

**CALL FOR AFRICAN STATES TO REJECT IMMUNITY FOR SERIOUS  
CRIMES BY AFRICAN CIVIL SOCIETY ORGANISATIONS AND  
INTERNATIONAL ORGANISATIONS WITH A PRESENCE IN AFRICA**

August 2014

We, the undersigned African civil society organisations and international organisations with a presence in Africa working on human rights and criminal justice, join together to express our deep dismay and opposition to the recent adoption by African Union (AU) member heads of states, at the 23rd AU summit, of an amendment to the Statute of the African Court of Justice and Human Rights that would preclude the African Court from trying sitting heads of state and government, as well as certain other senior state officials, for serious crimes committed in violation of international law.

The adopted Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights is the first legal instrument to extend a regional court's authority to criminal jurisdiction over genocide, war crimes, and crimes against humanity. The protocol also contains eleven additional crimes and notably has an independent defense office. The expanded role poses significant challenges to the African Court and we stress the importance of providing it with adequate resources to ensure the effective implementation of all mandates.

We are nevertheless deeply dismayed that Article 46A *bis* of the amendments provides immunity to sitting heads of state and government, and certain other senior state officials from trial for serious crimes. It states: "No charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office."

The immunity provision is a regrettable departure from the spirit and letter of the AU's Constitutive Act, which promotes respect for human rights and the rejection of impunity under article 4 of the act.

Victims cannot be protected if those at the highest levels of power are above the law. Immunity indirectly legitimizes the chronic disease of impunity, as it takes away the prospect of securing accountability before the African Court for persons who may be responsible for serious crimes. Victims cannot realize meaningful justice for violations suffered if those who may be responsible for grave crimes enjoy exemption from the effect and force of the law.

Civil society organisations oppose granting immunity to any person in relation to serious crimes committed in violation of international law. The statutes of the International Criminal Court (ICC), the Special Court for Sierra Leone, the International Criminal Tribunal for Rwanda, the Extraordinary African Chambers within the courts of Senegal, and other international and internationalized courts provide that official position of any accused person shall not relieve them of criminal responsibility.

We recall that African governments played an active role in the establishment of the ICC to help ensure justice for genocide, war crimes and crimes against humanity, and African states were among the founding ratifiers of the ICC's Rome Statute. The majority of African Union members are now state parties to the ICC. In ascribing to the letter and the spirit of the Rome Statute, these states have signaled their dedication to defend the rights of victims, to reject exemptions for accused based on their official position, and to ensure that the perpetrators of the most serious crimes known to humankind, whoever they might be, are brought to justice.

Other international conventions, including the Convention against Torture, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Geneva Conventions of 1949, all recognize the imperative of accountability for individuals, including state officials, who have committed serious crimes and do not provide immunity for individuals in relation to these crimes. Article IV of the Genocide Convention expressly states that individuals who have committed genocide "shall be punished whether they are constitutionally responsible rulers, public officials or private individuals."

We welcome that some African states like Benin, Burkina Faso, Democratic Republic of Congo, Kenya and South Africa exclude immunity for sitting officials with respect to serious crimes consistent with their national laws.

Granting immunity to African heads of states and government, and certain senior government officials before the African Court in some circumstances risks giving an open license for those in these positions to perpetrate crimes. It further risks encouraging those accused of the crimes to cling to their positions in order to avoid facing the law, thereby entrenching dictatorships.

The immunity provision of the adopted protocol thus goes against the very essence of promoting human rights, peace and stability, and is a setback to advances made towards democracy and the rule of law in Africa. African leaders should ultimately be assessed on the basis of their efforts to enhance the values of respect for human rights and justice for the victims of serious crimes - not by efforts at nurturing the culture of impunity at the expense of the rights of their citizens.

The recent decision to allow immunity for serious crimes under international law on the basis of official capacity before the regional court thus is retrogressive and undesirable. Instead of retreating from important achievements to limit impunity, advance the rule of law, and promote respect for human rights, we call upon African governments to remain steadfast in supporting justice for victims of the worst crimes.

We, the undersigned civil society organisations, appeal to African states to reaffirm their commitments in international and regional instruments to support human rights, accountability and access to justice by rejecting immunity for serious crimes under international law.

*This text was drafted by Malawi's Center for Human Rights and Rehabilitation, and benefitted from input from several African civil society organisations and international organisations with a presence in Africa.*

1. Media Institute of Southern Africa, with offices in Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe
2. Action des Chrétiens pour l'Abolition de la Torture, Benin
3. Amnesty International, Benin
4. Benin Coalition for the ICC, Benin
5. Coalition for the International Criminal Court, with offices in Benin and Democratic Republic of Congo
6. Ditshwanelo – The Botswana Centre for Human Rights, Botswana
7. Mouvement Burkinabé des Droits de l'Homme et des Peuples, Burkina Faso
8. Union Interafricaine des Droits de l'Homme, Burkina Faso
9. Amnesty International, Burkina Faso
10. Action des Chrétiens pour l'Abolition de la Torture, Burundi
11. Association Burundaise Pour la Promotion des Droits Humains et des Personnes Detenues (APRODH), Burundi
12. Burundi Coalition for the ICC, Burundi
13. Centre Des Mères, Burundi
14. Forum pour le Renforcement de la Société Civile, Burundi
15. Ligue Burundaise des Droits de l'Homme, Burundi
16. Action des Chrétiens pour l'Abolition de la Torture, Cameroon
17. Maison des Droits de l'Homme du Cameroun, Cameroon
18. Action des Chrétiens pour l'Abolition de la Torture, Central African Republic
19. Ligue Centrafricaine des Droits de l'Homme, Central African Republic
20. Mission Internationale de Soutien à la Centrafrique, Central African Republic
21. Mouvement pour la Defense des Droits et d'Action Humanitaire, Central African Republic
22. Action des Chrétiens pour l'Abolition de la Torture, Chad
23. Ligue Tchadienne des Droits de l'Homme, Chad
24. Action des Chrétiens pour l'Abolition de la Torture, Côte d'Ivoire
25. Actions pour la Protection des Droits de l'Homme, Côte d'Ivoire
26. Ivorian Coalition for the International Criminal Court, Côte d'Ivoire
27. Ligue Ivoirienne des Droits de l'Homme, Côte d'Ivoire
28. Mon Beau Village, Côte d'Ivoire
29. Mouvement Ivoirien des Droits Humains, Côte d'Ivoire
30. Organisation des Femmes Actives, Côte d'Ivoire
31. Organisation Nationale pour l'enfant, la Femme, et la Famille, Côte d'Ivoire
32. Réseau Equitas Côte d'Ivoire, Côte d'Ivoire
33. Réseau Paix et Sécurité des Femmes dans l'Espace Communauté Economique des Etats de l'Afrique de l'Ouest Côte d'Ivoire, Côte d'Ivoire
34. SOS Exclusion, Côte d'Ivoire
35. Aide-Vision, ASBL, Democratic Republic of Congo

36. Action des Chrétiens Activistes des Droits de l'Homme à Shabunda, Democratic Republic of Congo
37. Action des Chrétiens pour l'Abolition de la Torture, Democratic Republic of Congo
38. Carrefour Juridique Culturel, Democratic Republic of Congo
39. Congolese Coalition for the ICC, Democratic Republic of Congo
40. Collectif des ONG pour la Promotion de la Justice, Democratic Republic of Congo
41. Congolese Association for Access to Justice, Democratic Republic of Congo
42. Fondation Congolaise pour la Promotion des Droits humains et la Paix, Democratic Republic of Congo
43. Groupe Lotus, Democratic Republic of the Congo
44. Human Rights Watch, with offices in Democratic Republic of Congo, Kenya, Rwanda, and South Africa
45. Ligue des Electeurs, Democratic Republic of the Congo
46. Ligue pour la Promotion et le Développement Intégral de la Femme et de l'Enfant, Democratic Republic of Congo
47. Parliamentarians for Global Action, with offices in Democratic Republic of Congo and Uganda
48. Human Rights Concern, Eritrea
49. Action des Chrétiens pour l'Abolition de la Torture, Ghana
50. Africa Legal Aid, with offices in Ghana and South Africa
51. Amnesty International, Ghana
52. Media Foundation for West Africa, Ghana
53. West Africa Journalists Association, with offices in Ghana and Senegal
54. Association of Victims, Relatives and Friends of 28 September, Guinea
55. Amnesty International, Kenya
56. International Center for Policy and Conflict, Kenya
57. International Commission of Jurists, Kenya
58. Kenya Human Rights Commission, Kenya
59. Kenyans For Peace with Truth and Justice, Kenya
60. Transformation Resource Center, Lesotho
61. Action des Chrétiens pour l'Abolition de la Torture, Liberia
62. Centre for Media Studies and Peace Building, Liberia
63. Concerned Christian Community, Liberia
64. Foundation for Human Rights and Democracy, Liberia
65. NAYMOTE Partners for Democratic Development, Liberia
66. Rights and Rice Foundation, Liberia
67. Rural Empowerment Foundation, Liberia
68. Action des Chrétiens pour l'Abolition de la Torture, Madagascar
69. Centre for Development of People, Malawi
70. Centre for Human Rights and Rehabilitation, Malawi
71. Church and Society Programme-CCAP Synod of Livingstonia, Malawi
72. Citizen for Justice, Malawi
73. Civic and Political Space Platform, Malawi
74. Human Rights Consultative Committee, Malawi
75. Malawian Network of Religious Leaders Living with or Personally Affected by HIV and AIDS, Malawi

76. National Integrity Platform, Malawi
77. Pan African Civic Education Network, Malawi
78. Association Malienne des Droits de l'Homme, Mali
79. Coalition Malienne des Défenseurs des Droits Humains du Mali, Mali
80. Association Mauritanienne des Droits de l'Homme, Mauritania
81. SPEAK Human Rights and Environmental Initiative, Mauritius
82. NamRights, Namibia
83. Action des Chrétiens pour l'Abolition de la Torture, Niger
84. Association Nigérienne pour la Défense des Droits de l'Homme, Niger
85. Center for Democracy and Development, Nigeria
86. Civil Resource Development and Documentation Centre, Nigeria
87. Coalition for the International Criminal Court, Nigeria
88. Coalition of Eastern NGOs, Nigeria
89. International Society for Civil Liberties & the Rule of Law, Nigeria
90. National Coalition on Affirmative Action, Nigeria
91. West African Bar Association, Nigeria
92. Women Advocates Research and Documentation Center, Nigeria
93. Action des Chrétiens pour l'Abolition de la Torture, Republic of the Congo
94. Observatoire Congolais des Droits de l'Homme, Republic of the Congo
95. Association pour la Défense des Droits des Personnes et des Libertés Publiques, Rwanda
96. Human Rights First Rwanda Association, Rwanda
97. Ligue des Droits de la Personne dans la Region des Grands Lacs, Rwanda
98. Unissons Nous pour la Promotion des Batwa, Rwanda
99. Action des Chrétiens pour l'Abolition de la Torture, Senegal
100. Amnesty International, Senegal
101. Ligue Sénégalaise des Droits Humains, Senegal
102. Rencontre Africaine pour la Défense des Droits de l'Homme, Senegal
103. Amnesty International, Sierra Leone
104. Center for Accountability and Rule of Law, Sierra Leone
105. Coalition for Justice and Accountability, Sierra Leone
106. Network Movement for Democracy and Human Rights, Sierra Leone
107. Sierra Leone Coalition for the International Criminal Court, Sierra Leone
108. Allamagan Human Rights & Relief Advancement Organization, Somalia
109. Africa Programme of International Commission of Jurists, South Africa
110. Human Rights Institute of South Africa, South Africa
111. International Crime in Africa Programme, Institute for Security Studies, South Africa
112. Lawyers for Human Rights, South Africa
113. Masifundise Development Trust, South Africa
114. South Africa Forum for International Solidarity, South Africa
115. Southern Africa Litigation Centre, South Africa
116. South Sudanese Law Society, South Sudan
117. Darfur Bar Association, Sudan
118. Asylum Access, Tanzania
119. Centre for Widows and Children Assistance, Tanzania

120. Children Education Society, Tanzania
121. Tanzania Youth Vision Association, Tanzania
122. Action des Chrétiens pour l'Abolition de la Torture, Togo
123. Amnesty International, Togo
124. Advocates for Public International Law Uganda, Uganda
125. African Center For Justice and Peace Studies, Uganda
126. East and Horn of Africa Human Rights Defenders Project, Uganda
127. Foundation for Human Rights Initiative, Uganda
128. Human Rights Network, Uganda
129. Human Rights Network for Journalists, Uganda
130. Pan African Human Rights Defenders Network, Uganda
131. Platform for Social Justice, Uganda
132. Regional Associates for Community Initiatives, Uganda
133. Spectrum Uganda Initiatives Inc., Uganda
134. Uganda Victims Foundation, Uganda
135. Ugandan Coalition for the International Criminal Court, Uganda
136. Women's Initiatives for Gender Justice, Uganda
137. Southern African Centre for the Constructive Resolution of Disputes, Zambia
138. Counselling Services Unit, Zimbabwe
139. Crisis in Zimbabwe Coalition, Zimbabwe
140. Women of Zimbabwe Arise, Zimbabwe
141. Zimbabwe Human Rights NGO Forum, Zimbabwe