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African Union: The establishment of an independent and effective African Court on Human and Peoples' Rights must be a top priority

Amnesty International urges the African Union to review the Draft Protocol on the Merger of the African Court on Human and Peoples' Rights and the AU Court of Justice

As African leaders meet in Abuja, Nigeria, for the 4th African Union (AU) Assembly Ordinary Session, Amnesty International is calling on the AU Assembly and the AU Executive Council to reaffirm and strengthen their commitments to establish an effective African Court on Human and Peoples' Rights (African Human Rights Court).

During its 2nd Ordinary Session in July 2003 in Maputo, the AU Assembly decided that the African Human Rights Court "shall remain a separate and distinct institution from the Court of Justice of the African Union." However, the Assembly at its 3rd Ordinary Session in July 2004 in Addis Ababa reversed this decision, when it decided that "the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court". This decision has now resulted in a Draft Protocol merging the two courts.

Amnesty International is concerned that the new Protocol fails to clarify as to whether the African Human Rights Court will continue to possess its full mandate to provide an effective remedy in respect of violations of individual's human rights under the African Charter on Human and Peoples' Rights (African Charter), and might be used to further delay the establishment of the Court.

According to the Protocol "in the event of inconsistency relating to the Protocol of the African Human Rights Court and the Protocol of the AU Court of Justice, the latter shall take precedence" This provision might be interpreted in the future to restrict or undermine the authority and principles of the African Human Rights Court as well as the African Charter.

Moreover, the provision of the Draft Protocol to the effect that "a judge of the [African Human Rights Court] must possess the necessary practical, judicial or academic qualifications required in his or her country for appointment to the highest judicial offices or must be a jurist of recognized competence in the field of human rights law" appears to make the requirement for judges to possess competence in the areas of human rights optional by the use of "or".

Amnesty International is further concerned that the Protocol appears to weaken rather than strengthen the independence of the African Human Rights Court by providing that "a recommendation of the Court to suspend or remove a judge shall take effect upon its endorsement by the [AU] Assembly".

Under the Protocol establishing the African Human Rights Court, the Court would take such a decision, "unless the AU Assembly disapproves".

Amnesty International urges the AU Assembly and the AU Executive Council to review the Draft Protocol in order to ensure that the fundamental principles, which necessitated the adoption of the Protocol of the African Human Rights Court and the African Charter, are not undermined. Such a review should involve the full participation of civil society organizations, including human rights non-governmental organizations. This consultation is essential for ensuring the establishment of a strong and effective African Human Rights Court that is capable of holding states parties accountable to their obligations under the African Charter.

At a time when the human rights of individuals are under great pressure in the region, an independent and effective African Human Rights Court would be an essential mechanism to increase the protection of human rights regionally and nationally. African governments must now live up to their commitments and not undermine, prejudice or further delay the establishment of an independent and effective African Human Rights Court.

If the Draft Protocol is adopted in its present form without necessary consultations, there could be criticism that the process for the establishment of an African Human Rights Court lacks the appropriate appearance of transparency.

Amnesty International welcomes the decision by the African Commission on Human and Peoples' at its 36th Ordinary Session in November 2004 in Dakar to "mandate its Bureau to meet the Chairperson of the African Union and the Chairperson of the Commission of the African Union in order to draw their kind attention on the necessity to review the decision of the Assembly of Heads of State and Government of the African Union (AHG/AU) on the merger of the African Court on Human and Peoples' Rights and the African Court of Justice in light of the legal and practical implications of this merger on the effective establishment of the African Court on Human and Peoples' Rights."

Amnesty International reiterates its call to AU member states that have not yet done so to ratify without delay the Protocol establishing the African Human Rights Court. In addition, all AU member states, including those that have already ratified the Protocol, should make declarations endorsing the rights of individuals and NGOs to access the African Human Rights Court.

Background

The AU was established on 11 July 2000 in Lomé, Togo, following the adoption of its Constitutive Act. The AU is the successor to the defunct Organization of African Unity (OAU), in existence since 1963.

The AU Assembly of Heads of State and Government is the supreme decision-making organ of the Union. The Assembly determines the common policies of the AU; monitors the implementation of those policies and ensures compliance by all AU member states. Prior to the Assembly sessions, the AU Executive Council meets at the level of Ministers in order to prepare decision-making by the Assembly.

The Assembly of Heads of State and Government of the Organization of African Unity (OAU) in June 1998 adopted the Protocol establishing the African Human Rights Court. It entered into force in January 2004 following ratification by 15 states. As of today 19 AU member states have ratified the Protocol. Under the Protocol, the AU Assembly shall - among other things - decide on the seat of the Court and elect the judges in order to make the Court operational.

The Court of Justice of the AU has been established under the Constitutive Act of the Union and its statute, composition and functions are defined in the Protocol of the Court of Justice of the AU. As of today only 5 member states have ratified this Protocol, while a total of 15 ratifications is required for its entry into force.

While the AU Court of Justice has jurisdiction to resolve disputes between member states that have ratified the Court's Protocol, the African Court is empowered to hear cases challenging violations of

the civil and political rights as well as economic, social and cultural rights guaranteed under the African Charter on Human and Peoples' Rights (African Charter) and other relevant human rights instruments.

The Draft Protocol on the merger of the African Human Rights Court and the Court of Justice of the AU completed earlier this month has now been forwarded to the AU Executive Council for consideration and for subsequent approval by the AU Assembly.