

**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. International Federation for Human Rights, with offices in Côte d'Ivoire, Guinea, Kenya, and Mali
27. Ivorian Coalition for the International Criminal Court, Côte d'Ivoire
28. Ligue Ivoirienne des Droits de l'Homme, Côte d'Ivoire
29. Mon Beau Village, Côte d'Ivoire
30. Mouvement Ivoirien des Droits Humains, Côte d'Ivoire
31. Organisation des Femmes Actives, Côte d'Ivoire
32. Organisation Nationale pour l'enfant, la Femme, et la Famille, Côte d'Ivoire
33. Réseau Equitas Côte d'Ivoire, Côte d'Ivoire
34. 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
35. SOS Exclusion, Côte d'Ivoire
36. Aide-Vision, ASBL, Democratic Republic of Congo
37. Action des Chrétiens Activistes des Droits de l'Homme à Shabunda, Democratic Republic of Congo
38. Action des Chrétiens pour l'Abolition de la Torture, Democratic Republic of Congo
39. Carrefour Juridique Culturel, Democratic Republic of Congo
40. Congolese Coalition for the ICC, Democratic Republic of Congo

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

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

128. Foundation for Human Rights Initiative, Uganda
129. Human Rights Network, Uganda
130. Human Rights Network for Journalists, Uganda
131. Pan African Human Rights Defenders Network, Uganda
132. Platform for Social Justice, Uganda
133. Regional Associates for Community Initiatives, Uganda
134. Spectrum Uganda Initiatives Inc., Uganda
135. Uganda Victims Foundation, Uganda
136. Ugandan Coalition for the International Criminal Court, Uganda
137. Women's Initiatives for Gender Justice, Uganda
138. Southern African Centre for the Constructive Resolution of Disputes, Zambia
139. Counselling Services Unit, Zimbabwe
140. Crisis in Zimbabwe Coalition, Zimbabwe
141. Legal Resources Foundation, Zimbabwe
142. Women of Zimbabwe Arise, Zimbabwe
143. Zimbabwe Human Rights NGO Forum, Zimbabwe

*Updated on September 3, 2014 to reflect additional signatories.*