



Jakub Karfik,
Director General, Non- European Countries and
Development Co-operation
Ministry of Foreign Affairs,
Czech Republic

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Dear Mr Karfik,

European Union - African Union Human Rights dialogue

In light of the fact that the next round of the European Union (EU) - African Union (AU) dialogue is taking place from 15 to 17 April, Amnesty International is writing to propose a number of issues which we would encourage the EU to raise with AU counterparts in the discussion. For your information, Amnesty International is also writing in similar terms to AU representatives.

We would propose that two important human rights themes, which strongly affect both regions, are discussed:

- EU-AU co-operation on enhancing the contribution of the Universal Periodic Review of the UN Human Rights Council to effective national measures for the promotion and protection of human rights;
- International justice.

In addition, we are attaching specific country briefs on a number of crisis situations in the AU, some of which we understand are scheduled for discussion, namely:

- Zimbabwe.
- Democratic Republic of the Congo;
- Somalia.

We also attach two thematic briefs covering human rights concerns in a number of EU member states, regarding:

- Migrants' rights;
- Police brutality.

EU –AU co-operation on the Universal Periodic Review (UPR)

At the end of the fourth session of the UPR Working Group in February 2009, a total of 64 states have so far come under review - one third of the UN member states. In addition to the number of states examined, the Universal Periodic Review has reviewed the human rights record of states that have never before come under scrutiny by a human rights body comprised of member states. Some of the reviews have yielded important outcomes for human rights; others have been largely missed opportunities to enhance the protection of human rights in the country reviewed.

Good practice is developing in the UPR both for states under review and for states doing the reviewing, in terms of the mechanism's potential to improve the situation of human rights on the ground. This needs to be developed by greater effort to ensure that states better focus their interventions in the Working Group on key human rights challenges and make concrete recommendations for action to strengthen the protection of human rights in the country reviewed. In this regard, reviewing states can make good use of both the Compilation of UN information and the Summary of stakeholder information. The emerging practice of states under review to organize early and comprehensive consultation both within government and with civil society during the drafting of the national report can be further developed, including by holding similar consultations in connection with national follow-up to UPR outcomes. Similarly the practice of including voluntary pledges to protect human rights in national reports can be refined and developed. Improvement in the preparation for the UPR dialogues and follow-up to the UPR outcomes will contribute to the UPR being an integral part of an effective national process to promote and protect human rights.

Amnesty International urges the EU and AU to work together in the Human Rights Council to ensure that valuable lessons learned from the first four sessions of the UPR are applied to future rounds of reviews in order that the reviews becomes more effective.

Key actions that the two regions could agree to work on are:

- to ensure that concrete, measurable actions to strengthen the situation of human rights in the state under review are proposed during the dialogue in the UPR Working Group;
- to encourage states under review to accept as many of the recommendations as possible, and to indicate in a timely and transparent manner its position on all of the recommendations made, well before the adoption of the UPR outcome by the Council;
- to focus after the dialogue in the UPR Working Group on practical measures to support effectively the reviewed country's efforts to implement the recommendations accepted and commitments made in the review. Reviewed states should be encouraged to establish an action plan for the implementation of the UPR outcome and to monitor progress, including in consultation with civil society;
- to make UPR follow-up an element of bilateral technical cooperation programmes;
- to encourage states that have been reviewed to keep the Council informed of progress on implementing the outcome of the UPR at the national level.

Co-operation on International Justice

The International Criminal Court

The EU Africa Strategy adopted in December 2007 highlighted that the EU and AU are 'natural interlocutors' on continental issues of regional concern. Co-operation to promote international justice is one of the key expected outcomes envisaged in the action plan for the Human Rights and Good Governance Partnership of the strategy.

To realise these commitments, Amnesty International urges the EU and AU to use the human rights dialogue to agree key follow-up actions. All member states that have not yet done so should ratify the Rome Statute, and enact or amend existing legislation to effectively comply with their international obligations, including the exercise of both principles of complementarity and co-operation under the Rome Statute.

On 4 March 2009, the International Criminal Court (ICC) issued an arrest warrant for Sudanese President Omar al Bashir on charges of crimes against humanity and war crimes. In response to this, the Sudanese authorities expelled and suspended the operations of key humanitarian aid agencies working in the country. This decision was in clear violation of Sudan's responsibilities under international law, including the International Covenant on Economic Social and Cultural Rights, which Sudan has ratified. The International Covenant obliges the Sudanese government to refrain from actions that violate the economic, social and cultural rights of its citizens and to seek international assistance if they are unable to carry out their obligations. The arrest warrant for the country's president is entirely irrelevant to the issue.

The EU- AU human rights dialogue should discuss this specific issue, and call collectively on the Sudanese authorities to immediately reverse the decision to expel and suspend humanitarian operations in their country. In light of the support which the AU has shown to date for President Bashir, the EU representatives should make clear that they would not support any attempts to block or delay his prosecution, including through Security Council action under Article 16 of the Rome Statute. On 31 March 2005, the UN Security Council determined that the situation in Sudan constituted a threat to international peace and security. Acting under Chapter VII of the UN Charter, the Security Council adopted Resolution 1593, referring "the situation in Darfur since 1 July 2002" to the ICC Prosecutor. Amnesty International opposes any efforts to prevent the prosecution of those for whom the ICC has issued an arrest warrant, and would consider a blocking action by the Security Council to be an intervention by a political body into the judicial proceedings of the Court.

Universal Jurisdiction

In July 2008 the AU called for all states to cease issuing any arrest warrants based on universal jurisdiction until all legal and political issues have been “exhaustively discussed” by the AU, EU and the UN. On 3 February 2009, the Chair of the African Union asked that the topic, “Abuse of the principle of universal jurisdiction”, be added to the agenda of the 63rd session of the UN General Assembly (2008 to 2009).

Amnesty International would like the EU-AU human rights dialogue to note that not only are such warrants permitted under international law, but national courts are obliged to issue such warrants when persons are suspected of certain crimes under international law, such as grave breaches of the Geneva Conventions of 1949 and Protocol I to those conventions and torture, when the courts are in a state that has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

There is no evidence of selective or abusive exercise of universal jurisdiction against African leaders and, should it ever occur, states have a range of remedies, including filing an application in the International Court of Justice. There is considerable evidence that police, prosecutors and investigating judges are taking their responsibilities to investigate and prosecute crimes committed against victims in Africa, as well as victims in many other areas of the world, when those victims have been unable to obtain justice at home.

It must be considered that national police and prosecutors outside Rwanda that are investigating crimes committed in that country during 1994 are doing so at the request of the Security Council, which urged:

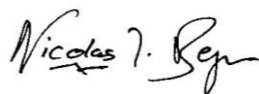
“States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda *or by the appropriate national authorities*, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda[.]”

In some instances, the investigations or prosecutions took place because extradition to Rwanda was refused. In addition, some of the cases that are claimed to be examples of “selective” or “abusive” exercise of universal jurisdiction are not even based on universal jurisdiction. For example, the prosecution of Rose Kabuye and others is based on passive personality as the victims were both nationals of the state where the court is located.

Amnesty International urges that the EU-AU Human Rights Dialogue is used as a forum to defend the legitimacy of the exercise of universal jurisdiction over conduct amounting to crimes under international law, including genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances, provided that the proceedings are in accordance with the right to fair trial and other international human rights law and standards and exclude the death penalty.

We look forward to feedback on positive discussions at this dialogue.

Yours sincerely,



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