

HE Dr. Nkosazana Dlamini-Zuma
Chairperson
African Union Commission
Addis Ababa, Ethiopia

January 17, 2013

Dear AUC Chairperson HE Dr. Nkosazana Dlamini-Zuma:

We, the undersigned African civil society organizations and international organizations with a presence in Africa, wish to congratulate you on your election as Chairperson of the African Union Commission. We wish you well during your tenure and trust that your leadership will seek to further address key challenges facing the African continent to promote respect for the rule of law and human rights in order to serve the best interests of the people of Africa.

In this regard we write to urge you to address the issue of impunity for international crimes committed on the continent consistent with article 4 of the African Union's Constitutive Act. African countries have already contributed greatly to ensuring accountability for atrocities. The work of the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, wide African membership in the International Criminal Court (ICC), and recent progress in the case of Hissène Habré are just some examples that are testament to this contribution and commitment.

However, it is notable that in recent years the relationship between the ICC and the African Union (AU) has become strained. Some AU and member state representatives have maintained a stance that the ICC is unfairly targeting Africa, and AU decisions have called for African states not to cooperate in surrender of Sudanese President Omar al-Bashir, who is sought by the ICC on charges of alleged crimes committed in Darfur, and former Libyan President Muammar Gaddafi, who was an ICC suspect prior to his death.

We believe that your role as AU Commission Chairperson provides important new opportunities for the AU to renew focus on ensuring redress for victims of serious crimes committed in violation of international law as an essential component of the AU's contribution to peace and security on the continent. In this effort, we wish to offer several observations and recommendations, which we believe will help to promote justice for the gravest violations of human rights. These are:

1. The importance of taking account of Africa's role in calling for ICC involvement in African countries

While some African leaders have asserted that the ICC is unfairly targeting Africans, we believe this conclusion overlooks important facts that should be incorporated into your analysis and public commentary on issues of justice for international crimes.

Although the ICC's current investigations are entirely in Africa, the majority of the court's investigations came about as a result of a request by the country where the crimes were

committed (Uganda, Democratic Republic of Congo, Central African Republic, Côte d'Ivoire, and Mali). Two other investigations, Darfur and Libya, came about as a result of a United Nations (UN) Security Council referral. Notably, all African members on the Security Council at the time of these referrals voted in favor of them. The ICC prosecutor has in fact acted on his own authority to open an investigation without a request by the country where the crimes were committed in only one situation, Kenya.

We believe that the ICC's current focus on African situations where serious crimes in violation of international law have been committed and the court's efforts to deliver justice to African victims should be welcomed, not criticized. 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, legal limitations on the court's jurisdiction make certain situations beyond the court's reach. Specifically, the ICC cannot assert jurisdiction over territories of states that have not become parties to the court unless the UN Security Council refers the situation or the state that is affected by the crimes asks the court to conduct an investigation.

The ability of permanent Security Council members to utilize their veto power has meant that council action has been influenced by political considerations and crippled the opportunities to advance justice in certain situations. It appears that much of the frustration that has emanated from the AU with regard to the ICC thus relates more to Security Council action than the court itself. Many of our organizations are currently working to ensure the Security Council acts more consistently and fairly on ensuring justice for international crimes. We encourage you to assist the AU in addressing concerns that relate to Security Council actions more directly. We believe that this would help ensure that the AU's views are more accurately conveyed and promote a more principled approach by the council.

2. The importance of AU support to promote domestic capacity to prosecute serious crimes committed in violation of international law

The ICC is a court of last resort and is not intended to be the primary forum for the investigation and prosecution of serious crimes in violation of international law. The Rome Statute of the ICC envisages states themselves taking the lead in the investigation and prosecution of such crimes, consistent with what is known as the ICC's complementarity regime and framework.

The ICC's intervention is limited to situations in which countries are either unable or unwilling to prosecute those suspected of criminal responsibility. Yet, it remains the reality that far too few countries—including those in Africa—have the laws and capacity to prosecute serious crimes committed in violation of international law.

Some African states have incorporated genocide, war crimes, crimes against humanity, principles of command responsibility, and cooperation with the ICC into their domestic law. Mauritius adopted such legislation in 2012, and other countries—including Burkina Faso, Central African Republic, Kenya, Senegal, South Africa, and Uganda—previously enacted such laws. However, the overall number of countries in the region with comprehensive legislation to prosecute these crimes remains under 10. Furthermore, many of the enacted legislations have flaws that could

prevent the authorities from investigating or prosecuting the crimes in accordance with international law.

An important role for the AU, in our view, can be to assist states in enhancing their domestic technical and legislative capacity to dispense justice. Accordingly, we urge you to encourage AU member states to strengthen their criminal justice systems to address serious crimes committed in violation of international law. 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, if national courts can ensure justice for crimes committed in their countries, public confidence in and respect for the rule of law in the affected countries and sub-regions will improve.

3. Recognizing the strong support for the ICC in Africa

African states make up a large regional bloc of parties to the Rome Statute of the ICC. Thirty-three African states out of 54 are already parties to the statute, and Africa's engagement played a pivotal role in the establishment of the court.

In addition to the African states that have asked for the ICC to open investigations into crimes committed on their territories, there also is a growing list of countries—including Botswana, Burkina Faso, Malawi, South Africa, Niger, Uganda, and Zambia—that have expressly stated that they will fulfill their obligations under the Rome Statute to 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 is important that such support be better reflected in future AU action. This includes the AU not renewing decisions that call for non-cooperation with the court, which run counter to African ICC states parties' obligations under the Rome Statute and the Constitutive Act of the AU. Such decisions also put African ICC states parties who do not wish to negate their international treaty obligations to cooperate with the ICC in a difficult situation.

4. Expansion of the jurisdiction of the African Court

The AU has embarked on an initiative to expand the African Court of Justice and Human Rights (the African Court) to include jurisdiction over prosecutions of international crimes. We believe increased opportunities for justice are positive in principle, but it will be important to ensure that the court's expanded mandate is able to advance justice for all crimes under its jurisdiction. In this regard, we have prepared a letter that outlines areas we believe merit further scrutiny in relation to proposed expansion, which is available at:

http://iccnw.org/documents/Letter_on_African_Court_May_2012_FINAL.pdf

In summary, questions and concerns include, but are not limited to:

- possible impact of expansion on implementation of the human rights mandate of the African Court;
- ability of the court to obtain the intensive resources that will be needed to achieve an expanded mandate, essentially the creation of a new court within the existing court;

- importance of ensuring the proposed court does not compromise the ability of the ICC and national jurisdictions to deliver justice in areas under their jurisdiction; and
- value of further consultation with civil society on expansion, in addition to other international justice issues.

5. Improve communications between the AU and the ICC

In the face of strained relations between the AU and the ICC, we believe increased communication would play a critical, positive role. Both institutions are complex and have nuanced mandates. More frequent information exchange could help to clarify misconceptions and promote greater understanding of the institutions' respective roles.

The ICC previously sought to establish an AU-ICC Liaison Office in Addis Ababa. This is similar to an ICC liaison office that exists at the UN. We encourage you to revisit the establishment of such an office and move forward with its creation. Notably, African states parties previously wrote to the AU to expressly call for the office's creation.

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We hope this information will be of use to you during your tenure at the AU. Our organizations—which are based in many different African countries—have worked for years to ensure justice for victims of mass atrocities. This includes through collective advocacy to promote principled support for the International Criminal Court. We are convinced that although the ICC is not without its shortcomings, the ICC is a crucial court of last resort that should be supported.

We would appreciate the opportunity for some members of our organizations to meet with you to discuss these issues in greater depth. We may be reached at anicj@issafrica.org to arrange a meeting should that be possible.

Congratulations again on your election and we look forward to working with you.

Sincerely,

1. Access to Justice, Nigeria
2. Action Contre l'Impunité pour les Droits Humains, Democratic Republic of Congo (DRC)
3. Action des Chrétiens Activistes des Droits de l'Homme à Shabunda, DRC
4. Action Humanitaire et de Développement Intégral, DRC
5. Action pour la Protection des Droits de l'Homme, Côte d'Ivoire
6. Africa Legal Aid, with offices in Ghana and South Africa
7. African Center for Justice and Peace Studies, Sudan
8. Alliance des Femmes pour l'Egalité et le Genre en Guinée, Guinea
9. Amnesty International Section Côte d'Ivoire, Côte d'Ivoire
10. Amuria District Development Agency, Uganda
11. Association des Jeunes Avocats pour un Leadership Intégral, DRC
12. Association pour la Promotion de la Culture Islamique, Defense des Droits des Enfants et des Femmes, Guinea

13. Association pour les Droits de l'Homme et l'Univers Carcéral, DRC
14. Association Congolaise pour l'Accès à la Justice, DRC
15. Association des Jeunes pour la Promotion des Droits de l'Homme, Burundi
16. Arry Organization for Human Rights, Egypt
17. Borno Coalition for Democracy and Progress, Nigeria
18. Cameroon Coalition for the ICC, Cameroon
19. Caucus des Femmes, DRC
20. Cause Commune, DRC
21. Centre d'Ecoute de Femmes et des Enfant, Guinea
22. Centre d'Études sur la Justice et la Résolution 1325, DRC
23. Centre d'Initiatives pour le Développement Intégral, DRC
24. Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme, DRC
25. Centre d'Observation des Droits de l'Homme et d'Assistance Sociale, DRC
26. Center for Peace and Development Effectiveness, Liberia
27. Centre for Accountability and Rule of Law, Sierra Leone
28. Centre for Democracy and Development, Nigeria
29. Centre for Gender Education, Nigeria
30. Centre for Human Rights and Rehabilitation, Malawi
31. Children Education Society, Tanzania
32. Church of Central Africa Presbyterian, Synod of Livingstonia, Malawi
33. Civil Liberties Committee, Malawi
34. Civil Resource Development and Documentation Centre, Nigeria
35. Civil Society Legislative Advocacy Centre, Nigeria
36. Club Union Africaine – Côte d'Ivoire, Côte d'Ivoire
37. Coalition Burundaise pour la CPI, Burundi
38. Coalition Centrafricaine pour la CPI, Central African Republic
39. Coalition for the International Criminal Court, with offices in Benin and the DRC
40. Coalition Ivoirienne des Défenseurs des Droits Humains, Côte d'Ivoire
41. Coalition Ivoirienne pour la Cour Pénale Internationale, Côte d'Ivoire
42. Coalition of Eastern NGOs, Nigeria
43. Collectif des Organisations des Jeunes Solidaires au Congo, DRC
44. Concerned Christian Community, Liberia
45. Congo Peace Network, DRC
46. Connecting Gender for Development, Nigeria
47. Conseil National des Techniciens en Développement Rural du Congo, DRC
48. Consortium des Organisations de Jeunes pour la Défense des Victimes de Violences en Guinée, Guinea
49. Coordination des Organisations de Défense des Droits Humains, Guinea
50. Ditshwanelo - The Botswana Centre for Human Rights, Botswana
51. East and Horn of Africa Human Rights Defenders Project, Uganda
52. Egi Women Council, Nigeria
53. Egyptian Initiative for Personal Rights, Egypt
54. Encadrement des Femmes Indigènes et des Ménages Vulnérables, DRC
55. Espace Humanitaire de Côte d'Ivoire, Côte d'Ivoire
56. Fastlane Women Organizations, Nigeria
57. FIDA Nigeria, Nigeria

58. Fédération Internationale des Droits de l'Homme, with offices in Kenya
59. Fondation Point de Vue des Jeunes Africains pour Développement, DRC
60. Groupe d'Appui-Conseils aux Réalisations pour le Développement Endogène, DRC
61. Groupe d'Associations de Défense des Droits de l'Homme et de la Paix, DRC
62. Groupe Justice et Libération, DRC
63. Groupe Lotus, DRC
64. Global Justice and Research Project, Liberia
65. Human Rights Concern, Eritrea
66. Human Rights Consultative Committee, Malawi
67. Human Rights Law Service, Nigeria
68. Human Rights Monitor, Nigeria
69. Human Rights Network – Uganda, Uganda
70. Human Rights Network for Journalists – Uganda, Uganda
71. Human Rights Social Development and Environmental Foundation, Nigeria
72. Human Rights Watch, with offices in the DRC, Kenya, Rwanda, and South Africa
73. Initiative Congolaise pour la Justice et la Paix, DRC
74. Institut de Recherche sur la Démocratie et l'Etat de Droit, Guinea
75. International Center for Policy and Conflict, Kenya
76. International Commission of Jurists, Kenya
77. International Crime in Africa Programme, Institute for Security Studies, South Africa
78. International Center for Transitional Justice, with offices in Côte d'Ivoire, DRC, Kenya, and Uganda
79. International Society for Civil Liberties & the Rule of Law, Nigeria
80. Jinsiangu, Kenya
81. Justice Plus, DRC
82. Kebetkache Women Development and Resource Centre, Nigeria
83. Kenya Human Rights Commission, Kenya
84. Kenyans for Peace with Truth and Justice Coalition, Kenya
85. Kituo Cha Sheria, Kenya
86. Lawyers for Human Rights, South Africa
87. Legal Resources Centre, South Africa
88. Ligue des Électeurs, DRC
89. Ligue Ivoirienne des Droits de l'Homme, Côte d'Ivoire
90. Man and Water Survival Foundation, Nigeria
91. Media Foundation for West Africa, Ghana
92. Mouvement des Peuples pour l'Education aux Droits Humains - Côte d'Ivoire, Côte d'Ivoire
93. Mouvement Ivoirien des Droits Humains, Côte d'Ivoire
94. Mouvement pour la Defense des Droits de l'Homme et d'Action Humanitaire, Central African Republic
95. National Coalition on Affirmative Action, Nigeria
96. National Coalition of Human Rights Defenders – Kenya, Kenya
97. Niger Delta Women for Justice, Nigeria
98. Nigeria Coalition for the ICC, Nigeria
99. Observatoire Congolais des Droits Humains, DRC
100. Ogbakiri Women Peace Forum, Nigeria
101. Ogoni Solidarity Forum, Nigeria.

102. Plateforme Nationale des Citoyens Unis pour le Développement, Guinea
103. Promotion de la Justice Réparatrice des Initiatives de Développement Intégral, DRC
104. Radiant Women Association, Nigeria
105. Regional Associates for Community Initiatives, Uganda
106. Regroupement des Acteurs Ivoiriens des Droits Humains, Côte d'Ivoire
107. Rencontre Africaine pour la Défense des Droits de l'Homme, Senegal
108. Renforcement Local des Associations et des Initiatives Sociales, Guinea
109. Réseau des Associations des Droits de l'Homme du Sud Kivu, DRC
110. Réseau Equitas Côte d'Ivoire, Côte d'Ivoire
111. Réseau National des ONGs pour le Développement de la Femme en République Démocratique du Congo, DRC
112. Réseau Provincial des ONGDH au Congo, DRC
113. Réseau Provincial des ONG des Droits de l'Homme de la Ville de Kinshasa, DRC
114. Rescue Alternatives Liberia, Liberia
115. Rumuekpe Women Prayer Warriors, Nigeria
116. Rural Health and Women Development, Nigeria
117. Socio-Economic Rights and Accountability Project, Nigeria
118. SOS Exclusion, Côte d'Ivoire
119. Southern African Centre for the Constructive Resolution of Disputes, Zambia
120. Southern Africa Litigation Centre, South Africa
121. SPEAK Human Rights and Environmental Initiative, Mauritius
122. Sudan Democracy First Group, Sudan
123. Syndicat des Travailleurs de l'Enseignement du Burundi, Burundi
124. Tjombe-Elago Law Firm, Namibia
125. Toges Noires, DRC
126. Trade Union Confederation of Sierra Leone, Sierra Leone
127. Transformation Resource Centre, Lesotho
128. TrustAfrica, Senegal
129. Uganda Coalition for the International Criminal Court, Uganda
130. Uganda Victims' Foundation, Uganda
131. Union d'Actions pour les Initiatives de Développement, DRC
132. Vision Sociale, DRC
133. West African Bar Association, Nigeria
134. West African Civil Society Forum, Nigeria
135. West Africa Network for Peacebuilding – Nigeria, Nigeria
136. Women and Youths Empowerment, Nigeria
137. Women Environmental Programme, Nigeria
138. Women Information Network, Nigeria
139. Women, Law and Development Centre, Nigeria
140. Women's Right to Education Programme, Nigeria