

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

**AI Index: AFR 54/036/2008**

**18 August 2008**

### **Sudan: African Union must demonstrate its commitment to tackle impunity for Darfur**

Amnesty International is gravely concerned about the recent request by the African Union (AU) for the United Nations Security Council (Security Council) to defer the investigation and prosecution of crimes in Darfur by the International Criminal Court (ICC).

Following the announcement by the ICC's Prosecutor on 14 July 2008 that he intended to seek an arrest warrant for Sudanese President Omar al Bashir, the AU Peace and Security Council (PSC) issued a statement, at its 142nd meeting held on 21 July 2008, calling on the Security Council to defer the investigation and prosecution pursuant to Article 16 of the Rome Statute of the International Criminal Court (Rome Statute). The call for a deferral was made on the ground of ensuring "that the ongoing peace efforts are not jeopardised", and that "in the current circumstances a prosecution may not be in the interest of the victims and justice".

According to several media reports, the Chairman of the AU Assembly has said that "there is a risk of anarchy in a proportion we have not seen in this continent" if the investigation and prosecution for crimes in Darfur is not deferred. These statements ignore the complementary role that justice can play in achieving long-term and meaningful peace by establishing an effective deterrent to future crimes and by implementing the rights of the victims to justice, truth and reparations.

Despite the fact, that the Pre-Trial Chamber has not yet considered the Prosecutor's application, the AU has worked to obtain a deferral. Disturbingly, AU states even threatened the renewal of the United Nations – Africa Union Mission in Darfur (UNAMID) in its efforts to undermine the important work of the ICC. These efforts were defeated and the UNAMID mission was extended on 31 July, however, with language that indicates the Security Council will come back to the issue of the Article 16 deferral shortly.

If successful in their efforts, AU states, including those which are states parties to the Rome Statute and have committed to support the work of the International Criminal Court, would send a clear message to those planning and committing crimes in Darfur that they are free to proceed without risk of being held accountable. Amnesty International does not believe this is "in the interest of victims and justice." Furthermore, it would have potentially disastrous effects on the Court and would risk becoming a precedent in every situation being investigated by its Prosecutor. It would also leave the Security Council open to permanent blackmail by the government of Sudan that might threaten a broad range of retaliatory measures, including the resumption of hostilities, if the Security Council were to end the deferral and the Court were to resume consideration of the request for an arrest warrant.

Amnesty International is concerned that the AU's position on the Prosecutor's application for an arrest warrant of President Omar al Bashir is in sharp contrast with the organization's own objectives and principles under the Constitutive Act of the AU to end impunity for human rights abuses, and to take effective and concrete measures to uphold the rule of law and promote principles of human rights and accountability. The disparity and inconsistency between the

principles and objectives enshrined in the Constitutive Act, and the continuing insistence by the organization on deferral of the ICC's investigation and prosecution, is blatant.

Among the objectives of the AU, which are enshrined in Article 3 of the Constitutive Act, is to "promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law." The Constitutive Act also makes respect for the sanctity of human life and condemnation and rejection of impunity one of its operational principles. Similarly, African countries supported the establishment of the ICC, the majority of AU member states have ratified the Rome Statute, and the AU's own institution, the African Commission on Human and Peoples' Rights has called on the AU and its members to fully support the work of the ICC. At its 24th Ordinary Session in 1998 in Banjul, The Gambia, the African Commission among others asked AU member states "to ratify the Rome Statute and to take all necessary legislative and administrative steps to bring national laws and policies into conformity with the statute."

Amnesty International is seriously concerned that the AU has not demonstrated sufficient political will to back up its institutional objectives and principles with action by its continued refusal to support international efforts to investigate and prosecute crimes in Darfur. Amnesty International believes that the AU's failure to support the ICC's initiative on Darfur is sending a message that the organization cannot enforce its own principles and commitments, including those contained in the AU Constitutive Act and the African Charter on Human and Peoples' Rights.

Moreover, the AU's insistence on deferral under Article 16 of the Rome Statute is capable of obstructing justice to victims of the international crimes committed in Darfur, and may endanger the establishment of a lasting peace in the region based on the rule of law and respect for human rights. Amnesty International believes that accountability for human rights abuses is necessary not only to satisfy the needs of the victims, but also to re-establish the rule of law and to deter future abuses.

Amnesty International also believes that the ICC's work presents the AU Assembly with a unique opportunity to demonstrate its commitment to addressing impunity for serious crimes under international law, and to rebuild confidence in the credibility of the organization as one committed to the protection of human rights and not the immunity of individual heads of state. It is only by effectively and decisively tackling impunity for Darfur that African governments can show that the AU can make a real difference for the human rights of African children, men and women.

It is important for the AU Assembly to show strong political will and to demonstrate that it is capable of implementing its own objectives and principles in a principled and consistent manner by publicly supporting and endorsing the ICC's initiative on Darfur, and working for the effective implementation of the outcome of the ICC process.

END/