

African Union Summit in Sharm El Sheikh: Amnesty International's Recommendations to the African Union Assembly

In advance of the 11th Ordinary Session of the African Union Heads of State and Government (AU Assembly) to be held in Sharm El Sheikh Egypt, from 24 June to 1 July 2008, Amnesty International is calling on African governments to demonstrate the human rights commitments expressed in the AU Constitutive Act adopted in 2000 by taking urgent and concrete measures to address the human rights challenges facing Africa.

In this document, Amnesty International is making recommendations to the AU Assembly to demonstrate its commitment to fight impunity for human rights violations by amending the Protocol establishing the African Court of Justice and Human Rights in order to allow full and direct access for individuals and Non Governmental Organizations (NGOs) before the Court. Amnesty International also considers that the AU Assembly is uniquely placed to address the deteriorating human rights situation in Zimbabwe.

African Court of Justice and Human Rights

The African Ministers of Justice and Attorneys General meeting, held from 14-18 April 2008 in Addis Ababa, Ethiopia, agreed on a merger Protocol on the African Court of Justice and Human Rights, effectively integrating the African Union (AU) Court of Justice contemplated under the AU Constitutive Act, and the African Court on Human and Peoples' Rights established under the AU 1998 Protocol. The merger Protocol is expected to be adopted by the AU Assembly during its 11th Ordinary Session.

Although the initial draft of the merger Protocol, agreed by legal experts, contained a provision allowing individuals direct access to the Court, the Ministers of Justice and Attorneys General decided to excise this provision from the Protocol. Instead, the Protocol in Article 30 excludes

the rights of individuals and NGOs to directly approach the court for remedies, except if state parties make a declaration to the effect. This provision mirrors that of Article 34(6) of the Protocol establishing the African Court on Human and Peoples' Rights, which states that "[a]t the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration."

Amnesty International considers the decision to limit direct access of victims of violations to the Court to be a retrogressive step in the efforts to ensure effective protection of human rights in Africa, and could undermine the long-term effectiveness of the Court. The approach of requiring state parties to make declarations before allowing individuals and NGOs direct access under the African Human Rights Court Protocol has proven not to be effective given that only two states---Burkina Faso and Mali---have made such declarations under Article 34(6), more than ten years after the Protocol was adopted.

Amnesty International believes that key to the functioning and effectiveness of the African Court of Justice and Human Rights is the ability of victims of human rights violations and NGOs to directly approach the Court for an effective remedy. Without direct access, it is impossible for the Court to exercise effective jurisdiction over human rights violations in the territories of states parties and to increase the international accountability of state parties to the African Charter on Human and Peoples' Rights.

Amnesty International urges AU member states at the 11th AU Summit to:

Ensure that the final merger Protocol on the Court of Justice and Human Rights includes provisions allowing individuals and NGOs direct access to the Court;

Rescind and remove the requirement of optional declarations contained in the protocol as adopted by the meeting of African Ministers of Justice and Attorneys General in April 2008;

Pending the adoption of the merger Protocol, make the declaration allowing direct access to the African Court on Human and Peoples'

Rights by individuals and NGO as required under Article 34(6) of the Court's Protocol;

Once adopted by the AU Assembly, ratify the merger Protocol on the African Court of Justice and Human Rights and before its adoption ratify the Protocol to the African Charter on Human and Peoples' Rights on the establishment of African Court on Human and Peoples' Rights;

Take measures to ensure the nomination and election of the highest qualified candidates for judges to the African Court on Human and Peoples' Rights by fulfilling the criteria set out in the Protocol, including that of individual competence, independence, and impartiality and adequate gender representation.

Zimbabwe

Amnesty International is concerned about the unlawful killings, torture and other ill-treatment, including beatings, as well as harassment and intimidation of predominantly Movement for Democratic Change (MDC) supporters and human rights defenders in Zimbabwe following elections on 29 March 2008. By mid-June, dozens of people had been killed and over 3000 people had been reportedly treated for injuries sustained from politically related violence.

The bulk of the human rights violations have been perpetrated by supporters of the Zimbabwe African National Union - Patriotic Front (ZANU-PF) party and members of the Zimbabwe National Liberation War Veterans Association (ZNLWA) (generally known as "war veterans"). State security organisations, in particular the Zimbabwe Republic Police (ZRP) have been unwilling to act against these perpetrators – allowing them to kill, torture, assault and burn homes and businesses of suspected MDC supporters with impunity.

Victims of human rights abuses have also reported that "war veterans" appear to cooperate closely with soldiers deployed in rural areas, in order to mobilise support for President Mugabe for the elections on 27 June. The failure by the state security organisations to act against "war veterans" who have been linked to human rights violations, as well as their alleged associations with "war veterans," suggests that the state is, at least, acquiescing in attacks by these groups. In some instances, authorities appear to have instigated the human rights violations committed by "war veterans" and ZANU-PF supporters. Amnesty International has also received reports of human rights violations perpetrated directly by soldiers and the police.

Victims of the state-sponsored violence, including women, children and elderly people, have been treated at various hospitals across the country for injuries sustained from torture and other ill-treatment, including beatings and injuries that result from arson. Several hundred have been admitted in hospitals. Human rights groups in Zimbabwe told Amnesty International that victims were being blocked from seeking help by soldiers, "war veterans" and other state security agents including the Central Intelligence Organisation (CIO). Hundreds of families have been

forced to leave their homes as their property was burnt down. Families have been separated. On 28 May 2008, UNICEF stated that at least 10,000 children alone have been displaced by the violence, and the agency reported that it was giving emergency support to more than 25,000 individuals affected by the violence.

The wave of state-sponsored violence is concentrated in rural areas, townships and farming areas where the MDC made significant gains during the elections held on 29 March 2008. The attacks appear to be aimed at displacing and intimidating MDC supporters as the country prepares for a run-off of the presidential election, scheduled for 27 June 2008. The situation of most victims is desperate and many are without shelter, food and in need of urgent medical care. Some schools have been forced to close as teachers flee from the state-sponsored violence.

Scores of people have been arbitrarily arrested and unlawfully detained as part of the government of Zimbabwe's wider crackdown on human rights defenders, trade unionists, lawyers, journalists, election observers and opposition activists, in the wake of the parliamentary and presidential elections of 29 March.

In an attempt to manipulate food distribution for political gains, the Minister of Labour, Public Service and Social Welfare wrote to all NGOs, including humanitarian organisations, on 4 June 2008, ordering them to suspend their field operations. The Minister gave his intention to invoke Section (10), Subsection (c), of the Private Voluntary Organisations Act [Chapter 17:05] as the basis for his action. The suspension of field operations by all NGOs on the order of the Zimbabwean government is likely to increase food insecurity in Zimbabwe and expose millions of people to hunger. The ban will also severely impact on the care of Zimbabwe's over one million children orphaned by AIDS, and the terminally ill who are on home-based care programmes. Following the ministerial letter police visited several NGOs ordering them to close down their offices. Since 2000, millions of people in Zimbabwe have had great difficulty in gaining access to adequate food. Government policies and practices have exacerbated Zimbabwe's food security problems in the past.

Amnesty International believes that increased international pressure on the government of Zimbabwe, particularly by member states of the Africa

Union, can have a significant positive impact on the protection of human rights during and after the elections.

The African Union Assembly should call on the Zimbabwean authorities to:

Take immediate steps to guarantee the right to life and freedom from torture and other ill-treatment for all. The government should publicly denounce all acts of violence by ZANU-PF supporters, "war veterans" and soldiers, as well as by any other parties, and work with all political parties to end political violence immediately. It should also withdraw soldiers, who have been deployed in rural areas, who appear to be instigating attacks against people perceived to have voted for the MDC.

Allow international election observers, and human rights specialists accompanying them, unrestricted access to all parts of the country during and after the election process. The government should also guarantee the safety of all persons who report human rights abuses.

Ensure that police arrest suspected perpetrators of human rights abuses, including those who are instigating the violence. Police should operate in a non-partisan manner in executing their duties.

Ensure that all people arrested, without exception, are free from torture and other ill-treatment while in detention, that they have adequate conditions of detention and access to lawyers, relatives, food and medical care. Detainees must be brought promptly before an independent judge, so that they can challenge the legality of their detention; they must be charged with recognizably criminal offences or be released.

Immediately set up an independent and impartial body to investigate all acts of political violence. The investigation's findings should be made public and suspected perpetrators should be brought to justice in proceedings which meet international standards of fairness. Victims should be awarded full reparations in accordance with international standards.

Immediately end the harassment and intimidation by police of human rights defenders who are carrying out their work peacefully. In addition, the government should fully fulfil the right of all persons to participate in public affairs of their country, including by allowing local civil society organisations to observe elections.

Alleged threats and acts of intimidation targeted at local observers should be fully investigated and the alleged perpetrators brought to justice.

Immediately invite the Special Rapporteur of the African Commission on Human and Peoples' Rights on Human Rights Defenders in Africa and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to investigate allegations of human rights violations and abuses and implement fully their recommendations.