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 130 African civil society organizations and international organizations with representatives in 34 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. DITHWANELO - The Botswana Centre for Human Rights, Botswana
2. Amnesty International Burkina Faso
3. l'Action des Chrétiens pour l'Abolition de la Torture au Burundi
4. Action pour le Droit et le Bien-être de l'Enfant, Burundi
5. Association of Female Lawyers of Burundi
6. Burundi Coalition for the International Criminal Court (ICC), Burundi
7. Fontaine-ISOKO pour la Bonne Gouvernance et le Développement Intégré, Asbl, Burundi
8. Forum for Strengthening Civil Society, Burundi
9. Forum pour la Conscience et le Développement, Burundi
10. Ligue burundaise des droits de l'Homme, Burundi
11. Réseau des Citoyens Probes, Burundi
12. Cameroon Coalition for the ICC, Cameroon
13. Gender Empowerment and Development, Cameroon
14. Association of Female Lawyers of Cape Verde
15. Central African Coalition for the ICC, Central African Republic
16. Association tchadienne pour la promotion et le défense des droits de l'Homme, Chad
17. Ligue tchadienne des droits de l'Homme, Chad
18. Ivorian Coalition for the ICC, Côte d'Ivoire
19. Ligue ivoirienne des droits de l'Homme, Côte d'Ivoire
20. Mouvement ivoirien des droits humains, Côte d'Ivoire
21. Réseau Equitas Côte d'Ivoire
22. Access to Justice, Democratic Republic of the Congo (DRC)
23. Christian Activists Actions for Human Rights in Shabunda, DRC
24. Congo Peace Network, DRC
25. Congolese Foundation for the Promotion of Human Rights and Peace, DRC
26. Coordination Office of the Civil Society of South Kivu, DRC
27. Democratic Republic of the Congo National Coalition for the ICC, DRC
28. League for Peace, Human Rights and Justice, DRC
29. La Ligue des Électeurs, DRC
30. Ligue pour la Promotion et le Développement Intégral de la Femme et de l'Enfant, DRC
31. The Lotus Group, DRC
32. Synergie des ONGs Congolaises pour les Victimes, DRC
33. Vision GRAM- International, DRC
34. Vision Sociale asbl, DRC
35. Eastern Africa Journalists Association, Djibouti
36. Cairo Institute for Human Rights Studies, Egypt
37. Egyptian Initiative for Personal Rights, Egypt
38. Human Rights Concern, Eritrea
39. Human Rights Concern, Eritrea
40. The Civil Society Associations Gambia
41. Coalition For Change, Gambia
42. Abibiman Foundation, Ghana
43. Amnesty International Ghana
44. Centre for Popular Education and Human Rights, Ghana
45. Communication for Social Change, Ghana
46. Ghana Center for Democratic Development, Ghana
47. Media Foundation for West Africa, Ghana
48. Association des victimes, parents et amis du 28 septembre 2009, Guinea
49. Organisation guinéenne des droits de l'Homme et du Citoyen, Guinea
50. Amnesty International Kenya
51. Civil Society Organization’s Network, Kenya
52. Independent Medico-Legal Unit, Kenya
52. International Commission of Jurists Kenya
53. Kenyans for Peace with Truth and Justice, Kenya
54. Transformation Resource Center, Lesotho
55. Actions for Genuine Democratic Alternatives, Liberia
56. Concerned Christian Community, Liberia
57. Foundation for International Dignity, Liberia
58. Liberia Research and Public Policy Center, Liberia
59. National Civil Society Council of Liberia
60. Rights and Rice Foundation, Liberia
61. Centre for Human Rights and Rehabilitation, Malawi
62. Centre for the Development of People, Malawi
63. Civil Liberties Committee, Malawi
64. Church and Society Programme, Malawi
65. Association malienne des droits de l'Homme, Mali
66. Coalition Malienne des Défenseurs des Droits Humains, Mali
67. FEMNET-Mali
68. Mali Coalition for the ICC, Mali
69. NamRights, Namibia
70. Access to Justice, Nigeria
71. Alliances for Africa, Nigeria
72. BAOBAB for Women's Human Rights, Nigeria
73. BraveHeart Initiative for Youth & Women, Nigeria
74. Center for Citizens Rights, Nigeria
75. Centre for Democracy and Development, Nigeria
76. Centre for Human Rights and Conflict Resolution, Nigeria
77. Citizens Center for Integrated Development & Social Rights, Nigeria
78. Civil Liberties Organisation, Nigeria
79. Civil Resource Development and Documentation Centre, Nigeria
80. Coalition of Eastern NGOs, Nigeria
81. Human Rights Agenda Network Nigeria
82. Human Rights Social Development and Environmental Foundation, Nigeria
83. Institute of Human Rights and Humanitarian Law, Nigeria
84. Justice, Development and Peace Commission, Nigeria
85. Legal Resources Consortium, Nigeria
86. National Coalition on Affirmative Action, Nigeria
87. Nigeria Coalition for the International Criminal Court, Nigeria
88. Socio-Economic Rights and Accountability Project, Nigeria
89. West African Bar Association, Nigeria
90. Engagement for peace and human rights, Republic of the Congo
91. Human Rights First Rwanda Association, Rwanda
92. Amnesty International Senegal
93. Ligue sénégalaise des droits humains, Senegal
94. Centre for Accountability and Rule of Law, Sierra Leone
95. Coalition for Justice and Accountability, Sierra Leone
96. Centre for Human Rights, University of Pretoria, South Africa
97. Co-operative for Research and Education, South Africa
98. Darfur Solidarity, South Africa
100. South Africa Forum for International Solidarity, South Africa
101. Southern Africa Litigation Centre, South Africa
102. Children Education Society, Tanzania
103. Services Health & Development for people living positively with HIV/AIDS, Tanzania
104. Tanzania Pastoralist Community Forum, Tanzania
105. Amnesty International Togo
106. West African Human Rights Network, Togo
107. Advocates for Public International Law Uganda
108. African Centre for Justice and Peace Studies, Uganda
110. Corruption Brakes Crusade, Uganda
111. East and Horn of Africa Human Rights Defenders Project, Uganda
112. Foundation for Human Rights Initiative, Uganda
113. Human Rights Network Uganda
114. Kumi Human Rights Initiative, Uganda
115. Lira NGO Forum, Uganda
116. People for Peace and Defence of Rights, Uganda
117. Soroti Development Association & NGOs Network, Uganda
118. Uganda Coalition on International Criminal Court, Uganda
119. Uganda Victims Foundation, Uganda
120. Women Peace and Security, Uganda
121. Southern African Centre for the Constructive Resolution of Disputes, Zambia
122. Amnesty International Zimbabwe
123. Counselling Services Unit, Zimbabwe
124. Coalition for the International Criminal Court, with offices in Benin and the Democratic Republic of the Congo
125. Enough Project, with offices in the Democratic Republic of the Congo, Kenya, South Sudan, and Uganda
126. Human Rights Watch, with offices in Kenya and South Africa
127. International Federation for Human Rights, with offices in Côte d'Ivoire, Guinea, Kenya, and Mali
128. Parliamentarians for Global Action, with offices in the Democratic Republic of the Congo and Uganda
129. West African Journalists Association, with offices in Mali and Senegal
130. Women’s Initiatives for Gender Justice, with offices in Egypt and Uganda