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African Union Summit in Accra: Time for African leaders to make human rights count and implement their promises and commitments

1. Introduction

Ahead of the Ordinary Session of the African Union (AU), to be held in Accra, Ghana between 25 June and 3 July 2007, Amnesty International is urging African leaders to seize the opportunity of the meeting to put human rights first, and to implement their promises and commitments.

At its 8th Ordinary Session in January 2007 in Addis Ababa, Ethiopia, the African Union Assembly decided to devote the Accra meeting to a “Grand Debate on the Union Government”, which is expected to produce a framework for ‘full political and economic integration’ of Africa, or ultimately lead to a “United States of Africa.” Amnesty International neither supports nor opposes any particular political system or inter-governmental structure. Nevertheless, Amnesty International is concerned that the human rights concerns motivating the creation of the AU six years ago, and many of which remain unaddressed, will take a back-seat in Accra.

The Constitutive Act of the AU adopted in 2000 expresses member states’ determination “to promote and protect human and peoples’ rights, consolidate democratic institutions and culture and to ensure good governance and the rule of law in accordance with the African Charter on Human and Peoples’ Rights.” However, despite this expression as well as other expressed commitments such as the New Partnership for Africa’s Development (NEPAD) framework document, the Declaration on Democracy, Political, Economic and Corporate Governance, and the binding legal obligations of the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and the Protocol to the African Charter on Human and Peoples’ Rights on the establishment of an African Court on Human and Peoples’ Rights, African leaders so far have not achieved the promised steps towards the full realization of human rights in the Continent.

Armed conflict, under-development, extreme poverty, widespread corruption, inequitable distribution of resources, political repression, marginalization, ethnic and civil violence, impunity and the HIV/AIDS pandemic are some of the factors that continue to undermine the enjoyment of human rights across the region. Although

armed conflicts generally are on the decrease, they still affect many countries. As a result, several million refugees and internally displaced people, including children and the elderly, remain without basic shelter, protection and care. In addition, hundreds of thousands of people in many African countries have been deliberately rendered homeless. Although a few African governments have either abolished or recommended its abolition, the death penalty is still imposed regularly and hundreds of prisoners remain under sentence of death in several countries in the region.

Amnesty international believes that the Accra meeting provides a new opportunity for African leaders to adopt a plan of action with clear timelines to implement fully their voluntary human rights promises and commitments, and to strengthen and make effective the various mechanisms they have established to protect and promote human rights across the region. The following recommendations highlight some areas which African governments and the AU should consider if they are to effectively address the enormous human rights challenges confronting the continent.

2. Amnesty International's recommendations to the African Union (AU) and African governments

2.1 The AU and African governments should show principled leadership

African governments and the AU must show principled leadership and in particular, be ready to use their influence and, where appropriate, be willing to openly criticise member states that commit human rights violations for failing to discharge obligations. 'African solidarity' should be used to improve the human rights performance of African governments, and not to shield human rights perpetrators. Otherwise, scepticism about the ability of the AU to make a difference in the areas of human rights will remain.

2.2 The AU and African governments should reaffirm commitment to the human rights of refugees, asylum-seekers, and internally displaced people

The AU Convention Governing Specific Aspects of Refugee Problems in Africa provides a comprehensive legal system for refugees across Africa, but fails to provide protection for or address the conditions of the internally displaced. The situation of the displaced remain precarious and appalling, whether they have crossed borders or not and whether they are housed in camps or seek employment and accommodation in urban areas. Lack of basic needs assistance to refugees and internally displaced persons (IDPs) in many countries have resulted in the violations of other human rights, exposing these people to a circle of human rights abuses.

Lack of political will by many African governments to implement their obligations towards refugees or internally displaced persons is further illustrated by the recent action of the Kenyan government to forcibly return hundreds of asylum-seekers to Somalia after the border closure. Thousands of asylum-seekers were unable to cross into Kenya, making them vulnerable to human rights abuses by parties to the Somali conflict. The border closure also restricted humanitarian access to IDPs on the Somali side of the border.

The situation highlighted above constitutes a grave violation of the AU Convention Governing Specific Aspects of Refugee Problems in Africa and other international standards, and is clearly inconsistent with the obligations of AU member states under the Comprehensive Plan of Action on Refugees adopted by the organization in 2000.

Amnesty International calls on the AU and African governments to recommit themselves to the full implementation of their own standards and promises to respect and promote the human rights of refugees and internally displaced persons, including protection from being forcibly returned to a country where they would be at risk of serious human rights abuses; protection from discrimination; the right to identity and travel documents; the rights to work, housing and education; protection from penalties for illegal entry, and the right to freedom of movement.

2.3 The AU and African governments should address human rights as an integral component of conflict prevention, management and resolution

Amnesty International urges the AU and African governments to address human rights as an integral component of strategies for dealing with conflicts. Amnesty International believes that many of the conflicts in Africa today (and indeed around the world) cannot be resolved without addressing their human rights dimension.

Economic and political integration on the African continent will not become a reality without sustained efforts to address human rights abuses and impunity for crimes under international law, including war crimes and crimes against humanity in Africa.

One way forward is for the AU and African governments to encourage the full implementation of Article 19 of the Protocol relating to the establishment of the Peace and Security Council of the AU, which provides that the Peace and Security Council would seek close cooperation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and its mandate. Amnesty International urges the AU and African governments to encourage the Peace and Security Council to work closely with the African Commission on Human and Peoples' Rights and to establish practical and effective ways to address the human rights dimension of armed conflicts in Africa.

2.4 The AU and African governments should show greater political will to ensure respect for economic, social and cultural rights in Africa

The African Charter on Human and Peoples' Rights guarantees economic, social and cultural rights, such as the right to adequate housing, but lack of political will by many African governments to implement their obligations have resulted in continuing violations of these human rights.

Lack of respect for economic, social and cultural rights is illustrated by the practice of forced evictions, which has resulted in more than three million Africans being forcibly evicted from their homes since 2000. Forced evictions have left people homeless, and far from sources of clean water, food, sanitation, livelihood or education; and in most cases without adequate compensation. In many African countries, forced evictions are often accompanied by violations of other human rights, including the use of excessive force by those carrying out the evictions, arbitrary arrests, beatings, rape, torture and even killings.

Forced evictions constitute one of the most widespread and unrecognized human rights violations in Africa. An estimated two million people have been forcibly evicted from their homes and many thousands have been made homeless since 2000 in Nigeria. More than 12,000 people were forcibly evicted from Dar Assalaam camp in Sudan in August 2006. The majority of the evictees had been previously displaced through conflict in Sudan and settled in camps in or around the capital Khartoum.

Authorities have forcibly evicted thousands of people from these camps, resettling them in desert areas without access to clean water, food and other essentials.

The government of Zimbabwe engaged in gross violations in 2005 when, in a military style operation, it forced an estimated 700,000 people from their homes, their businesses or both. To date, the government has not taken any effective action to address the plight of those displaced. In Luanda, the capital of Angola, at least 10,000 families have been forcibly evicted and had their homes demolished since 2001. Many of these families, who have received no compensation, had their property stolen by those carrying out the forced evictions and remain homeless. In Kenya, more than 100,000 people have been forcibly evicted from their homes in forest areas since 2004, while tens of thousands have been forcibly evicted from neighbourhoods in or around Nairobi since 2000. In Ghana over 7,000 people were made homeless when they were forcibly evicted by the Game and Wildlife Division from the Digya National Park in March and April 2006. The eviction was halted in April only after a boat carrying over 150 evictees capsized, causing the death of at least 10 people. Those remaining in the park still live under threat of forced eviction. Close to 1,000 families in Equatorial Guinea have been forcibly evicted from their homes since 2004, when the government embarked on a programme of urban regeneration in Malabo and Bata. These families had title to their property. Thousands more remain at risk.

Amnesty International asks the AU to urge its member states to halt forced evictions and abide by their international human rights obligations. Unless forced evictions are recognized as a human rights issue and urgently addressed by African leaders, the Millennium Development Goals calling for governments to “[h]ave achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers”, will remain a mere dream for millions of Africans.

2.5 The AU and African governments should provide political and financial support to strengthen and make more effective already established African human rights institutions

Since the transformation of the Organization of African Unity (OAU) into the African Union (AU) in 2002, African governments have established human rights institutions, such as the African Court on Human and Peoples’ Rights, the African Committee on the Rights and Welfare of the Child, the Economic, Social and Cultural Council (ECOSOCC) of the AU, and the Peace and Security Council. African governments have also made numerous promises and commitments to strengthen the AU’s principal human rights institution—the African Commission on Human and Peoples’

Rights. However, unfulfilled commitments and broken promises have seriously undermined the ability of African human rights institutions to deliver on their mandates. In some other instances, lack of independence, transparency and non-participation of broad based civil society groups in bodies such as the ECOSOCC, or the non-implementation of recommendations by human rights institutions, have been the debilitating factors.

The establishment of institutions to oversee the implementation of human rights in Africa is laudable. However, African leaders must live up to expectations by providing AU's human rights institutions with necessary human, material and financial resources. A situation whereby human rights institutions such as the African Commission on Human and Peoples' Rights rely almost exclusively on external donors to discharge their mandates will continue to cast doubts on the seriousness and good faith of African governments to implement their repeatedly expressed human rights commitments and promises.

Amnesty International urges the AU to establish a framework for voluntary contribution by African governments to strengthen the African human rights institutions mentioned above. This recommendation has been endorsed by both the African Commission on Human and Peoples' Rights and the AU Executive Council, and it is now time for the AU Assembly to set in motion mechanism to ensure its full implementation.

2.6 The AU should encourage its member states that still retain the death penalty to move towards abolition and in the meantime adopt a moratorium on executions

Amnesty International opposes the death penalty in all cases. Amnesty International considers that the death penalty violates the right to life and the prohibition of torture, cruel, inhuman or degrading punishment and treatment. These universally recognized human rights are also enshrined in the African Charter on Human and Peoples' Rights.

Over half the countries in the world have now abolished the death penalty in law or practice. In 1977, just 16 countries had abolished the death penalty for all crimes. Today, that figure stands at 89. A further 30 countries can be considered to have "abolished in practice" having not carried out an execution for at least 10 years or more and are believed to have a policy or established practice of not carrying out executions. 129 of the world's 190 countries are now death penalty free.

In Africa the trend towards abolition is clear. Only 6 countries carried out executions in 2006. African states have also taken important steps towards the abolition of the death penalty. According to Amnesty International's information, of the 53 African Union member states, 13 countries no longer have the death penalty. They are: Angola, Cape Verde, Cote d'Ivoire, Djibouti, Guinea-Bissau, Liberia, Mauritius, Mozambique, Namibia, Sao Tome and Principe, Seychelles, Senegal and South Africa. A further 17 countries are abolitionist in practice. Several other countries continue to make steady progress towards the abolition of the death penalty.

In Benin the newly appointed Minister of Justice Mr. Nestor Dako when invited to the 3rd World Congress Against the Death Penalty held in Paris in February 2007, declared that: *"The government [of Benin] is in favour of measures toward the abolition of the death penalty (...). The government is considering establishing a commission of experts (composed of lawyers, judges, etc...) to refine the issue and propose a draft on death penalty (...) in view of the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights."*

In Ghana according to the media, the Minister of Interior, Mr. Albert Kandapaah, announced in March 2007, the commutation of 36 death sentences to life imprisonment. In total, it is expected that 1206 prisoners should benefit from measures of commutation.

In May Nigeria granted amnesty to all prisoners aged 70 and all prisoners on death row who are over 60 years old and have been on death row for more than 10 years. All prisoners were to be released before the appointment of the new President on the 29 of May. In February 2007 the Commission on the Reform of the Administration of Justice made a number of recommendations to the government on the status of several categories of inmates in Nigerian prisons, and in particular they called for commutation of the sentences for the prisoners who have spent over ten years on death row.

In Sierra Leone President Kabbah announced on 11 December 2006, when the Commissioners of the National Human Rights Commission were inaugurated, that the death penalty would not be used during his time in office.

In Togo in November 2006, an Amnesty International delegation met with Prime Minister Yawovi Agboyibo who on the question of the death penalty, explained his personal stand in favour of abolition and, while he did not commit to abolishing it, recognized that he had "a golden opportunity" to do so. He said: "I'm convinced we

can abolish. I'm still haunted by the memory of a client I defended who was later executed".

In Burundi, proposals for the new revised Penal Code excluded the death penalty as punishment. The new code is pending promulgation.

The Rwanda parliament very recently voted in favour of a bill abolishing the death penalty. The next step will be the Senate and finally the President before the law is promulgated. It is foreseen that Rwanda will become fully abolitionist before the end of the year.

In Malawi this April the High Court declared unconstitutional the mandatory death penalty.

But in other countries the situation remains dire. Sudan continues to sentence to death prisoners including child offenders, reportedly after unfair trials. In 2007 there were two cases of child offenders sentenced to death in Darfur. Even this year, Amnesty International has received reports of the sentencing to death by stoning of two women for committing adultery after what appears to be an unfair trial. Libya continues to carry out executions although the number has decreased in recent years. Egypt continues to sentence people to death, after unfair judicial processes that fall far short of international standards, including the right to appeal to a higher court.

The AU should encourage its member states that still retain the death penalty, to abolish the practice, in line with global and regional trends. Amnesty International calls on the AU and African governments to support and encourage the work of the African Commission on Human and Peoples' Rights' Working Group on the Death Penalty, including by inviting the Working Group to the meeting in Accra to discuss how to advance and take its work forward.

Several years after the African Commission on Human and Peoples' Rights adopted a resolution in Kigali asking states parties to the African Charter on Human and Peoples' Rights to consider abolishing the death penalty, it is now time for the AU to take responsibility and to encourage its member states that still retain the death penalty to move towards abolition, and in the meantime, establish a moratorium on executions, as well as ensure that persons accused of crimes which carry the death penalty are afforded all safeguards and due process guarantees under international and regional standards. Specifically, the AU should encourage its member states that have

not yet done so to ratify the International Covenant on Civil and Political Rights and/or its Second Optional Protocol aiming at the abolition of the death penalty.

2.7 The AU should enforce its own Constitutive Act against recalcitrant states

Despite its human rights mandate under its Constitutive Act, the AU continues to demonstrate a deep reluctance to publicly and strongly criticize African governments that fail to protect human rights, especially in Sudan and Zimbabwe.

The Sudanese government continues to violate the human rights of its own people with impunity. At the same time, it is defying the international community's effort to end the crisis in Darfur. While the refusal of the AU, for two consecutive sessions, to grant the chairmanship of the organization to Sudan is a step forward, much more needs to be done to tell the Sudanese government very clearly that the AU and its members can and will hold the government to account if it does not take real and effective measures to end the crisis in Darfur, including the widespread violations of human rights and international humanitarian law.

Similarly, the AU and African governments have to show greater political will to publicly and strongly condemn continuing large scale human rights violations in Zimbabwe, and to demand accountability for those violations.

Amnesty International has observed a drastic increase in unlawful and organised violence, including torture and other ill-treatment, by the Zimbabwean police and supporters of the ZANU PF party since September 2006. State security agents have increasingly targeted political opposition activists, human rights defenders, media workers, lawyers and trade unionists. Hundreds of activists have been arrested after engaging in peaceful protest. Police, in particular officers from the Law and Order Section in the Zimbabwe Republic Police (ZRP), have repeatedly denied lawyers' access to detained activists. Detainees are frequently been denied access to food, water and medical care.

Amnesty International is concerned that lack of sufficient political will by the AU and many African governments is fuelling a circle of human rights violations in Zimbabwe, and emboldening the government not to bring to an end the human rights violations. For example, the government has repeatedly failed to investigate reported abuses by the police and other security agents thereby allowing a culture of impunity to thrive.

Amnesty International believes that it is only by holding recalcitrant states, including Sudan and Zimbabwe, accountable that African governments can show that the AU has the ability to reverse the prevailing culture of impunity for human rights violations in the continent.

2.8 The AU should encourage its member states that have not yet done so to ratify the Protocol Establishing the African Court on Human and Peoples' Rights and other regional and international human rights treaties

Amnesty International has expressed support for the establishment of an African Court on Human and Peoples' Rights. Amnesty International believes that an independent, effective and efficient African human rights court has a huge potential to contribute to the protection of human rights, and reverse the prevailing culture of impunity in many parts of Africa. Amnesty International has campaigned for the ratification of the Protocol establishing the Court by African governments.

However, as at 27 January 2007, only 23 of the 53 AU member states have ratified the Protocol. They are: Algeria, Burkina-Faso, Burundi, Côte d'Ivoire, Comoros, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Senegal, South Africa, Tanzania, Togo, and Uganda. Only Burkina Faso has made a declaration that would grant individuals and non-governmental organizations (NGOs) direct access to the Court.

Amnesty International asks the AU to urge in the strongest possible terms member states that have not yet ratified the Protocol to do so without further delay. The AU should also encourage states to make declarations accepting individual and NGOs direct access to the Court.

Amnesty International also asks the AU to urge its member states that have not yet done so to ratify or accede, without reservations, to regional and international human rights treaties, including:

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- the International Covenant on Economic, Social and Cultural Rights;

- the International Covenant on Civil and Political Rights, together with the first and second optional protocol;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- the two Optional Protocols to the Convention on the Rights of the Child;
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- the International Convention for the Protection of all Persons from Enforced Disappearances;
- the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities;
- the Rome Statute of the International Criminal Court.