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**AMNESTY  
INTERNATIONAL**



Colonel Mu'ammarr al Gaddafi  
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Tripoli  
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Dear Colonel al Gaddafi,

**13TH AFRICAN UNION SUMMIT OF HEADS OF STATE AND GOVERNMENT, 1 TO 3 JULY 2009**

I am writing to urge you to use your position and leadership to ensure that the 13<sup>th</sup> Ordinary Session of the Assembly of the African Union (AU), scheduled to take place between 1-3 July 2009 in Sirte, Libya, renews and reaffirms commitments made by previous sessions to ending impunity for crimes under international law committed in Africa and elsewhere in the world.

At the international level, the AU Assembly should support the work of the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, all courts created largely because of the initiative and support of African states. At the national level, the AU Assembly should encourage all AU member states to take effective steps to reform their criminal justice systems to ensure that perpetrators of human rights violations, including those who commit acts of genocide, war crimes and crimes against humanity are brought to justice.

**THE INTERNATIONAL COURT – A COURT FOR, NOT AGAINST, AFRICA**

Africa played a leading – indeed, decisive – role in 1998 in the establishment of the ICC. Thirty African states have ratified the Rome Statute of the International Criminal Court (Rome Statute) so far, nine other African states have signed it and other African states are contemplating ratifying it in the near future. In addition, 17 states parties have enacted or drafted legislation implementing the Rome Statute.

African states strongly supported the creation of the ICC as a court of last resort to ensure that African victims of genocide, crimes against humanity and war crimes receive justice and reparations whenever states were unable or unwilling to investigate and prosecute such crimes. Three African states, the Central African Republic, the Democratic Republic of the Congo and Uganda referred situations in their own countries to the ICC on the ground that they were not able to investigate and prosecute such crimes. A fourth country, Côte d'Ivoire, has recognized the ICC's jurisdiction to investigate and prosecute crimes in its territory or by its citizens abroad.

African civil society has recently reaffirmed its strong support for the ICC to bring to justice perpetrators of genocide, crimes against humanity and war crimes committed against African victims and to award reparations when their own courts are unable or unwilling to do so, for example, in recent statements adopted at meetings in Banjul, Cape Town and Kampala (Forum on the Participation of NGOs preceding the 46<sup>th</sup> Ordinary Session of the African Commission on

Human and Peoples' Rights, Karaiba Beach Hotel, the Gambia, 9 to 11 May 2009; Statement by Representatives of African Civil Society and the Legal Profession on the Implications of the African Union's Recent Decisions on Universal Jurisdiction and the Work of the International Criminal Court in Africa, 11 May 2009; Statement Expressing African Civil Society Support for International Justice, Kampala, 29 May 2009). In addition, the meeting of African states parties to the Rome Statute at the Headquarters of the African Union from 8 to 9 June 2009 made a number of positive recommendations in support of international justice.

As noted above, three of the four situations under investigation were referred by African states parties and the fourth was referred by the Security Council, with the support of African members, without a dissenting vote. The Prosecutor is examining situations in other continents, including those in Afghanistan, Colombia, Georgia and the Palestinian Occupied Territories with a view to deciding whether investigations should be opened.

In the light of the above, Amnesty International urges you to ensure that the AU Assembly support the ICC in its efforts to secure justice for African victims by:

- Asking the AU Commission to expedite the adoption of a memorandum of understanding regarding cooperation with the ICC and the opening of a liaison office of the ICC in Addis Ababa;
- Urging AU member states to cooperate with the ICC in the investigation and prosecution of crimes committed against African victims;
- Urging AU member states to oppose any requests to the ICC by the Security Council to defer an investigation or prosecution of such crimes, as that would obstruct international justice.
- Urging all AU member states which have any concerns about any aspect of the work of the ICC with respect to the investigation and prosecution of persons suspected of crimes committed against African victims to address those concerns in the procedures under the Rome Statute, including Article 19, providing for challenges to admissibility of cases, and Article 119 (1), providing for raising any question related to the judicial functions of the ICC before the ICC.

#### TAKING EFFECTIVE STEPS AT THE NATIONAL LEVEL TO SECURE JUSTICE FOR AFRICAN VICTIMS

In addition to taking these steps at the international level, it is vital for AU member states, as part of their commitment to ending impunity in Africa, to take the following steps at the national level:

- Define crimes under international law, including genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances, as crimes under national law in accordance with the strictest standards of international law, subject to penalties reflecting their grave nature, but excluding the death penalty and other cruel, inhuman or degrading punishments;
- Define principles of criminal responsibility, including command and superior responsibility, as principles of national law in accordance with the strictest requirements of international law;
- Exclude improper defences, such as the defence of superior orders, necessity and duress, in national law, but permit them to be taken into account in mitigation of punishment;
- Ensure that national courts can exercise jurisdiction in all cases over such crimes no matter when, where or by whom they were committed;
- Ensure that effective extradition and mutual legal assistance agreements exist with all states, with safeguards against the death penalty, torture and other ill-treatment, unfair trial or other human rights violations; and
- Promptly, thoroughly, independently and impartially investigate all such crimes in accordance with international law and standards for investigations, and, whenever there is sufficient admissible evidence, prosecute those suspected of such crimes in fair trials that exclude the death penalty and torture and other ill-treatment.

I am confident that if these recommendations are made by the Assembly that they will make a great contribution to ending impunity for crimes under international law committed against African victims.

I am sending a copy of this letter to heads of state and government and minister of foreign affairs of African Union Member states.

Yours sincerely,

  
For Irene Khan  
Secretary General