

## **The Tunis Declaration on the Arab Court of Human Rights**

*Recalling* that the realization of human rights requires meaningful access to justice for all persons and that it is the primary responsibility of States to remove barriers to full access to justice;

*Recalling* also that under international law States must provide effective domestic remedies for human rights violations, including judicial remedies, that are prompt, accessible and able to bring about cessation of violations and full reparation, including, as appropriate, compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition;

*Recalling* that States have an obligation to ensure in good faith the effective implementation of universal and regional human rights instruments to which they are parties;

*Recalling* that independent and impartial national justice systems are essential to ensuring access to justice and the right to a remedy for victims of human rights violations;

*Emphasizing* that without accessible and effective remedies and reparation for violations of human rights, human rights guarantees may be illusory;

*Convinced* that while States have the obligation to ensure access to justice, as a complement, effective remedies, including judicial remedies, should be available at the international, including regional, level to victims for breaches of international human rights obligations and that such remedies should be available where the State is unable or unwilling to provide remedies, or where such remedies are ineffective or have been exhausted;

*Concerned* that member States of the League of Arab States (LAS) have insufficiently implemented their obligations under the universal and regional human rights instruments to which they are parties, including the Arab Charter on Human Rights;

*Concerned* that the national justice systems of member States of the LAS have frequently failed to ensure effective remedies and reparation for victims of human rights violations;

*Mindful* that the uprisings that took place in numerous LAS member States since December 2010 helped to highlight the dismal state of human rights in the region, including the failure to implement international human rights guarantees, and the lack of effective and accessible redress and reparation and enforcement mechanisms for victims of human rights violations;

*Concerned* that the process for negotiating and drafting the Statute of the Arab Court of Human Rights (the "Arab Court") was conducted through opaque procedures and without consultation with key stakeholders, including civil society organizations;

*Concerned* that the Statute of the Arab Court that was elaborated and adopted by the LAS Ministerial Council on 7 September 2014 does not establish a genuine human rights court and falls well short of international and regional standards;

*Concerned* that the manifest deficiencies of the Statute will undermine the Arab Court's ability to act independently and to ensure that victims can access their right to an effective remedy and reparation for human rights violations;

**The participants of the joint International Commission of Jurists (ICJ) and Legal Agenda conference held in Tunis from 8 to 9 April 2015 on 'the Arab Court of Human**

**Rights in light of global and regional standards and experiences’, including judges, lawyers and human rights defenders call for:**

1. The revision of the Statute with a view to creating an effective Arab human rights court as a means of ensuring access to justice and effective remedy and reparation for victims of human rights violations by States parties;
2. The revision of the Statute, as well as other stages of the establishment and operationalization of the Arab Court, to take place through transparent and inclusive processes, which provide the opportunity for meaningful participation of all stakeholders, including civil society organizations, victims of human rights violations and their representatives, Bar Associations, judges, national human rights institutions and academics;
3. Member States of the LAS to refrain from ratifying the Statute of the Arab Court, unless and until the Statute is amended in accordance with the requirements set out in paragraph 4 below; and
4. The Statute of the Arab Court to be revised to accord with international standards, including by:
  - i. Ensuring that international standards on the independence of the judiciary, including the UN Basic Principles, are effectively incorporated into the Statute on all matters relating to the independence of the Arab Court and its judges, particularly by:
    - a. requiring judges to be elected for a single lengthy term of office with a view to safeguarding their independence;
    - b. ensuring the nomination, election and appointment of judges through transparent and inclusive procedures and based on specified and clearly defined criteria, which include appropriate personal and legal qualifications, recognized competence and experience in the field of human rights, and which ensure gender balance and fair representation of different legal systems;
    - c. ensuring that judges of the Arab Court sit in their personal capacity and not as representatives of their national States; and
    - d. ensuring that the Arab Court establishes and adopts its own rules of procedure and determines its own internal administration without any interference from the Assembly of States Parties;
  - ii. Ensuring that the Arab Court is competent to assess the effectiveness of domestic remedies, including instances where procedures are unduly prolonged or unlikely to bring effective relief, and the ability and willingness of local courts to effectively and meaningfully address human rights violations;
  - iii. Providing that, consistent with article 43 of the Arab Charter on Human Rights, the Arab Court, in its construction and interpretation of the Arab Charter or other Arab human rights treaties, may take full account of international human rights law, including the other obligations of any State that is party to the case before it;
  - iv. Ensuring that access to the Arab Court is extended to include all individuals who claim to be a victim of a violation that falls under the jurisdiction of the Arab Court by a State party;

- v. Ensuring that any obstacles limiting NGOs' access to the Arab Court are removed and that any NGO, not only those accredited in a respondent State, can bring a complaint before the Arab Court against any alleged violation by any of the State parties that falls within the jurisdiction of the Arab Court;
- vi. Providing for other avenues of access to the Arab Court, including for individuals and NGOs to submit information as *amicus curiae* or through expert opinions or to join proceedings as interested parties;
- vii. Providing for States parties not to hinder in any way the effective exercise of the right to access the Arab Court by any person or group of persons;
- viii. Providing that States parties are required to take all appropriate measures to facilitate the effective protection of victims and other participants in the proceedings, including by ensuring that they are not subjected to any form of pressure, reprisals or ill-treatment as a result of their filing a complaint or participation in proceedings before the Arab Court;
- ix. Ensuring that the Arab Court is competent to prescribe interim measures, prior to the issuance of a final judgment, where the applicant faces an imminent risk of a serious, irreversible or irreparable harm;
- x. Providing for an effective and independent monitoring mechanism to supervise the execution of the Arab Court's judgements;
- xi. Ensuring that the decision to designate a host State is based on the commitment to and compliance of the concerned State with universal human rights standards; and
- xii. Ensuring that the designated host State provides the necessary facilities and guarantees for the Arab Court, including the judges and staff, to operate in defence of human rights free from any undue interference, constraints or pressures; as well as guarantees access to its territory and the Arab Court to all parties to the proceedings and the protection of victims, their representatives, witnesses, and civil society associations from reprisal and restrictions.

### Signatories

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