

TABLE OF CONTENTS

| | |
|---|---|
| Introduction..... | 1 |
| Kenya: Political and ethnic violence and killings..... | 1 |
| Sudan: Continuing attacks against civilians and impediment of the work of UNAMID | 3 |
| The delayed trial of Hissène Habré..... | 4 |
| Death Penalty: A milestone resolution by the UN General Assembly | 6 |

Amnesty International's Recommendations to the African Union Assembly

Introduction

Ahead of the tenth Ordinary Session of the Assembly of the African Union Heads of State and Government (AU Assembly), to be held in Addis Ababa, Ethiopia, from 31 January to 2 February 2008, Amnesty International is urging African leaders to seize the opportunity of the meeting to address urgent and critical human rights challenges confronting Africa.

The Constitutive Act of the AU adopted in 2000 expresses member states' determination "to promote and protect human and peoples' rights, consolidate democratic institutions and culture and to ensure good governance and the rule of law in accordance with the African Charter on Human and Peoples' Rights".

The AU Assembly must show principled leadership in giving effect to this commitment, and in particular, be ready to use its influence and exercise its authority more proactively in the interest of human rights. The AU Assembly needs to show more commitment by investing adequately in structures and institutions that can strengthen the protection of human rights across the region.

In this document, Amnesty International is making recommendations to the AU Assembly to take urgent steps to address the human rights situation in Kenya and Sudan (Darfur); and to demonstrate its commitment to fighting impunity for human rights violations by supporting, and encouraging support, for bringing to justice Hissène Habré for the crimes he is suspected to have committed in Chad when he was President (from 1982-1990). Amnesty International is also asking the AU Assembly to endorse the recent decision by the UN General Assembly calling for a moratorium on executions, and to encourage its member states, that still retain the death penalty, to implement fully the UN decision.

Kenya: Political and ethnic violence and killings

Amnesty International is deeply concerned by continuing reports of violence and killings in Kenya following a disputed presidential and parliamentary election in that country. Amnesty International condemns the politically-motivated killings of civilians by groups of armed youths in different parts of Kenya, which have been increasing in number during the last few weeks, and has expressed concerns at the ethnic dimensions of the violence.

Since the announcement of the December presidential and parliamentary elections serious human rights violations and abuses have been committed. Widespread violence continues in

many parts of Kenya particularly in Nairobi, Nyanza province, Western Province, the Rift Valley and Coast Province. The violence has involved many incidents of attacks between the different ethnic communities, often with machetes, stones and clubs. Part of the violence appears to have been criminally motivated, with perpetrators exploiting a period of lawlessness to steal, rape, and displace people from land and property for selfish reasons. Informal roadblocks quickly sprung up in many parts of Kenya, and numerous areas became no-go zones for members of the wrong ethnic group, as reprisals for the violence continue.

As political tension mounted, the government suppressed freedom of expression and banned live broadcasting by the Kenyan media although the ban has in practice been widely ignored by the media. The government has deployed security forces to many areas. Police and troops acted to protect people from violent mobs in some areas and dispersed violent protesters in others. The government has banned all demonstrations called by the opposition in Nairobi and other towns and has since prevented demonstrators from gathering, using tear-gas and water-cannon and in some incidences firing live ammunition into crowds which have some times been violent.

Over 800 people are reported to have lost their lives through communal violence and police killings, with the UN stating that over 250,000 people are displaced. Thousands others have crossed into Uganda and Tanzania as refugees.

Amnesty International condemns the unlawful police killings of dozens of people in different parts of Kenya during the period of political violence. Amnesty International recognizes that the Kenyan police are and have been trying to contain what in some cases have been violent protests in Kenya. However, by firing live ammunition into crowds the police have far exceeded what is a lawful use of force. The firing of live ammunition into crowds cannot be considered a necessary and proportionate use of force, as required by law. On 16-18 January alone, at least twelve individuals, including a 13-year old boy, were shot and killed by police bullets during protests called by the opposition party. In one incident, captured on video by a local television station, an unarmed protestor in Kisumu town in Western Kenya was shot at close range by a Kenyan police officer who then kicked him while he lay wounded on the ground. The man reportedly died later from the bullet wound.

Amnesty International calls on the AU Assembly to:

- Address meaningfully the situation in Kenya at its meetings in Addis, and call for a sustained and effective human rights protection for all Kenyans;
- Urgently establish an AU Commission of Inquiry into unlawful killings and identify those suspected to be responsible for the crimes. The AU Assembly must insist on holding accountable those responsible, and on providing reparations for victims;
- Fully apply its own human rights principles articulated in its Constitutive Act, and the African Charter on Human and Peoples' Rights, by pressing the Kenyan government and political party leaders to take all lawful measures to ensure an immediate halt to

the violence and to commit themselves publicly to the respect and protection of the human rights of all citizens;

- Ask the African Commission on Human and Peoples' Rights' Commissioner Bahame Tom Mukirya Nyanduga, Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa to urgently visit Kenya to assess the situation and make recommendations to address the situation of those that have been displaced as a result of the violence.

Sudan: Continuing attacks against civilians and impediment of the work of UNAMID

Amnesty International remains concerned about lack of protection of civilians in Darfur and other parts of Sudan. Due in part to numerous delays in the implementation of Security Council Resolution 1769, systematic violations of international human rights and humanitarian law persist in Darfur despite the transformation of the African Mission in Sudan into the United Nations-African Union Hybrid Mission in Darfur (UNAMID). Some of the delays have resulted from the lack of will by key players in the international community. Despite adopting resolution 1769 unanimously, UN member states have failed to pledge military equipment, such as helicopters which are vital to transport UNAMID personnel swiftly in a large and difficult region like Darfur.

Other delays have occurred through the obstruction by the government of Sudan to UNAMID deployment. The government of Sudan has not accepted the list of troop contributing countries approved by the African Union in September and has delayed in giving over land for bases. In addition, no Status of Forces Agreement (SOFA) has been reached for UNAMID.

Sudan continues to impose a curfew on night flights and demands that all movements be coordinated through the government and that it should have the right to cut all communication if the Sudan Armed Forces are carrying out an operation. In making such demands to an armed force set up by the African Union in coordination with the United Nations, the government of Sudan is gravely damaging its effectiveness and hindering the protection of civilians in Darfur which the force is set up to achieve.

Renewed participation of the Sudan People's Liberation Movement (SPLM) in the Government of National Union in Khartoum is a positive step in the implementation of the Comprehensive Peace Agreement. Nevertheless, tensions remain high in the region, and over the past month clashes between different ethnic groups and armed forces have resulted in dozens of casualties. The government of Sudan continues to refuse to accept the Abyei Boundary Commission's report of 2006. Agreement according to the terms of the Abyei

Protocol in the Comprehensive Peace Agreement is important to ensure that further conflict with accompanying loss of civilian lives, is averted.

Amnesty International is also concerned about continuing failure of Sudan to comply with the Interpol warrant issued pursuant to an indictment by the International Criminal Court. It is regrettable that Ahmad Haroun, one of those indicted by the court on 51 counts of crimes against humanity and war crimes continues to serve in the government, including in high profile positions. Ahmad Haroun remains State Minister for Humanitarian Affairs and is Co-Chair of the Boundary Commission. In addition, the government of Sudan has recently appointed Musa Hilal, a leader of Janjawid militia, as an adviser in the Ministry of Federal Government. Janjawid militia have been responsible for mass forced displacement, killings and rape in Darfur,

Amnesty International is concerned about renewed interest of Sudan in the chairmanship of the AU, despite continuing violations of international human rights and humanitarian law in Darfur, and the government's failure to cooperate fully with the UNAMID.

Amnesty International therefore asks the AU Assembly to:

- Publicly condemn the obstruction, by the government of Sudan, of the complete deployment of UNAMID, and in particular its failure to sign the Status of Force Agreement, and press the government of Sudan to support and cooperate fully in facilitating the work of UNAMID;
- Insist that the government of Sudan cooperate fully with international mechanisms, including the International Criminal Court, in order to bring to justice those suspected of being responsible for violations of international human rights and humanitarian law in Darfur;
- Ensure that Sudan does not assume the chairmanship of the AU, on the grounds which include its refusal to fully cooperate with the UNAMID and to avert potential conflict of interests given that Sudan is party to the conflict, which the AU is playing a critical role to resolve.

The delayed trial of Hissène Habré

Amnesty International is concerned about the slow pace of full implementation by Senegal of the AU Assembly decision during its 7th Ordinary Session in Banjul, The Gambia in July 2006, requesting the Senegalese authorities to try Hissène Habré for the crimes under international law he is suspected to have committed in Chad.

Amnesty International has noted the adoption by Senegal, in February 2007, of a reform of its criminal law removing the legal obstacles to try Hissène Habré, and the government

announcement that it would allow the Dakar Assize Court to organize a possible trial of Hissène Habré.

However, further progress on the case is being impeded because Senegal has not authorised funding for the investigation and possible prosecution and, to the extent that Senegal may need further assistance, the AU has not provided the required financial and logistical support, nor has it sought support from other members of the international community on the matter. In January, a team of experts visited Senegal to assess what were the practical requirements for conducting fair proceedings and the team is expected to report soon, although it is not clear whether their report would be made public.

In November 2007, experts of the UN Committee against Torture, a body of experts established pursuant to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to monitor implementation of the Convention said that the case was progressing too slowly. The Committee urged the Senegalese authorities to speed up the implementation of the Committee's May 2006 decision, which called upon Senegal to start criminal proceedings against Hissène Habré. Senegal promised the Committee that it would open an investigation in the coming months, while continuing to stress that it needed international funding and support for the trial.

Amnesty International welcomes the decision by the AU to appoint former Benin minister Robert Dossou as its special representative to speed up proceedings, and urges that he conduct extensive discussions with civil society and publish frequent public reports on his work. However Amnesty International is concerned that to date an investigating judge has not yet been appointed. Justice delayed is justice denied for the victims, the suspect and the international community.

Amnesty International therefore urges the AU Assembly to:

- Ensure the prompt and full implementation of its decision by pressing Senegal to authorise sufficient resources for the investigation and any prosecution, and to the extent that Senegal needs further assistance, by supporting and/or soliciting support from members of the AU and other members of the international community so that the Senegalese authorities can make progress on the case. If there is sufficient admissible evidence, to bring Hissène Habré to trial in Senegal within a reasonable time, and in accordance with the fundamental principles of fair trial and international justice standards;
- Ensure that the Senegalese authorities put in place a framework to guarantee protection and support to victims, their family members, lawyers and witnesses and the participation of the latter at all stages of the trial;
- Ensure that the Senegalese authorities are able to guarantee to victims the right to reparations;

- Ask the AU Commission Chairperson to be seized of the matter, and to monitor closely development relating to the trial, and to report back to the eleventh Ordinary Session of the AU Assembly on the level of progress.

Death Penalty: A milestone resolution by the UN General Assembly

On 18 December, 2007, the UN General Assembly endorsed a resolution calling for “a moratorium on executions” by an overwhelming majority: 104 votes in favour, 54 against and 29 abstentions. The resolution enjoyed strong cross-regional support. Angola and Gabon were among the ten countries that co-authored the resolution.

Out of the 104 countries supporting the resolution, seventeen were from the Africa region. Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Congo, Cote D’Ivoire, Gabon, Madagascar, Mali, Mauritius, Mozambique, Namibia, Rwanda, S. Tome and Principe and South Africa.

The resolution welcomes “the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,” and expresses deep concern that capital punishment continues to be applied. Further, it asks countries to progressively restrict the use of the death penalty, such as by reducing the number of offences for which it may be imposed, and calls on those States that have abolished the practice to not reintroduce it. Given the size of the majority vote, the resolution carries considerable moral and political weight.

Furthermore the resolution is a clear reminder of member states' commitment to work towards abolition of the death penalty. It is also an important tool to encourage retentionist countries to review their use of the death penalty.

This important resolution is further evidence of the world-wide trend towards abolition. As of January 2008, 135 countries had abolished the death penalty in law or practice. The continent of Africa is largely free of executions with only six of the region's 53 countries known to have carried out executions in 2006. According to Amnesty International's information, of the 53 AU member states, 14 countries no longer have the death penalty: Angola, Cape Verde, Côte d'Ivoire, Djibouti, Guinea-Bissau, Liberia, Mauritius, Mozambique, Namibia, Sao Tome and Principe, Rwanda, Senegal, Seychelles and South Africa have abolished the death penalty completely. A further 21 member states - Algeria, Benin, Burkina Faso, Central African Republic, Congo (Republic), Eritrea, Gabon, Gambia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Niger, Sahrawi Arab Democratic Republic, Swaziland, Tanzania, Togo, Tunisia and Zambia - are abolitionist in practice. 18 countries retain the death penalty but only a handful of them use it regularly.

Amnesty International calls on the AU Assembly to:

- Publicly endorse the important decision by the UN General Assembly calling on a moratorium on executions, and to encourage its full implementation by all African states that still retain the death penalty. A moratorium should allow all sectors of civil society to participate in an informed debate and prompt governments to review laws on capital punishment in accordance with the resolution's provisions;
- Encourage its member states that have not yet done so to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Provide adequate resources to the African Commission on Human and Peoples' Rights' Working Group on the Death Penalty to meet on a regular basis and to carry out its work efficiently and effectively.