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Amnesty International's recommendations to the Ordinary Summit of the African Union

Introduction

In advance of the Ordinary Summit of the African Union (AU), to be held in Addis Ababa, Ethiopia, between 22 and 30 January 2007, Amnesty International is making the following recommendations to the AU bodies in order for the AU to make progress towards the promotion and protection of human rights and fundamental freedoms in Africa.

The adoption of the Constitutive Act of the AU in 2000 containing fine statements on the promotion and protection of human rights raised expectations that African leaders were prepared to take a stand against abuses of human rights in AU member states, and to reverse the deteriorating human rights conditions that have characterised many parts of the region for decades.

Although some limited steps have been taken to implement the human rights mandate of the AU, grave human rights violations, including rape, torture and unlawful killings continue to be committed in many parts of Africa. In this report Amnesty International makes recommendations to the AU to take urgent steps to address the human rights situation in Somalia, Darfur and eastern Chad, Zimbabwe and to demonstrate its commitment to fighting impunity for human rights violations in the continent. Amnesty International also makes recommendations to strengthen the regional human rights protection mechanisms, notably the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.

Somalia

Amnesty International is concerned about the human rights and humanitarian situation in Somalia, following the recent conflict between the Transitional Federal Government (TFG), supported by Ethiopian troops, and the Council of Somali Islamic Courts.

Amnesty International is concerned by the recent closure of the Kenyan border with Somalia on the grounds of security and by reports that humanitarian agencies have been denied access to refugees fleeing this conflict. The organization is also concerned about reported deaths of civilians in Somalia reportedly as a result of air strikes carried out by US and Ethiopian armed forces in January 2007.

On 6 December, the UN Security Council passed a resolution authorizing a regional peacekeeping force in Somalia under the auspices of the regional Inter-Governmental Authority for Development (IGAD) and the AU. The mandate of the 8,000-strong IGAD Peace Support Mission to Somalia (IGASOM) force is principally to protect the Transitional Federal Government (TFG) and train its security forces.

With regards to the current negotiations about the Peace Support Mission to be deployed in Somalia by IGAD and the African Union, Amnesty International urges the AU to:

- Call on all parties to respect their obligations under international human rights and humanitarian law;
- Ensure that the operational mandate of IGASOM include the protection of civilians, particularly human rights defenders and vulnerable groups such as women, minorities and children, and provide security for the provision of humanitarian assistance;
- Ensure that that IGASOM forces are adequately trained to operate in full compliance with international human rights and humanitarian law, anyone who is reasonably suspected of involvement in serious violations of human rights or humanitarian law should be excluded from participation in the IGASOM mission and IGASOM forces should be held accountable at all times for any serious breach of international humanitarian law or human rights;
- Ensure that IGASOM monitor and publicly report violations of human rights and international humanitarian law;
- Call on the government of Kenya to urgently review its decision to close the Kenyan-Somalia border, guarantee that it will not forcibly return refugees to Somalia, and allow the provision of humanitarian assistance to all seeking protection in line with Kenya's obligations under international human rights and refugee law, including the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol and the 1969 OAU Convention Governing the Specific Problems of Refugees in Africa;
- Request the African Commission on Human and Peoples' Rights, including its Special Rapporteur on refugees, asylum seekers and internally displaced persons in Africa, to carry out a fact-finding mission in Somalia and Kenya, with the view of making recommendations aimed at strengthening the protection and promotion of human rights in Somalia.

Darfur and Eastern Chad

Amnesty International is deeply concerned by the deteriorating human rights and humanitarian situation in Darfur and Eastern Chad.

The government of Sudan has consistently failed to protect civilians in Darfur. Its forces, together with the Janjawid militia and more recently members of armed groups which have signed the Darfur Peace Agreement (DPA), continue to act in violation of international standards of human rights and international humanitarian law, including the African Charter on Human and Peoples' Rights and the Constitutive Act of the Union. Despite its efforts, the presence of an African Union peacekeeping mission in Darfur (AMIS) since 2004 has failed to stop the mass killings, rapes and forcible displacement of civilians in Darfur. Furthermore, since the signing of the Darfur Peace Agreement in May 2006, humanitarian agencies have been facing increasing obstacles to deliver vital aid to the civilian population. Rising insecurity, attacks on aid workers and restrictions on the work of humanitarian agencies by

government forces and armed opposition groups have narrowed the space in which humanitarian assistance can be provided in Darfur.

The Darfur conflict has already spilled over into Chad with serious consequences for the Chadian population and the Sudanese refugees.

On 30 November 2006, the AU Peace and Security Council agreed to extend the AMIS mandate for six months and endorsed the establishment of a hybrid operation of United Nations (UN) and AU peacekeepers in Darfur. Despite the reported acceptance by the government of Sudan of such hybrid force, many issues still remain to be defined, and no timetable for the deployment of the hybrid force has been agreed. For such hybrid force to guarantee effective protection of civilians it must remedy the difficulties which have weakened AMIS. An effective peacekeeping force requires sufficient human and material resources and a strong mandate to protect civilians by all necessary means in accordance with international humanitarian and human rights law. In addition, the Sudanese government must be fully committed to the implementation of the mandate of the peacekeeping mission and should remove all obstacles which are hampering AMIS and any future peacekeeping operation including by promptly releasing equipment and other materials belonging to the peacekeeping mission and by issuing visas to peacekeeping mission personnel and contractors. Furthermore, accountability needs to be ensured through clearly defined and transparent command and control structures.

Since June 2006, Amnesty International has documented how the conflict in Darfur has spread to eastern Chad, accompanied by serious human rights violations and abuses committed by Chadian and Sudanese militias and other armed groups. Homes ablaze, slaughters, rapes are part of the daily life of these populations. Similar concerns have been raised by UN independent experts, the UN High Commissioner for Refugees and other non-governmental organizations.

Amnesty International delegates last visited Chad in November/December 2006, where they gathered information, including witnesses' accounts of rape, killings and forced displacements of civilians by Janjawid militias, with the Chadian military and police failing to take any effective actions to provide protection.

Amnesty International calls on the AU to:

- Impress upon the government of Sudan and Chad their primary responsibility to protect civilians;
- Urge the government of Sudan to disarm the Janjawid in accordance with UN Security Council Resolutions 1556, 1654, and 1591, the Security Protocol of 2004, the Darfur Peace Agreement of 2006 and other international agreements and to prevent cross-border attacks against civilians in Chad by the Janjawid;
- Urge the government of Sudan to lift all obstacles to the strengthening of AMIS and the future deployment of the UN/AU hybrid force in Darfur;

- Immediately reinforce AMIS in coordination with the UN, and ensure that it acts proactively and effectively to protect civilians;
- Ensure AMIS and any future peacekeeping force in Darfur has the capacity to protect civilians and to patrol the border area between Chad and Sudan;
- Set up, in consultation with the UN, the process and timetable for the prompt and complete deployment of the AU/UN hybrid force in Darfur.

Amnesty International is also concerned about the possibility that Sudan may assume the Chairmanship of the AU Assembly from January 2007, as recommended by the Committee on the Chairmanship of the AU in January 2006, in Khartoum, Sudan. The objectives of the AU, as set out in Article 3 of the Constitutive Act of the Union, include the promotion and protection of human rights and peace, security, and stability on the continent. Electing Sudan as chair of the AU Assembly, while the government is persistently committing grave violations of human rights and international humanitarian law will send a very negative signal on the commitment of the AU to uphold human rights in Africa. Furthermore, the impartiality of the AU, which, through AMIS, is monitoring the implementation of the Darfur Peace Agreement, would be called into question if a party to the conflict, such as Sudan, is elected to chair one of the main decision making organs of the AU. As a result, the support enjoyed by AMIS would be greatly diminished.

Zimbabwe

Amnesty International remains gravely concerned by the continuing violations of human rights and the almost absolute impunity enjoyed by the perpetrators in Zimbabwe.

At its 38th Ordinary Session in November 2005, the African Commission on Human and Peoples' Rights condemned the deteriorating human rights situation in Zimbabwe. In its resolution, the African Commission urged *"the government of Zimbabwe to implement without further delay the recommendations contained in the African Commission Report of the 2002 Fact-Finding Mission to Zimbabwe and the recommendations in the July 2005 Report of the UN Special Envoy on Human Settlement Issues"* and made a series of recommendations to improve respect for human rights in the country, including the right to freedom of expression, association and assembly and the independence of the judiciary.

Amnesty International believes that the silence of African leaders and their failure to insist on the respect of human rights by the government of Zimbabwe has contributed to a culture of impunity resulting in increased violations as evidenced by the destruction of the homes and livelihoods of over 700 000 people in 2005 and the reported torture of leaders of the Zimbabwe Congress of Trade Unions while in police custody on 13 September 2006.

Amnesty International urges the AU Assembly to publicly condemn all human rights violations in Zimbabwe and to take effective measures within the AU framework to ensure that the government of Zimbabwe respects and protects all rights enshrined in the African Charter on Human and Peoples' Rights and other international standards. In particular the organization recommends that the AU:

- Publicly call on the government of Zimbabwe to respect its obligations under the African Charter on Human and Peoples' Rights and to comply with the recommendations contained in the African Commission's resolution and fact-finding mission;
- Renew, in line with the recommendation of the African Commission, the mandate of its Envoy to Zimbabwe to investigate the human rights implications and humanitarian consequences of the forced evictions and demolitions.

Fight against Impunity – the trial of Hissène Habré

Amnesty International welcomes the reported decision of the Senegalese government, in response to the request by the AU Assembly adopted during its 7th Ordinary Session in Banjul, The Gambia in July 2006, to try Hissène Habré for the crimes he is suspected to have committed in Chad.

A necessary prerequisite for this process is the enactment of legislation to include crimes against humanity, war crimes, genocide, extrajudicial executions, enforced disappearances and torture, as defined in international law, in the Senegalese penal code and criminal procedure code over which Senegalese courts can exercise extraterritorial jurisdiction, including universal jurisdiction. In this regard, Amnesty International noted with interest the communiqué published following the council of ministers meeting on 9 November 2006 announcing the adoption of a bill amending the Senegalese Penal Code introducing the crimes of genocide, war crimes and crimes against humanity and a bill amending the Senegalese Code of Criminal Procedure on matters concerning universal jurisdiction. In December 2006, the government set up a working group in charge of organizing the trial of Hissène Habré.

These bills could represent an important step towards the process of amending national legislation to bring it into line with Senegal's obligations under international law. However, they have not been made public, despite having been reportedly presented to the Senegalese Parliament. Amnesty International is concerned about the lack of transparency and the failure, so far, of the government of Senegal to consult with civil society and other experts, which is in marked contrast to the broad consultation by the government with civil society organizations concerning the implementation of the Rome Statute of the International Criminal Court.

Amnesty International recommends that the AU Assembly urge the government of Senegal to:

- Ensure that the process of amending national legislation to bring it into line with Senegal obligations under international law is carried out in a transparent manner, with the participation of civil society;
- Try Hissène Habré in Senegal within a reasonable time, and in accordance with the fundamental principles of fair trial and international justice standards;

- Guarantee protection and support to victims, their family members, lawyers and witnesses and the participation of the latter at all stages of the trial;
- Guarantee that victims have the right to reparations.

Supporting and strengthening the African Commission on Human and Peoples' Rights

Amnesty International welcomes the publication of the report of the Brainstorming meeting on the African Commission on Human and Peoples Rights (African Commission) organised by the AU Commission on 9-10 May 2006 in Banjul, The Gambia. The report contains several important recommendations which if implemented will contribute to the effective functioning of the African Commission.

The African Commission plays a crucial role in ensuring the protection and respect of human rights in Africa. The AU Assembly has a responsibility to ensure that states implement the resolutions adopted at the African Commission.

All AU member states are parties to the African Charter and have undertaken to implement effectively and in good faith the provisions of the African Charter to ensure that the rights contained therein are protected, respected and fulfilled. Findings and recommendations of the African Commission, the body established to monitor the implementation of the Charter's obligations by states parties, should be respected and implemented. In this regard, Amnesty International welcomes the African Commission's decision, contained in its resolution on the importance of the implementation of the recommendations of the African Commission by States Parties, adopted at its 40th Ordinary Session, held in Banjul, The Gambia, from 15 to 29 November 2006, to submit at every session of the AU Executive Council a report on the situation of compliance with its recommendations by states parties to the African Charter.

The rules of procedure and working methods of the African Commission and the AU organs must reflect the principle, enshrined in the African Charter, of independence of the African Commission from interference by the AU political bodies. In particular, resolutions and decisions adopted by the African Commission, as well as concluding observations to states parties' reports, reports of country missions and other reports of activities carried out by the African Commission under its mandate are not subjected to confidentiality. Governments publicizing their views on Commission resolutions and reports provide a useful opportunity for engagement and constructive dialogue between states parties to the African Charter and the Commission. However, while crucial for monitoring the implementation of the African Charter, the publication of written responses by states parties concerned must not obstruct the publication of the African Commission's activities.

The brainstorming meeting in May 2006 has brought to everyone's attention the failure of the AU to provide adequate financial support to the African Commission and to its Secretariat. Such lack of support has very negative effect on the staffing and work of the African Commission's Secretariat, on the capacity of the Commissioners to carry out promotional and

fact-finding missions and even on the capacity of the African Commission to hold its two ordinary sessions each year, as provided for by the African Charter. The AU has also failed to provide any financial support for the work of the special rapporteurs and working groups established by the African Commission. Inadequate funding has meant that the African Commission is not able to realize its full potential. The African Commission has on various occasions raised these concerns with the relevant organs of the AU and has recently recommended the establishment of a voluntary fund for the African human rights system.¹

Amnesty International recommends that:

- All AU bodies, and in particular the AU Assembly, support and promote the work of the African Commission by acting upon its resolutions and recommendations and by sanctioning those states that are in violation of their obligations under the African Charter or fail to implement recommendations and decisions of the African Commission, including interim measures taken by the African Commission under its communication procedure;
- The AU Assembly continues to urge states to submit their overdue reports and consider taking other steps should states continue to fail to do so;
- The AU Assembly allows the publication without delay of resolutions and decisions adopted by the African Commission, as well as concluding observations to states parties' reports, reports of country missions and other reports of activities carried out by the African Commission under its mandate and does not make the publication of these conditional upon receiving governments' responses;
- The AU Assembly increases the human and material resources allocated to the African Commission and its Secretariat, including by establishing a voluntary fund for the African Human Rights institutions.

The establishment and functioning of the African Court on Human and Peoples' Rights

Amnesty International welcomes the election of the judges of the African Court on Human and Peoples' Rights (African Court) and the progress made towards the full operationalization of Court.

However, the organization is concerned that, since the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court (the Protocol) on 9 June 1998 and despite numerous calls from AU organs and the African Commission, only 23 out of the 53 AU member states have ratified the Protocol and only two,

¹ See African Commission resolution on the Establishment of a Voluntary Contribution Fund for the African Human Rights System, adopted at its 40th Ordinary Session, in Banjul (the Gambia, from 15 to 29 November 2006.

Burkina Faso and Mali, have made the declaration under Article 34(6) of the Protocol, granting individuals and non-governmental organizations direct access to the African Court.²

The effectiveness of the African Court to provide redress to human rights violations in Africa would be gravely impaired if less than half of AU member states have accepted the jurisdiction of the African Court.

Amnesty International recommends that the AU Assembly should:

- Strongly encourage member states that have not yet done so, to ratify the Protocol without further delay and to make the declaration under Article 34(6) of the Protocol, granting individuals and non-governmental organizations direct access to the African Court;
- Provide the registrar of the African Court with the necessary human and financial resources, so that the African Court is able to carry out its functions independently and effectively.

² As of 25 July 2006. Source: African Union website: <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>