Charter on Human and Peoples' Rights (1981), the African Charter on the Rights and Welfare of the Child (1990), the Protocol to the African Court (1998), the Protocol on the Rights of Women in Africa (2003) and the African Charter on Democracy, Elections and Governance (2007) – include numerous provisions on the administration of justice and the obligations of States Party to guarantee access to justice and equal protection before the law for all¹, an independent judicial system², and prosecution of perpetrators of war crimes, crimes against humanity and genocide³.

Similarly, by virtue of the "**principle of non-indifference**" towards the most serious crimes, the AU Peace and Security Council (2003) was created to foresee and prevent conflicts and to

¹ Articles 5, 6 and 7 of the African Charter on Human and Peoples' Rights; Article 17 of the African Charter on the Rights and Welfare of the Child; Article 8 of the Protocol to the African Charter on Human and Peoples' Right on the rights of women in Africa.

² Article 26 of the African Charter on Human and Peoples' Rights; Articles 2.5 and 32.3 of the African Charter on Democracy, Elections and Governance.

³ Article 11.3 of the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa.

promote, restore and consolidate peace and security, and also to promote and encourage the protection of human rights and international humanitarian law. In carrying out its mandate, it is guided by the provisions of article 4.h of the Constitutive Act. Furthermore, the AU has been undertaking a consolidation process of the **regional system for the promotion and protection of human rights**, in particular by increasing the technical and financial capacity of the related mechanisms such as the African Commission on Human and Peoples' Rights (ACHPR) – which has also adopted several texts on the fight against impunity⁴ – and the African Court on Human and Peoples' Rights.

Despite this engagement, there are still many obstacles to the systematisation and effectiveness of criminal prosecutions for perpetrators and persons responsible for crimes on a continent that is prone to conflict (Mali, the East of the Democratic Republic of Congo, Somalia...) and political instability (Guinea-Bissau...). Political, legal, technical and financial obstacles to the initiation of **procedures at national level**, tense relations between the AU and the **International Criminal Court (ICC)**, questions linked to the use of **universal jurisdiction** and the reluctance often observed with regard to the implementation of **transitional justice** mechanisms, are the main challenges to the effective fight against impunity on the African continent. The seminar participants will have the opportunity to discuss all these issues.

II – A seminar on the fight against the impunity of the perpetrators of the most serious crimes, for the Permanent Representatives Committee (PRC), the African Union Commission and the AU Peace and Security Council

Subsequent to a specific request from several Ambassadors, members of the AU's Permanent Representative Committee (PRC), FIDH and the Regional Bureau of the U.N. Office of the High Commissioner for Human Rights (Addis Ababa) are planning a seminar on the fight against impunity of the perpetrators of the most serious crimes, from 13 to 14 December 2012, if possible, at the African Union headquarters.

A) Overall objectives

The purpose of this seminar, which is being held in response to a request from PRC representatives, will be to stimulate discussion on the issues, challenges and prospects of fighting impunity in

⁴. Mention could be made, *inter alia* of the Resolution on the Right to Recourse and Fair Trial (March 1992), the Resolution on Respect and the Strengthening of the Independence of the Judiciary (March 1996), the Resolution Urging States to Envisage a Moratorium on the Death Penalty (November 1999), the Resolution on the Right to Fair Trial and Legal Aid (November, 1999), Directives and Principles on the Right to Fair Trial and Legal Aid in Africa, Guidelines and Measures for the Prohibition and Prevention of Torture, and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (2008) that calls upon the States to adopt measures against the impunity of the perpetrators of torture by criminalising it and authorising the national courts to investigate, the Resolution on the right to a remedy and reparation for women and girls victims of sexual violence (November 2007) or the Resolutions on the ratification of the Rome Statute of the International Criminal Court and the integration of its provisions in national law (1998, 2002 and 2005).

present-day Africa. Experts (lawyers, jurists, academics) who will be speaking at the seminar will have discussions with the participants on the general principles of international criminal justice (concepts, new dynamics, etc.) and the legal, political and financial implications of their application at national, regional and international levels. As the African Union celebrates its 10th anniversary and the African Commission on Human and Peoples' Rights its 25th, experts, together with the participants, will consider the more general role of the AU in the fight against impunity of the perpetrators of the most serious crimes and victims' effective access to the justice system. What means of action? What obstacles? What perspectives?

III – FIDH action in support of justice for victims of the most serious crimes

The International Federation for Human Rights (FIDH) is composed of 164 human rights organisations in over 100 countries and defends all the rights (civil, political, economic, social and cultural) set out in the Universal Declaration of Human Rights and in other regional and international human rights instruments. FIDH acts at the legal and political levels to strengthen these instruments and ensure that they are applied.

FIDH has acquired singular experience in fighting the impunity of the perpetrators and responsible for the most serious violations of human rights since it is the leading international NGO, with a general mandate, that continually supports the victims of international crimes in their efforts to obtain justice, truth and reparation before the national, regional and international courts. Through its Legal Action Group (LAG), which is a network of magistrates, lawyers, jurists and law professors, FIDH offers direct legal and judicial assistance to the victims of serious crimes before the competent criminal courts.

FIDH is involved in cases before the national courts in countries where crimes have been committed or, if the courts lack the capacity or will to investigate and prosecute the people responsible for these crimes, before the national courts of other countries, in application of extra-territorial jurisdiction. These procedures concern international crimes perpetrated in Algeria, Cambodia, Chile, Congo-Brazzaville, Côte d'Ivoire, United States, Guinea-Conakry, Iraq, Mauritania, Peru, Democratic Republic of Congo, Rwanda, Syria, Chad, Chechnya and Tunisia. FIDH is also working on training programmes for judges, lawyers, and human rights defenders on the rules of a fair trial and the victims' access to effective remedy. Last, FIDH observes and works with the mechanisms of transitional justice, including the ones established by the truth commissions (especially in Togo, Guinea-Conakry, Côte d'Ivoire and Morocco).

IV– Actions of the UN Office of High Commissioner for Human Rights in support of justice for victims of the most serious crimes

The mandate of the Office of High Commissioner for Human Rights (OHCHR) is to promote and protect enjoyment and application, by all persons, of all the rights proclaimed in the United Nations Charter and in the international laws and treaties on human rights. The work of the

OHCHR is based on the mandate it has received from the General Assembly in Resolution 48/141, the United Nations Charter, the Universal Declaration on Human Rights and more recent human rights instruments. The Vienna Declaration and the Action Programme of the 1993 World Conference on Human Rights, as well as the 2005 World Summit Outcome Document.

The mandate focuses on the prevention of human rights violations, guarantees for the respect of all human rights, promotion of international cooperation in order to protect human rights, coordination of activities related to the United Nations and the strengthening and integration of human rights throughout the United Nations system.

Besides the responsibilities inherent in its mandate, the Bureau strives to ensure inclusion of the human rights angle in all U.N. activities.

With regard to the fight against impunity, the OHCHR supports the U.N. human rights mechanisms such as the treaty bodies, the special procedures, the Universal Periodic Review and other instructions from the Human Rights Council on the implementation of their recommendations in this field.

Furthermore, as part of its research efforts, the OHCHR division on the Rule of Law has developed the following activities:

- Provide support for the legal processes involved in seeking truth, provide the mechanisms of accountability and the reparation programmes (also for victims of sexual violence), and provide support for national consultations on transitional justice and institutional reforms;
- Provide advice and support for the U.N. agencies and materials on certain themes such as the emergence of new aspects of transitional justice; this includes violations of socio-economic and cultural rights, sexual violence and gender issues, reintegration of ex-combatants and the vetting process;
- Work with mediators and other professionals to ensure the inclusion of transitional justice and the prosecution of perpetrators of violations in peace agreements and negotiations;
- Provide support for the legal processes that strengthen the national mechanisms of accountability
- Contribute to strengthening national institutions through training for judges, lawyers and other people of the law on international standards for human rights, humanitarian law and criminal law, and develop materials and instruments for training and for the regulation of mechanisms of accountability, including the fact-finding commissions;
- Offer technical assistance to the local authorities to ensure that the informal justice systems meet international standards for human rights, and develop materials to guide the states in protecting victims and witnesses, including the victims of sexual or gender-related violence;
- Do more to monitor the legal systems in order to ensure their respect for international human rights standards, working together with partners from the United Nations, the national institutions and the civil society in order to highlight their role in this field;
- Promote decisions on moratoriums against the death penalty, working with appropriate national actors and targeting the abolition of this penalty;
- Strengthen the human rights approach as part of the fight against terrorism and the electoral process;

- Develop regulations and instruments to provide access to the justice system and to legal assistance for individual and groups of victims of discrimination;
- Strengthen cooperation with the International Criminal Court on the basis of the U.N. General Assembly Agreement;
- Provide technical support for the application of human rights standards with regard to human trafficking, military activities of a private nature and private security companies.

V – Agenda – 13 and 14 December 2012

DAY 1 – 13 December 2012

8h30 – 9h00 : Welcoming of Participants

9h – 10h : Opening Ceremony

Moderator : **Professor Mabassa Fall**, FIDH Representative to the African Union

- **Me Sidiki Kaba**, Lawyer, FIDH Honorary President
- **Mr Ibrahim Wani**, Chief Africa Branch, Field Operations and Technical Cooperation Division, Office of the United Nations High Commissioner for Human Rights
- **H.E.Dr Ferdinand Montcho**, Ambassador of the Republic of Benin to the African Union, President of the AU Permanent Representative Committee (PRC)

10h – Refreshment and Group Photo

I – Prosecute the perpetrators of international crimes at national level (10h30 – 13h)

Moderator: PRC

- Introductory Intervention : State's first responsibility in combating the impunity of perpetrators of the most serious crimes. **Hon. Justice Johnston Busingye, Principal Judge of the East African Court.**
- Principles : International crimes and the challenges of their integration into national law. **Mr Arnold Tsunga, Lawyer, FIDH Vice-President, Africa Director at the International Commission of Jurists (ICJ).**
- Challenges and impacts of national procedures on the consolidation of peace, on reconciliation and strengthening of the rule of law A) Kenyan example : **Mr James Gondi, Representative of Kenyans for Peace with Truth and Justice (KPTJ)** B) Guinean example : **Mr Abdoul Gadiry Diallo, Representative of the *Organisation guinéenne pour la défense des droits de l'Homme (OGDH)*.**
- The use of extraterritorial jurisdiction to prosecute perpetrators and persons responsible of international crimes. The Hissène Habré case : **Mr. Sidiki Kaba, Lawyer, FIDH Honorary President.**

12h – 13h : Discussion. How can the African Union best support national procedures? Discussion based on the proposals of a **PRC Representative**.

13h00 – 14h : Lunch

II – Prosecute the perpetrators of international crimes at international level: The Role of the International Criminal Court in Combating Impunity in Africa

(14h30 - 17h00)

Moderator : Mr Moussa Gassama, Regional Representative, Office of the United Nations High Commissioner for Human Rights

- Introductory intervention : The relationship between the African Union and the International Criminal Court, **Mr Sidiki Kaba, Lawyer, FIDH Honorary President**.
- Principles : The International Criminal Court **Mr. Phakiso Mochochoko, Head of the Jurisdiction, Complementarity and Cooperation Division, Office of the Prosecutor of the International Criminal Court**.
- The impacts of the ICC's first verdict in the Democratic Republic of Congo. **Mr Dismas Kitenge, FIDH Vice President, President of the Group Lotus**.
- The challenges of victims' rights before the ICC. **Mrs. Montserrat Carboni, FIDH Representative to the ICC**.

15h30 – 17h00 : Discussion. Perspectives to strengthen the relationship between the ICC and the African Union? Discussion based on the proposals of **Mr. George Mugwanya, Senior Appeals Counsel in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda (ICTR)**

DAY 2 – 14 December 2012

III – Prosecute the perpetrators of international crimes at regional level: The African Court on Human and Peoples’ Rights

(10h – 12h)

Moderator: H.E. Mrs Minata Samate, Ambassador of Burkina Faso to the African Union

- Principles : The African Court on Human and Peoples’ Rights. **Mr Sylvain Ore, Judge of the African Court on Human and Peoples’ Rights.**
- The project to extend the jurisdiction of the African Court. **Mrs Sophia Dhatemwa.** Foundation for Human Rights Initiative (FHRI – Ouganda), **Representative of the Coalition for the African Court.**
- Comparative approach: The Inter-american Court of Human Rights **Mrs. Montserrat Carboni, FIDH Representative to the ICC.**

11h – 12h : Discussion. The role of the African Court in combating impunity and strengthening the administration of justice. Discussion based on the proposals of **H.E.M. Kwesi Quartey, Ambassador of Ghana to the African Union**

12h – 13 h : Closing Ceremony

Moderator : **Professor Mabassa Fall**, FIDH Representative to the African Union

- **Me Sidiki Kaba**, Lawyer, FIDH Honorary President
- **Mr Ibrahim Wani**, Chief Africa Branch, Field Operations and Technical Cooperation Division, Office of the United Nations High Commissioner for Human Rights
- **H.E.Dr Ferdinand Montcho**, Ambassador of the Republic of Benin to the African Union, President of the AU Permanent Representative Committee (PRC)

13h00 – 14h00 : Lunch

Establishing the facts – Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society – Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community – Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting – Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



The Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to universal ideals of human dignity. We have a unique mandate from the international community to promote and protect all human rights. The OHCHR is the principal human rights official of the United Nations.

The East Africa Regional Office (EARO) brings UN Human Rights program to Africa through the African Union, the UN Economic Commission for Africa and through the UN Country Teams and national partners in East Africa. EARO advocates for a rights based approach to all activities relating to governance, development, humanitarian issues as well as to peace and security. The Office supports governments, national human rights institutions and civil society in their efforts to realize human rights.

EARO's five key areas of work are:

1. Partnership with UNECA to strengthen the human rights dimension of its mandate to promote economic and social development and regional cooperation in Africa;
2. Strengthening the African Union's institutional capacity to mainstream human rights in its programs and institutional framework;
3. Collaborating with UN Country Teams to encourage greater coherence and coordination of all UN system support to the strengthening of national human rights protection systems;
4. Supporting sub regional level initiatives to facilitate networking and the sharing of experiences;
5. Advocating to increase awareness and develop strategic partnerships in support of human rights promotion and protection activities in East Africa.

FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France

CCP Paris: 76 76 Z

Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80

www.fidh.org

FIDH represents **164** human rights organisations on **5** continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.
- A broad mandate
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.
- A universal movement
FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.
- An independent organisation
Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.