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Africa Human Rights Day: African governments must demonstrate their commitment to establish an effective and independent African Court on Human and Peoples' Rights

African governments should not further delay or undermine the full and effective establishment of an African Court on Human and Peoples' Rights (African Court), Amnesty International said today on the 18th anniversary of the entry into force of the African Charter on Human and Peoples' Rights (African Charter).

All 53 member states of the African Union (AU) have ratified the African Charter, which is the main regional instrument for the promotion and protection of human rights in the continent. The African Charter guarantees civil and political rights as well as economic, social and cultural rights. They include the rights to life and integrity of person; liberty; fair trial; freedom from slavery; freedom from torture and other inhuman or degrading treatment; freedom of expression; family life; to seek and obtain asylum; education and housing and the right to the best attainable state of physical and mental health;

However, 18 years after the African Charter entered into force, these rights remain under severe attack. African governments generally have failed to address adequately the human rights problems confronting the continent. These include persistent armed conflicts which have resulted in the massive displacement of population; arbitrary killings, maimings and abductions; and forced recruitment of child soldiers. Furthermore, African women continue to suffer human rights violations simply because they are women.

Although the AU took the decision in 1998 to establish the African Court in order to address impunity for violations of human rights guaranteed by the African Charter, AU member states have so far not demonstrated sufficient commitment and political will towards the full and effective establishment of the Court.

Of particular concern in this context is the decision of the AU Assembly at its 3rd Ordinary Session in July in Addis Ababa, to integrate the African Court and the Court of Justice into one Court, despite an earlier commitment made by the Assembly at its 2nd Ordinary Session in July 2003 in Maputo, to the effect that the African Court "shall remain a separate and distinct institution from the Court of Justice of the African Union".

At a time when the human rights guaranteed by the African Charter are being undermined, it is imperative that the AU sends a powerful message that it is fully committed to the fundamental ideals of the African Charter and the African Court. As an institution designed to play a significant role in the struggle against impunity for human rights violations in Africa, the African Court has the potential to increase the protection of human rights regionally and nationally. Since the African Court is supposed to work together with the African Commission on Human and Peoples' Rights, (African Commission) the Court could also contribute to the long-term effectiveness of the Commission.

Furthermore, the establishment of an effective and independent African Court will ensure a better implementation of the African Charter by member states and effective domestic remedies for violations of the African Charter.

AU member states should not adopt measures that will prejudice, restrict or weaken the essence of the African Court. AU member states, especially those that have ratified the Protocol establishing the African Court, should urgently assess whether the integration of the two courts provides as full a remedy for human rights violations as is appropriate under the African Charter and the Protocol establishing the African Court.

The full participation of civil society organizations, including human rights non-governmental organizations in this process is essential for ensuring the long-term effectiveness of the African Court.

The celebration of Africa Human Rights Day provides AU member states with another opportunity to reinforce their commitments to establish an effective and independent African Court. They must not waste it.

Background

The African Charter was adopted in June 1981 at the eighteenth Conference of the Heads of State and Government of the Organization of African Unity (OAU). The African Charter entered into force on 21 October 1986, after ratification by "a simple majority of member states of the Organization of African Unity". The African Charter establishes the African Commission, charged with monitoring the implementation of the Charter by states parties. However, while the African Commission has an elaborate promotional mandate under the African Charter, it does not possess sufficient protective powers to ensure states parties' compliance.

The Protocol establishing the African Court was adopted at the Summit of the OAU/AU in Ouagadougou, Burkina Faso on 10 June 1998. According to the Protocol, the African Court will operate side by side with the African Commission, and not replace it. As the Preamble to the Protocol states: "the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of an African Court on Human and Peoples' Rights to complement and reinforce the functions of the African Commission on Human and Peoples' Rights."

In July 2004, the AU Assembly decided at its 3rd Ordinary Session in Addis Ababa, to integrate the African Court and the Court of Justice into one Court. While the Court of Justice established under the AU Constitutive Act 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. Furthermore, unlike the judges of the African Court who are required to possess competence in human rights, the judges of the Court of Justice are only required to "possess the necessary qualifications required in their respective countries for appointment to the highest judicial offices." Additionally, while the instrument elaborating the framework for the Court of Justice, has not yet entered into force, the African Court's Protocol entered into force in January 2004.

Since the Protocol establishing the Court was adopted, Amnesty International has repeatedly called on AU member states to ratify the Protocol, to nominate competent, independent and impartial

judges to the Court, and to provide the Court with sufficient resources to enable it to be effective and to ensure full cooperation of the member states with the Court.

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566

Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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