

May 14, 2013

**Foreign Ministers
African Union Member States**

Re: 50th Anniversary and Advancing Justice for Grave Crimes

Dear Foreign Minister:

We, the undersigned African civil society organisations and international organisations with a presence in Africa, working on human rights and international criminal justice, are pleased to congratulate the Organisation of African Unity (OAU), now the African Union (AU), on the occasion of its 50th Anniversary.

We commend the Organisation for its key achievements during the past 50 years and to express our continued commitment in working with the AU towards promoting and protecting human rights, peace, and justice on the Continent. In this regard, we wish to take this occasion to applaud the AU and the African continent for:

-The establishment of the African Commission on Human and Peoples' Rights in 1987, and the African Court on Human and Peoples' Rights in 1998, to promote human and peoples' rights and ensure their protection in Africa.

-Support for the International Criminal Court (ICC). Currently, 34 African countries are states parties to the Rome Statute of the ICC and Africa remains one of the largest represented continents in the Court's membership. In addition, five African states have asked the ICC to investigate crimes committed on their territories, and at least nine African states have adopted implementing legislation of the ICC's Rome Statute.

-Substantial contributions to safeguarding accountability through the work of the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the case of Chad's former President Hissène Habré, and efforts to prosecute grave crimes domestically in some African countries, such as in Côte d'Ivoire and Guinea.

These examples bear testament to the contribution and commitment of Africa to advance justice. Yet, recent strain in Africa's relationship with the ICC creates significant risks to ensuring victims of the gravest crimes and their families have access to redress and much more remains to be done to advance accountability.

Building on the gains made in the last 50 years, we believe that there exist important opportunities to advance justice for serious crimes committed in violation of international law as an essential component of the AU's contribution to peace and security on the continent. Consistent with this approach, we believe cooperation between international, regional and national levels is crucial to promote justice and peace, and regional initiatives will not work if not poised within the international criminal justice framework.

In this effort, we wish to offer several recommendations that we urge your government to take up at the AU summit in May, as well as subsequent summits, through decisions, press statements, and other actions. These are:

1. Take account of Africa's role in calling for ICC involvement in its countries

While concerns that the ICC is targeting Africa seem to abound in some public and diplomatic discourse in recent years, this conclusion overlooks important facts that we urge your government to work to incorporate into AU documents and policy.

Specifically, while the ICC's current investigations are entirely in Africa, the ICC prosecutor has only acted on its own authority to open an investigation in Africa without a request by the relevant state in one situation, Kenya. All other African situations under ICC investigation came about as a result of voluntary referrals or requests by the state affected or referral by the United Nations (UN) Security Council. Uganda, the Democratic Republic of Congo (DRC), Central African Republic, Mali, and Côte d'Ivoire asked the ICC to investigate and the Security Council referred the situations in Darfur and Libya.

There are of course situations outside of Africa that cry out for ICC involvement, such as Syria, which have not been brought before the court. However, this is a product of legal limitations on the ICC's jurisdiction that are beyond its control. The ICC cannot assert jurisdiction over states that are not parties to the ICC Statute unless the UN Security Council refers the situation or the relevant state asks the court to become involved. Meanwhile, the ability of permanent Security Council members to use veto powers on the basis of political considerations has crippled opportunities to advance justice in certain situations.

It appears that much of the frustration that has emanated from the AU on the ICC relates more to the Security Council, and not to the court itself. In light of this, we encourage your government under the umbrella of the AU to convey concerns over Security Council actions directly to the council, including the need for more consistent action to promote justice and specifically calling for referral of Syria to the ICC. This would help ensure that the AU's views are more accurately conveyed and hopefully promote a more principled approach by the council. Many of our organizations are also currently working to promote more consistent action on justice by the Security Council.

2. Take account of strong support for the ICC in Africa

As noted above, 34 African states out of 54 are party to the Statute, Africa's engagement played a pivotal role in the establishment of the ICC, and a number of African states have asked for the ICC to open investigations into crimes committed on their territories. A growing list of countries—including Botswana, Burkina Faso, Malawi, South Africa, Niger, Uganda, and Zambia—also have expressly stated that they will arrest individuals subject to ICC arrest warrants if they enter their territories.

African support for the ICC is, however, often overlooked in AU decisions and communications, and we believe it will be important for your government to urge the AU to reflect African support for the court in future AU decisions and public statements. This includes reversing decisions that call for non-cooperation with the court in the arrest of President Omar al-Bashir of Sudan. These calls run counter to African ICC states parties' obligations to cooperate with the court, the Constitutive Act of the AU on ending impunity, and puts African ICC states parties in an awkward position in upholding their international treaty obligations to cooperate with the ICC.

3. Strengthen domestic criminal justice systems to deal with international crimes

We urge your government to press for the AU to strengthen technical and legislative capacity at the national level to dispense justice in line with the spirit of complementarity, the principle by which the ICC is only involved when a state is unable or unwilling to prosecute grave crimes. This will not only address AU concerns about justice efforts rendered outside the continent, but enable Africa to best ensure victims have access to redress. In addition, strengthening national systems will advance public confidence and promote respect for rule of law in the affected countries and sub-regions. This can be achieved through partnerships with stakeholders including civil society.

4. The expansion of the jurisdiction of the African Court

As you know, the AU has embarked on an initiative to expand the African Court of Human and Peoples' Rights to include criminal jurisdiction over international crimes. We believe increased opportunities for justice are positive in principle. However, it will be crucial to ensure that an expanded court is able to advance justice and human rights for all crimes under its jurisdiction. As such, careful consideration should be given to ensuring adequate resources for an expanded mandate, including to support the wide range of needs associated with a criminal jurisdiction—such as witness protection and fair trials for accused, and that the expanded mandate would not constrain the ability of the ICC, as supported by the majority of African states, to conduct its work. More information on this issue is available in a 2012 letter, available at: http://www.coalitionfortheicc.org/documents/Letter_on_African_Court_May_2012_FIN_AL.pdf.

5. Improve communications between the AU and the ICC

We call upon your government to press for continued dialogue between the AU and the ICC; both institutions have nuanced mandates and more frequent information exchange could help to advance dialogue and clarify misconceptions, where these may exist, as well as advance cooperation.

Recent seminars at the African Union where the ICC has opportunities to discuss its work are positive and should be continued. Another key step would be establishment of an AU-ICC Liaison Office, similar to the ICC liaison office that exists at the UN. Notably, African states parties wrote a letter to the AU in 2010 calling for the establishment of the

office, and we encourage your government to revisit the establishment of the office with the AU.

We trust this information will be of use as we move forward towards the next 50 years. Please do not hesitate to contact us should you require further information or clarifications relating to the contents of this document.

Sincerely,

African Assembly for the Defense of Human Rights, Guinea
African Assembly for the Defense of Human Rights, Senegal
African Centre for Justice and Peace Studies, Uganda
African Union Club of Ivory Coast, Côte d'Ivoire
Amnesty International Togo, Togo
Amuria District Development Agency, Uganda
Ark of the Covenant, Republic of Congo
Arry Organization for Human Rights, Egypt
Benin Coalition for the International Criminal Court, Benin
Burkinabè Movement for Human and Peoples' Rights, Burkina Faso
Cairo Institute for Human Rights Studies, Egypt
Centre for Accountability and Rule of Law, Sierra Leone
Centre for Democracy and Development, Nigeria
Chadian Coalition for the International Criminal Court, Chad
Children Education Society, Tanzania
Christian Activists Actions for Human Rights in Shabunda, DRC
Church and Society Programme of the Church of Central Africa Presbyterian Synod of Livingstonia, Malawi
Civil Liberties Committee, Malawi
Coalition for the International Criminal Court, Cameroon
Coalition for the International Criminal Court, with offices in Benin and RC
Community Empowerment for Progress Organization, South Sudan
Congolese Coalition for Transitional Justice, DRC
Counseling Services Unit, Zimbabwe
DITSHWANELO – The Botswana Centre for Human Rights, Botswana
East and Horn of Africa Human Rights Defenders Project, Uganda
Equitas Network, Côte d'Ivoire
Forum for Awareness and Development, Burundi
Forum for Strengthening Civil Society, Burundi
Foundation for Human Rights and Democracy, Liberia
Guinean Center for the Protection and Promotion of Human Rights, Guinea
Horn of Africa Human Rights Committee, Somaliland
Human Rights Concern, Eritrea
Human Rights Network, Uganda
Human Rights Watch with offices in DRC, Kenya, Rwanda, and South Africa
International Crime in Africa Programme, Institute for Security Studies, South Africa
International Commission of Jurists-Kenyan Section, Kenya

International Commission of Jurists-Regional Office, South Africa
International Society for Civil Liberties & the Rule of Law, Nigeria
Ivorian Coalition on the International Criminal Court, Côte d'Ivoire
Kenya Human Rights Commission, Kenya
KISIMA Peace & Development, Somaliland
League for Peace, Human Rights and Justice, DRC
Legal Resources Centre, South Africa
NamRights, Namibia
Regional Associates for Community Initiatives, Uganda
Rwandan League for the Promotion and Defence of Human Rights, Rwanda
Saxafi Media Network, Somaliland
Social Justice and Advocacy Initiative, Nigeria
South Sudan Human Rights Defenders Network, South Sudan
Southern Africa Litigation Centre, South Africa
Southern African Centre for the Constructive Resolution of Disputes, Zambia
SPEAK Human Rights Initiative, Mauritius
Synergy of Congolese NGOs for Victims, DRC
Transformation Resource Centre, Lesotho
Uganda Coalition on the International Criminal Court, Uganda
Vision Sociale, DRC
Women's Centre for Democracy and Human Rights, Côte d'Ivoire
Women Lawyer's Association, Burundi