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African Union: Assembly should establish an effective African Court on Human and Peoples' Rights

The African Union (AU) Assembly of Heads of State and Government meeting in Addis Ababa, Ethiopia should ensure the establishment of an effective and functioning African Court on Human and Peoples' Rights (African Court), Amnesty International urged today.

Since its adoption on 10 June 1998, Amnesty International has consistently called on AU member states to ratify the Protocol establishing the Court, to nominate competent, independent and impartial judges to the Court, and provide the Court with sufficient resources once it is fully established and ensure full cooperation with the Court.

The Protocol provides for the establishment of a human rights court with jurisdiction 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 relevant human rights instruments.

Under Article 3 of the Protocol, the Court is empowered to judge whether a state party has violated any of the rights contained in the African Charter, or any other relevant human rights instruments ratified by the state concerned, for which the victim seeks redress.

As of 29 June 2004--more than six years after the adoption of the Protocol, only 18 of the 53 AU member states have ratified the Protocol. Of these, only Burkina Faso has adopted a declaration that would grant direct access to individuals and NGOs before the Court. Moreover, only ten states have nominated judges to the Court.

"The current AU summit provides another opportunity for the Assembly to live up to its promises made during earlier summits to ensure a speedy ratification of the Protocol and to increase the protection of human rights in Africa. These commitments are consistent with the Constitutive Act of the AU, which attaches particular significance to human rights," Amnesty International said.

The effectiveness of the Protocol will continue to be undermined by the refusal of governments that have ratified it to make declarations that would allow individuals and NGOs direct access to the Court. Clearly, concrete actions by many African governments are needed to ensure the effective implementation of the Protocol and the full operationalization of the African Court.

Amnesty International urges the AU Assembly to use its Third summit to take important decisions that translate its previously expressed commitments into reality.

Specifically, AU member states that have not yet done so should:

ratify without delay the Protocol establishing the African Court. In addition, AU member states, including those that have already ratified the Protocol, should make declarations accepting individual and NGO access to the African Court.

review their legislation and practice, to ensure that these fully conform with the Protocol.

ensure that the judges to be elected into the African Court have the relevant expertise for their position.

States should also ensure adequate gender balance and representation of the different regions and legal systems in the AU. Member states should ensure a transparent nomination and selection procedure that is open to all potential candidates; they should encourage applications from female candidates, and encourage civil society organizations to participate at all stages of the nomination process.

provide essential resources, including funding to the African Court once fully established. The African Commission on Human and Peoples' Rights should also be given adequate resources to carry out its task effectively.

ensure that the African Court is allowed to function independently, impartially and effectively, and to develop its own case law.

take all necessary steps to cooperate fully with the African Court, including by according high priority to the prompt compliance with the judgments and decisions of the Court.

ensure that interested people are given the opportunity to be heard and to be represented by legal counsel if they cannot afford one. Also, parties and witnesses who appear before the Court should be protected and not be made to face retribution.

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 meeting in Addis Ababa is the Third Summit of the Assembly.

The AU Assembly is the supreme 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.

The Protocol establishing the African Court was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in June 1998. 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." The African Charter, which entered into force on 21 October 1986, has been ratified by all the AU member states. 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.

Despite some positive developments in the Commission's individual complaint mechanism, the decisions it renders are non-binding, and still attract little, if any, attention from governments of member states. Amnesty International has for several years campaigned for ratification of the Protocol.

Only the following entities have the right of direct access to the Court: the African Commission; the State party which has lodged a complaint to the Commission; the state party against which a complaint has been lodged at the Commission; the state whose citizen is a victim of human rights

violations and African Intergovernmental Organizations. Similarly, a State that has an interest before the Court could request permission from the Court to join in the proceedings. NGOs with observer status before the African Commission and individuals may only institute cases before the Court if the State against which they want to proceed has made a declaration accepting such NGO and individual submission of cases. Without such declaration, the Court would not, under any circumstance receive any petition from an NGO or individual.