

## **African Union Summit in Addis Ababa: African leaders should re-commit to full implementation of human rights**

In advance of the 12th Ordinary Session of the African Union (AU) Assembly in Addis Ababa, Ethiopia, between 1 and 3 February 2009, Amnesty International is calling on African leaders to re-commit to full implementation of human rights, and to live up to their promises and the vision that informed the establishment of the AU in 2002 in Durban, South Africa, following the adoption of its Constitutive Act in 2000.

Among others, African Heads of State and Government are expected to discuss "Infrastructure Development in Africa." However, to achieve a durable and sustainable development, African leaders would need to re-commit to implementing fully their oft-repeated human rights promises and commitments, and to exercise sufficient political will to create an environment suitable for the protection of human rights, rule of law and access to justice for victims of human rights violations. Without concrete and effective implementation of human rights principles and commitments, serious violations of human rights that have characterized many parts of Africa, including Somalia, Sudan and Zimbabwe, will continue to occur and suspected perpetrators will continue to enjoy impunity.

Amnesty international urges the AU Assembly to adopt a plan of action with clear timelines to implement fully their voluntary human rights promises and commitments, and to consistently and boldly address the human rights challenges confronting Africa. The AU Assembly and African governments must show principled leadership and in particular, be ready to use their influence and, where appropriate, be willing to openly criticize member states that commit human rights violations for failing to discharge obligations. Amnesty International is calling on African leaders to take concrete measures in the following areas in order to improve the human rights situation on the continent.

## **1. The AU Assembly should take more proactive steps to ensure protection of civilians in Somalia, and to reject impunity**

Amnesty International is gravely concerned that since late 2006, conflict in Somalia has taken a dramatic toll on the lives of the Somali people. Civilians have been indiscriminately and directly targeted by all parties to the conflict, including in attacks that amount to war crimes, and possibly crimes against humanity.

As a result of armed conflict, over 1.2 million Somali civilians are internally displaced, and today some 3.25 million Somalis are dependent on humanitarian aid for survival. Increasing threats and attacks against humanitarian workers - many of them targeted attacks - have seriously reduced access by aid agencies to those in need. Somali journalists have also faced death threats and targeted attacks since 2007, and international journalists have limited presence due to the risk of abduction and other attacks.

In 2008, human rights defenders and other members of the civil society have also come increasingly under attack, prompting many to flee the country, as documenting and reporting on the human rights abuses has become extremely dangerous to carry out.

Amnesty International therefore urges the AU Assembly to:

Establish a civilian protection mandate and a human rights component to AMISOM, the African Union peace support mission in Somalia, with the capacity to monitor, investigate and publicly report on violations of international human rights and humanitarian law;

Request the African Commission on Human and Peoples' Rights, including its Special Rapporteur on refugees, asylum seekers and internally displaced persons in Africa, to conduct a fact-finding mission among Somali refugees and internally displaced persons throughout the region

Take a strong stand against impunity for gross human rights abuses committed in Somalia, which fuel the conflict and encourage perpetrators who see no reason to believe they will ever be held accountable

Work closely with the UN Security Council to establish AU/UN Commission of Inquiry or similar mechanism to investigate violations of international human rights and humanitarian law committed by all parties to armed conflict in Somalia, as requested by both parties to the Djibouti peace

process in November 2007, and supported by the AU Special Representative for Somalia

Ensure that the UN arms embargo on Somalia, in place since 1992, is respected and fully implemented by all states, including by demanding that all states and private entities in Somalia respect the requirement to apply for exemptions to the UN sanctions committee to send security-related equipment or engage in security sector capacity or reform.

## **2. The AU Assembly should provide political support to the work of the International Criminal Court in Sudan**

The Pre-Trial Chamber of the International Criminal Court (ICC) is currently examining the application of an arrest warrant for Sudanese President Omar al Bashir on charges of genocide, crimes against humanity and war crimes. Amnesty International is gravely concerned about the requests by the AU for the UN Security Council to defer the investigation and prosecution of crimes in Darfur by the ICC.

Amnesty International has consistently called for, and repeats that, all those responsible for violations of human rights in Darfur should be brought to justice.

Amnesty International calls on the AU Assembly to provide the necessary political support to the work of the ICC and not to thwart the course of justice but stand by the AU's principles with regard to the respect for human rights and rejection of impunity, as established under the Constitutive Act of the AU.

Amnesty International also calls on the AU Assembly to discourage Sudanese authorities from resorting to measures that could have a negative effect on the civilian population in Darfur should the International Criminal Court issue an arrest warrant against the Sudanese President.

## **3. The AU Assembly should ensure that respect for human rights is prioritised in the on-going political negotiations in Zimbabwe**

Amnesty International is concerned that humanitarian situation remains desperate with cholera taking thousands of people's lives, millions being in need

of food aid, and the health and education systems in disarray. The Zimbabwean authorities continue to harass and intimidate state critics and political opponents, including human rights defenders Jestina Mukoko, Broderick Takawira and Pascal Gonzo who are considered by Amnesty International to be prisoners of conscience, detained solely as a result of their legitimate human rights work. They all alleged to have been tortured by state security agents.

Amnesty International urges the AU Assembly to prioritise respect for human rights in Zimbabwe whatever the outcome of the SADC-led political negotiations. The AU Assembly should speak out publicly against the continued state-sponsored human rights violations which are the cause of untold suffering for the Zimbabwean people.

The AU Assembly should support the call for the deployment of AU human rights monitors to Zimbabwe to investigate all allegations of violations by the security forces. It is very important for the AU to show that it does not tolerate or accept the persistent human rights violations in the country, and to put pressure on the government to address the prevailing culture of impunity in the country.

#### **4. The AU Assembly should encourage its member states that have not yet done so to ratify the Protocol on the Statute of the African Court of Justice and Human Rights**

The African Ministers of Justice and Attorneys General meeting, held from 14-18 April 2008 in Addis Ababa, Ethiopia, agreed on a merger Protocol on the African Court of Justice and Human Rights, effectively integrating the AU Court of Justice contemplated under the AU Constitutive Act, and the African Court on Human and Peoples' Rights established under the AU 1998 Protocol. The merger Protocol adopted by the AU Assembly during its 11th Ordinary Session in Sharm El Sheikh, Egypt has not yet been ratified by any state. Fifteen ratifications are required for the Protocol to enter into force.

Also, the Protocol in Article 30 excludes the rights of individuals and human rights non-governmental organizations (NGOs) to directly approach the court for remedies, except if state parties make a declaration to the effect. This provision mirrors that of Article 34(6) of the Protocol establishing the African Court on Human and Peoples' Rights, which states that "[a]t the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol.

The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.”

Amnesty International has criticized the approach as capable of undermining the long-term effectiveness of the Court. It is therefore important that when ratifying the Protocol states simultaneously make declarations to allow individuals and NGOs direct access to the Court; otherwise the promise of the Court would not be fulfilled. The key to the functioning and effectiveness of the African Court of Justice and Human Rights is the ability of victims of human rights violations and NGOs to directly approach the Court for an effective remedy.

Amnesty International urges African governments to demonstrate their expressed commitment to address impunity for human rights violations by promptly ratifying the Protocol. Full ratification of the Protocol would allow victims of human rights across the continent to bring their concerns to the attention of the African Court, and to achieve effective remedy. It would also contribute to the effective implementation of the human rights obligations and commitments by AU member states. The Court would provide the platform for the articulation of international legal principles at the regional level, and direction and precedents for domestic courts.

Amnesty International therefore urges AU Assembly to encourage member states that have not yet done so to:

Promptly ratify the Protocol on the Statute of the African Court of Justice and Human Rights

At the time of ratification, make the declaration that would allow direct access to the African Court of Justice and Human Rights by individuals and NGO as required under Article 30 of the Court’s Protocol.

## **5. The AU Assembly should encourage its member states that still retain the death penalty to fully implement African Commission’s resolution on moratorium on executions**

The African Commission on Human and Peoples’ Rights (African Commission) at its 44th Ordinary Session in Abuja, Nigeria adopted a resolution calling on African States that still retain the death penalty to “observe a moratorium on the

execution of death sentences with a view to abolishing the death penalty” (ACHPR/Res.136(XXXXVIII).08).

The resolution, adopted just days after the Third Committee of the UN General Assembly voted for a similar resolution on moratorium on executions, is an important step towards making the AU a totally death penalty-free zone.

The resolution expressed concerns about the failure of some African states “to give effect to the UN resolutions and African Commission’s own 1999 resolution calling for a moratorium on executions”, and about the application of “the death penalty in conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples’ Rights and other relevant international norms”. The resolution recalled Article 4 of the African Charter, which recognizes the right of everyone to life, and Article 5(3) of the African Charter on the Rights and Welfare of the Child, which guarantees the non-application of death penalty for crimes committed by children.

Amnesty International opposes the death penalty because it is irrevocable and there is always a chance that innocent men and women will be executed in any country that maintains this punishment. The death penalty is inherently arbitrary and discriminates against those who are poor, marginalized or belong to minority communities.

Amnesty International considers that the African Commission’s resolution provides a solid basis for individual and collective state action to observe a moratorium on executions towards the eventual abolition of the death penalty.

However, the death penalty is still being used by some African governments. AU member states that still retain the death penalty, include Botswana, Burundi, Cameroon, Chad, Comoros, Congo (Democratic Republic), Egypt, Equatorial Guinea, Ethiopia, Guinea, Lesotho, Libya, Nigeria, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe.

The AU Assembly must now take immediate steps to ensure that member states that have not yet done so implement fully the resolution by establishing a moratorium on executions.

The AU Assembly should ask the AU Commission to oversee the implementation of the resolution on the national fronts, and to report back to the Assembly at its 13 Ordinary Session on the extent to which states are implementing the resolution.

The AU Assembly should fully support, engage and cooperate with the African Commission’s Working Group on the Death Penalty for it to discharge its mandates effectively and efficiently. The AU Assembly should implement any recommendations by the Working Group.

