

—Updated to include additional endorsements on October 7, 2013—

October 4, 2013

Foreign Ministers
African States Parties to the International Criminal Court

Re: Support for the ICC at African Union (AU) summit on October 11-12

Dear Foreign Minister:

We, the undersigned 142 African civil society organizations and international organizations with representatives in 35 African countries, write to urge your government to affirm its support for the ICC and the court's treaty, the Rome Statute, during the extraordinary AU summit on the ICC scheduled for October 11-12, 2013.

As you know, the relationship between the ICC and some African governments has faced renewed challenges as the ICC's cases for crimes committed during Kenya's post-election violence in 2007-08 have progressed. This has led to the scheduling of the AU extraordinary summit and questions over whether some African ICC states may be considering withdrawal from the Rome Statute.

We believe any withdrawal from the ICC would send the wrong signal about Africa's commitment to protect and promote human rights and reject impunity as reflected in article 4 of the AU's Constitutive Act. Needless to say, the work and functioning of the ICC should not be beyond scrutiny and improvement. However, considerations of withdrawal risk grave consequences for civilians in Africa, who tend to bear the brunt of serious crimes committed in violation of international law.

The ICC remains the only permanent criminal court with the authority to act when a state with jurisdiction is unable or unwilling to investigate or prosecute. As organizations working within Africa, some on behalf of or alongside victims of international crimes, we see every day the importance of ensuring access to justice. It is also important to note that withdrawal from the Rome Statute would not have a legal impact on the ICC's existing cases.

A key criticism raised by some African leaders is that the court is targeting Africa. While the ICC's cases are entirely from Africa, the majority came before the court as a result of requests by the states where the crimes were committed (Uganda, Democratic Republic of Congo, Central African Republic, Côte d'Ivoire, and Mali). Two other situations—Libya and Darfur, Sudan—were referred by the United Nations Security Council, with the support of its African members. Kenya is the only situation where the ICC Office of the Prosecutor acted on its own initiative, but only with the approval of an ICC pre-trial chamber after Kenya failed to take action to ensure justice domestically.

We recognize that international justice currently operates unevenly across the globe. In some situations, powerful governments are able to shield their citizens and the citizens of their

allies from the ICC's authority by not joining the ICC or using their veto power at the Security Council to block referrals of situations to the court.

We will continue to work with your government and other partners to ensure consistency in the application of international justice, including pressing against double standards at the Security Council. But undercutting justice for crimes where it is possible because justice is not yet possible in all situations risks emboldening those who might commit grave crimes. Working to expand, rather than contract, the membership of the ICC is a key step in widening access to justice and sending the message that no one is above the law.

The ICC's role in Kenya underscores the court's role as a crucial court of last resort, and we urge your government to signal support for this process to run its course.

Kenya's leaders in 2008 initially agreed to set up a special tribunal to try cases related to the post-election violence, which claimed more than 1100 lives, destroyed livelihoods, and displaced more than a half-million people. But when efforts to create the tribunal or to move forward cases in ordinary courts failed, the ICC prosecutor opened an investigation. This had been recommended by a national commission of inquiry set up as part of an African Union-mediated agreement to end the violence.

Although the African Union, at the initiative of Kenya and Uganda, called for a "referral" of the ICC's cases to a national mechanism in Kenya at its May 2013 summit, such referral is only for the ICC judges to decide on the basis of a legal challenge to the ICC, known as an admissibility challenge. In view of a lack of genuine national investigations and prosecutions, the ICC judges in 2011 rejected a challenge by the Kenyan government in these cases. Even since that decision there have not been serious efforts within Kenya to mount investigations and prosecutions of the post-election violence.

Kenya has put governments in an awkward position by pressing for action to avoid the ICC's cases for crimes committed in Kenya while having failed to avail itself of the legal procedures for the court to authorize such a move based on credible domestic investigation and prosecution. If adopted, a recent resolution by the Kenyan parliament to repeal the country's International Crimes Act also would mean that the country would lose an important tool for the domestic prosecution of international crimes.

African states have been some of the most important supporters of the creation and effective functioning of the ICC. African states played an active role at the negotiations to establish the court, and 34 African states—a majority of African Union member states—have now become ICC states parties. As discussed above, African governments have sought the ICC's assistance to carry out investigations and prosecutions, and Africans are also among the highest-level ICC officials and staff and serve as judges at the court.

In this context, we urge your government to work to ensure support within Africa for the ICC and its critical role in the fight against impunity, including in Kenya. This includes by signaling at AU meetings, in public comments, and in bilateral discussions with other African governments that the court represents a vital instrument in the fight against impunity.

We would welcome the chance to discuss this important issue further and civil society organizations with offices in your country will be in contact to set up a meeting on these matters.

Sincerely,

1. Amnesty International Benin
2. Benin Coalition for the International Criminal Court (ICC), Benin
3. DITSHWANELO - The Botswana Centre for Human Rights, Botswana
4. Amnesty International Burkina Faso
5. l'Action des Chrétiens pour l'Abolition de la Torture au Burundi
6. Action pour le Droit et le Bien-être de l'Enfant, Burundi
7. Association of Female Lawyers of Burundi
8. Burundi Coalition for the ICC, Burundi
9. Fontaine-ISOKO pour la Bonne Gouvernance et le Développement Intégré, Asbl, Burundi
10. Forum for Strengthening Civil Society, Burundi
11. Forum pour la Conscience et le Développement, Burundi
12. Ligue burundaise des droits de l'Homme, Burundi
13. Réseau des Citoyens Probes, Burundi
14. Cameroon Coalition for the ICC, Cameroon
15. Gender Empowerment and Development, Cameroon
16. Association of Female Lawyers of Cape Verde
17. Central African Coalition for the ICC, Central African Republic
18. Association tchadienne pour la promotion et le défense des droits de l'Homme, Chad
19. Chad Civil Society Coalition for the ICC, Chad
20. Ligue tchadienne des droits de l'Homme, Chad
21. Ivorian Coalition for the ICC, Côte d'Ivoire
22. Ligue ivoirienne des droits de l'Homme, Côte d'Ivoire
23. Mouvement ivoirien des droits humains, Côte d'Ivoire
24. Réseau Equitas Côte d'Ivoire
25. Access to Justice, Democratic Republic of the Congo (DRC)
26. Arche d'Alliance, DRC
27. Christian Activists Actions for Human Rights in Shabunda, DRC
28. Congo Peace Network, DRC
29. Congolese Foundation for the Promotion of Human Rights and Peace, DRC
30. Coordination Office of the Civil Society of South Kivu, DRC
31. Democratic Republic of the Congo National Coalition for the ICC, DRC
32. League for Peace, Human Rights and Justice, DRC
33. La Ligue des Elécteurs, DRC
34. Ligue pour la Promotion et le Développement Intégral de la Femme et de l'Enfant, DRC
35. The Lotus Group, DRC
36. Synergie des ONGs Congolaises pour les Victimes, DRC
37. Vision GRAM- International, DRC
38. Vision Sociale asbl, DRC
39. Eastern Africa Journalists Association, Djibouti
40. Cairo Institute for Human Rights Studies, Egypt
41. Egyptian Initiative for Personal Rights, Egypt
42. Human Rights Concern, Eritrea
43. The Civil Society Associations Gambia
44. Coalition For Change, Gambia
45. Abibiman Foundation, Ghana

46. Amnesty International Ghana
47. Centre for Popular Education and Human Rights, Ghana
48. Communication for Social Change, Ghana
49. Ghana Center for Democratic Development, Ghana
50. Media Foundation for West Africa, Ghana
51. Association des victimes, parents et amis du 28 septembre 2009, Guinea
52. Organisation guinéenne des droits de l'Homme et du Citoyen, Guinea
53. Amnesty International Kenya
54. Civil Society Organization's Network, Kenya
55. Independent Medico-Legal Unit, Kenya
56. International Commission of Jurists Kenya
57. Kenyans for Peace with Truth and Justice, Kenya
58. Unganisha Wakenya Association, Kenya
59. Transformation Resource Center, Lesotho
60. Actions for Genuine Democratic Alternatives, Liberia
61. Concerned Christian Community, Liberia
62. Foundation for International Dignity, Liberia
63. Liberia Research and Public Policy Center, Liberia
64. National Civil Society Council of Liberia
65. National Youth Action, Inc., Liberia
66. Rights and Rice Foundation, Liberia
67. Centre for Human Rights and Rehabilitation, Malawi
68. Centre for the Development of People, Malawi
69. Civil Liberties Committee, Malawi
70. Church and Society Programme, Malawi
71. Association malienne des droits de l'Homme, Mali
72. Coalition Malienne des Défenseurs des Droits Humains, Mali
73. FEMNET-Mali
74. Mali Coalition for the ICC, Mali
75. Association des Femmes Chefs de Familles, Mauritania
76. Association Mauritanienne des droits de l'Homme, Mauritania
77. NamRights, Namibia
78. Access to Justice, Nigeria
79. Alliances for Africa, Nigeria
80. BAOBAB for Women's Human Rights, Nigeria
81. BraveHeart Initiative for Youth & Women, Nigeria
82. Center for Citizens Rights, Nigeria
83. Centre for Democracy and Development, Nigeria
84. Centre for Human Rights and Conflict Resolution, Nigeria
85. Citizens Center for Integrated Development & Social Rights, Nigeria
86. Civil Liberties Organisation, Nigeria
87. Civil Resource Development and Documentation Centre, Nigeria
88. Coalition of Eastern NGOs, Nigeria
89. Human Rights Agenda Network Nigeria
90. Human Rights Social Development and Environmental Foundation, Nigeria
91. Institute of Human Rights and Humanitarian Law, Nigeria
92. Justice, Development and Peace Commission, Nigeria
93. Legal Redress and Justice Centre, Nigeria
94. Legal Resources Consortium, Nigeria
95. National Coalition on Affirmative Action, Nigeria

96. Nigeria Coalition for the International Criminal Court, Nigeria
97. Socio-Economic Rights and Accountability Project, Nigeria
98. West African Bar Association, Nigeria
99. Engagement for peace and human rights, Republic of the Congo
100. Human Rights First Rwanda Association, Rwanda
101. Amnesty International Senegal
102. Ligue sénégalaise des droits humains, Senegal
103. Amnesty International Sierra Leone
104. Centre for Accountability and Rule of Law, Sierra Leone
105. Coalition for Justice and Accountability, Sierra Leone
106. Amnesty International South Africa
107. Centre for Human Rights, University of Pretoria, South Africa
108. Co-operative for Research and Education, South Africa
109. Darfur Solidarity, South Africa
110. International Crime in Africa Programme, Institute for Security Studies, South Africa
111. South Africa Forum for International Solidarity, South Africa
112. Southern Africa Litigation Centre, South Africa
113. Children Education Society, Tanzania
114. Services Health & Development for people living positively with HIV/AIDS, Tanzania
115. Tanzania Pastoralist Community Forum, Tanzania
116. Amnesty International Togo
117. Collectif des Associations Contre l'Impunité au Togo
118. West African Human Rights Network, Togo
119. Advocates for Public International Law Uganda
120. African Centre for Justice and Peace Studies, Uganda
121. Community Development and Child Welfare Initiatives, Uganda
122. Corruption Brakes Crusade, Uganda
123. East and Horn of Africa Human Rights Defenders Project, Uganda
124. Foundation for Human Rights Initiative, Uganda
125. Human Rights Network Uganda
126. Kumi Human Rights Initiative, Uganda
127. Lira NGO Forum, Uganda
128. People for Peace and Defence of Rights, Uganda
129. Soroti Development Association & NGOs Network, Uganda
130. Uganda Coalition on International Criminal Court, Uganda
131. Uganda Victims Foundation, Uganda
132. Women Peace and Security, Uganda
133. Southern African Centre for the Constructive Resolution of Disputes, Zambia
134. Amnesty International Zimbabwe
135. Counselling Services Unit, Zimbabwe
136. Coalition for the International Criminal Court, with offices in Benin and the Democratic Republic of the Congo
137. Enough Project, with offices in the Democratic Republic of the Congo, Kenya, South Sudan, and Uganda
138. Human Rights Watch, with offices in Kenya and South Africa
139. International Federation for Human Rights, with offices in Côte d'Ivoire, Guinea, Kenya, and Mali
140. Parliamentarians for Global Action, with offices in the Democratic Republic of the Congo and Uganda

141. West African Journalists Association, with offices in Mali and Senegal
142. Women's Initiatives for Gender Justice, with offices in Egypt and Uganda