

Ref.: IOR 63/008/2004

H.E. President Olusegun Obasanjo
Chairperson of the African Union
President of Nigeria

The Presidency, State House

Aso Rock

Abuja

NIGERIA

05 August 2004

**Open Letter to the Chairman of the African Union (AU)
seeking clarifications and assurances that the
Establishment of an effective African Court on Human
and Peoples' Rights will not be delayed or undermined**

Your Excellency,

Amnesty International is seriously concerned about the future of the African Court on Human and Peoples' Rights (African Court) following the decision by the AU Assembly at its 3rd Ordinary Session in July in Addis Ababa, to integrate the African Court and the Court of Justice into one Court. The Assembly requested "the Chairperson [of the AU Commission] to work out the modalities on implementing" its decision and to report back at its 4th Ordinary Session expected to be held in 2005.

This decision is inconsistent with the earlier one taken by the Assembly at its 2nd Ordinary Session in July 2003 in Maputo, to the effect that the African Court "shall remain a separate and distinct institution from the Court of Justice of the African Union." Amnesty International is writing to you to seek your assurance that the Assembly's decision to integrate the two courts will not further delay, undermine or stop the full establishment of an effective and functioning African Court.

Since the Protocol establishing the Court was adopted on 10 June 1998, Amnesty International has consistently called on AU member states to ratify the Protocol, to nominate competent, independent and impartial judges to the Court, and to provide the Court with sufficient resources to enable it to be effective and to ensure full cooperation of the member states with the Court. Amnesty International believes that the African Court is an essential mechanism that would increase the protection of human rights regionally and nationally. Since the African Court is supposed to work together with the African Commission on Human and Peoples' Rights, the Court could also contribute to the long-term effectiveness of the Commission.

We note that while the Court of Justice established under the AU Constitutive Act has jurisdiction to resolve disputes between member states that have ratified the Court's Protocol, the African Court is empowered to hear cases challenging violations of the civil and political rights as well as economic, social and cultural rights guaranteed under the African Charter on Human and Peoples' Rights (African Charter) and other relevant human rights instruments. Furthermore, unlike the judges of the African Court who are required to possess competence in human rights, the judges of the Court of Justice are only required to "possess the necessary qualifications required in their respective countries for appointment to the highest judicial offices." Additionally, while the instrument elaborating the framework for the Court of Justice, as yet, has not entered into force, the African Court's Protocol entered into force in January 2004.

For these reasons, Amnesty International appeals to AU member states not to allow the Assembly's decision to prejudice, restrict or weaken the essence of the African Court, which is to provide an effective remedy in respect of violations of individual's human rights under the African Charter. There would have to be a careful assessment by the AU authorities as to whether the integration of the two courts provides as full a remedy as is appropriate under the African Charter and the Protocol establishing the African Court. At a time when the human rights of individuals are under great pressure in the region, it is essential for the AU to ensure and maintain the integrity of the system it has established.

Amnesty International urges you to encourage AU member states to reaffirm their expressed commitments to the African Court, and to support the principles embodied in the Court's Protocol, and the African Charter.

Amnesty International further urges you to initiate consultations with AU member states, especially those that have ratified the African Court's Protocol and nominated judges to the Court, on the possible impact of the Assembly's decision on the protection of human rights on the continent. The full participation of civil society organizations, including human rights non-governmental organizations, in these consultations is essential for ensuring the long-term effectiveness of the African Court. If the Assembly's decision is implemented without necessary consultations, there could be criticism that the process for the establishment of an African Court lacks the appropriate appearance of transparency.

Amnesty International reiterates its call to AU member states that have not yet done so to:

ratify without delay the Protocol establishing the African Court. In addition, all AU member states, including those that have already ratified the Protocol, should make declarations endorsing the rights of individuals and NGOs to access the African Court.

review their legislation and practice, to ensure that these fully conform with the Protocol.

ensure that the judges to be elected into the African Court have the relevant expertise for their position. States should also ensure gender balance in these appointments and adequate representation of the different regions and legal systems in the AU. Member states should ensure a transparent nomination and selection procedure that is open to all potential candidates; they should encourage applications from female candidates, and encourage civil society organizations to participate at all stages of the nomination process.

provide essential resources, including adequate funding to the African Court once fully established. The African Commission should also be given adequate resources to carry out its task effectively.

ensure that the African Court is allowed to function independently, impartially and effectively, and to develop its own case law.

take all necessary steps to cooperate fully with the African Court, including by according high priority to the prompt compliance with the judgments and decisions of the Court.

We hope that you will use your good offices and position to ensure the full establishment of an effective and functioning African Court that would provide an effective remedy in individual cases and would welcome your assurances of the same.

Yours sincerely,

Irene Khan
Secretary General

cc: H.E. Alpha Konare, Chairperson, AU Commission
H.E. Abdelaziz Bouteflika, President of Algeria
H.E. Blaise Compaoré, President of Burkina Faso
H.E. Domitien Ndayizeye, President of Burundi
H.E. Laurent Gbagbo, President of Côte d'Ivoire
H.E. Azali Assoumani, President of Comoros
H.E. El Hadj Omar Bongo, President of Gabon
H.E. Yahya Jammeh, President of Gambia
H.E. Colonel Muammar Al-Qaddafi, President of Libya

H.E. Pakalitha Mosisili, Prime Minister of Lesotho
H.E. Amadou Toumani Touré, President of Mali
H.E. Joaquim Alberto Chissano, President of Mozambique
H.E. Tandja Mamadou, President of Niger
H.E. Paul Kagamé, President of Rwanda
H.E. Abdoulaye Wade, President of Senegal
H.E. Thabo Mbeki, President of South Africa
H.E. Gnassingbé Eyadéma, President of Togo
H.E. Yoweri Museveni, President of Uganda

Annex: List of states parties to the Protocol Establishing the African Court on Human and Peoples' Rights (as of 30 July 2004)

	<i>Country</i>	<i>Instrument of ratification deposited, date</i>	<i>Declaration under Art 34 (6)</i>	<i>No. of candidates nominated</i>
1	Algeria	03/06/2003		1
2	Burkina Faso	23/02/1999	Yes	1
3	Burundi	12/05/2003		1
4	Côte d'Ivoire	21/03/2003		
5	Comoros	26/12/2003		
6	Gabon	29/06/2004		
7	Gambia	15/10/1999		
8	Libya	08/12/2003		2
9	Lesotho	23/12/2003		1
10	Mali	20/06/2000		3
11	Mauritius	24/03/2003		
12	Mozambique	20/07/2004		
13	Nigeria	09/06/2004		
14	Niger	26/06/2004		1
15	Rwanda	06/05/2003		1
16	South Africa	03/07/2002		
17	Senegal	30/10/1998		1
18	Togo	06/07/2003		
19	Uganda	06/06/2001		1