

Open letter from Amnesty International to the Chairperson of the African Union on the options for trial of Hissène Habré

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H.E. Denis Sassou-Nguesso
Chairperson of the African Union
African Union Headquarters
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Ethiopia

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Dear President Sassou-Nguesso,

I am writing to outline Amnesty International's views on the workings of the Committee of Eminent African Jurists (Committee) mandated by the African Union (AU) Assembly "to consider all aspects and implications of the Hissène Habré case as well the options available for his trial" and our comments on the AU Assembly's criteria to assess such options. I wish to stress at the outset that our views are based on the obligations of Senegal and other states parties to the Constitutive Act of the AU and international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). I would be grateful if you would draw these views to the attention of the Committee.

Establishment and activities of the Committee of Eminent African Jurists

I understand that the members of the Committee have already been appointed. While this Committee can play a key role in this case, I regret that the nomination of candidates and the appointment of members of such an important body took place in total secrecy, without any consultation with civil society. Even now, after their appointments, the names of the members of this committee have been kept confidential and the agendas of the Committee's meetings are secret, with no opportunity for civil society to provide meaningful contributions or to engage in a fruitful dialogue on a matter of utmost importance to Africa and the rest of the international community.

I urge you to ensure that the activities of such committee are carried out in a transparent way, allowing the participation of civil society, and, most crucially, of the African victims, and their families, of the crimes committed by members of the Chadian security forces at all levels, including members of the *Direction de la documentation et de la sécurité*, Directorate of Documentation and Security (DDS), during the administration of Hissène Habré.

For such participation to be meaningful the Committee should allow and encourage the submission of relevant information by African victims and their families and by civil society; it should publicize its provisional agendas and schedule of meetings in advance and allow interested parties to attend. The Committee should also ensure that victims of the crimes committed by members of the Chadian security forces during the administration of Hissène Habré, their families or their representatives are heard and their views are carefully considered.

The Committee should also carefully consider the authoritative interpretations of international law concerning the obligations of states with regard to the investigation and prosecution of the crime of torture, and reparations for this crime, of the African Commission on Human and Peoples' Rights, the UN Committee against Torture, the UN Human Rights Committee and the UN Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions.

The AU Assembly has requested the Committee to "finalize its work and submit a report to its next Ordinary Session in July 2006." Amnesty International urges you to ensure that such report is made public well in advance of the July 2006 ordinary session to permit member states, the African Commission on Human and Peoples' Rights and civil society an opportunity to comment so that the AU Assembly is enabled to take a fully informed decision.

Investigate, prosecute or extradite - obligations under the Convention against Torture

As you are aware, in March 2001, Senegal's Court of Cassation ruled that Hissène Habré could not stand trial in Senegal for torture allegedly committed elsewhere because Senegal, in violation of its obligations under Articles 4 and 5 of the Convention against Torture, had failed to define torture as a crime under its national law when committed outside its territory.

Senegal could have been in no doubt of its obligations under the Convention against Torture: when the Committee against Torture examined Senegal's second periodic report in May 1995, it had recommended in its concluding observations that Senegal introduce explicitly in its national legislation "the definition of torture set forth in article 1 of the Convention and the classification of torture as a general offence, in accordance with article 4 of the Convention, which would, *inter alia*, permit the State party to exercise universal jurisdiction as provided in articles 5 of the Convention" and that "all of the crimes referred to in article 4, paragraph 1, of the Convention should automatically be made the subject of a rigorous and prompt investigation by the competent judicial authorities and by the Government Attorney." In 1991, Amnesty International expressed concern that the Senegalese authorities had made no moves to ensure that former President Habré was brought to justice."

Following the Court of Cassation's ruling in March 2001, and the inability of African victims to obtain justice or reparations in Senegal or any other African country, some of the victims filed a criminal complaint in Belgium and constituted themselves as *parties civiles*. On 19 September 2005, after a four-year investigation by a Belgian judge, involving an on-site investigation in Chad, with an effective victim and witness protection and support program, an international arrest warrant was issued for Hissène Habré charging him with crimes against humanity, war crimes and torture. Belgium requested Senegal to extradite him, on the basis, *inter alia*, of Article 8 (2) of the Convention against Torture.

The Senegalese authorities arrested Hissène Habré on 15 November 2005. However, on 25 November 2005, the Court of Appeals of Dakar ruled that it had no jurisdiction to rule on the extradition request on the grounds that Hissène Habré enjoyed immunity as a former head of state from prosecution in a foreign court for crimes under international law such as torture and crimes against humanity. However, as the United Kingdom's House of Lords recognized when it authorized the extradition of Augusto Pinochet, former President of Chile in 1999, former heads of state do not enjoy immunity for torture in a foreign court. Moreover, the Chadian authorities have publicly stated that Hissène Habré cannot claim to enjoy any form of immunity from the Chadian authorities.

On November 27, Cheikh Tidiane Gadio, foreign minister of Senegal, announced in a communiqué that "the State of Senegal, sensitive to the complaints of victims who are seeking justice, will abstain from any act which could permit Mr. Hissène Habré to not face justice."

The Africa - Caribbean - Pacific/ European Union (ACP/EU) organization has also stressed the need to bring Hissène Habré to justice. In a resolution on the situation in West Africa adopted in November 2005 in Edinburgh, the Joint Parliamentary Assembly of the ACP/EU expressed "its conviction that respect for human rights and democratic principles is the cornerstone for stabilisation and peace in the region, and hopes that the former dictator Hissène Habré, arrested by the Senegalese judicial authorities, will not continue to enjoy impunity in respect of the human rights crimes of which he is accused".

For 15 years, Senegal has denied justice to African victims by failing either to investigate and, if there is sufficient admissible evidence, to prosecute Hissène Habré for these crimes or to extradite him to face trial in another country willing and able to do so in a fair trial without the death penalty. No other African country has agreed to investigate or prosecute this case in the past 15 years.

Criteria to assess options for the trial of Hissène Habré

Whether Hissène Habré is to be tried in Belgium or elsewhere, Amnesty International believes that the criteria outlined in the AU Assembly decision to assess options for his trial are an important first step towards the resolution of this matter in a manner that would be fully consistent with Senegal's obligations under international law. The criteria apply with equal force to the members of the Chadian security forces at all levels, including members of

the DDS, who are suspected of crimes under international law during his administration. In particular, Amnesty International would like to comment on the following benchmarks:

Adherence to the principles of total rejection of impunity. Amnesty International welcomes the total rejection of impunity, which means that all persons responsible for crimes against humanity, including torture, and war crimes during the Habre' administration must be brought to justice, the truth about the crimes be established and full reparations awarded to every victim.

Adherence to international fair trial standards including the independence of the judiciary and impartiality of proceedings. Not only must the criminal proceedings (and reparations proceedings) be fully consistent with the right to fair trial as recognized in international law and standards, but they also must exclude the death penalty or any other cruel, inhuman or degrading punishment.

Jurisdiction over the alleged crimes for which Mr. Habré should be tried. In reviewing the national laws of countries or any other possible options of trial for Hissène Habré, the Committee of Eminent African Jurists must consider, *inter alia*, that:

- the laws define the crimes for which Hissène Habré is suspected in ways consistent with the strictest international law and standards, as reflected in international instruments, such as the Convention against Torture, the Geneva Conventions and their two Protocols and the Rome Statute of the International Criminal Court, and with customary international law;
- the court can exercise jurisdiction over all of the crimes committed in Chad;
- the laws do not allow for any immunity, including any official or former official capacity, be it head of state, head or member of government, member of parliament or other elected or governmental capacity;
- the strictest standards of command and superior responsibility should apply;
- there are no statute of limitations; and
- superior orders, duress and necessity should not be permissible defences, although they may be taken into account in certain circumstances as mitigating factors.

Efficiency in terms of cost and time of trial. African victims of the crimes committed by Hissène Habré and their families have been waiting for more than 20 years for justice, truth and reparations. Even the delay since the extradition request by Belgium is denying them justice, so any options of trial of Hissène Habré should ensure that the court that will prosecute can use the results of the investigation that has been completed in a secure manner and must start work immediately. We firmly believe that the cost of any alternative must not be greater than the cost of the trial in Belgium and it must not take any longer.

Accessibility to the trial by alleged victims as well as witnesses. Victims and their families must not only have access to the proceedings at every stage, but that access has to be equal to the access they would have in the Belgian proceedings and the International Criminal Court. They must also have the same protection and support that they would have in the Belgian proceedings.

The above recommendations reflect fundamental principles of fair trial and international justice that should be followed by all states. I hope that the Committee's recommendations will be fully consistent with them and be a significant contribution to justice for African victims.

Yours sincerely,

Irene Khan
Secretary General