

CHAD

“We don’t want to die before Hissène Habré is brought to trial”

1. INTRODUCTION

At the request of Senegal, the African Union (AU) Assembly during its Sixth Ordinary Session, in January 2006, in Khartoum, the Sudanese capital, discussed the cases brought against the former Chadian President, Hissène Habré, filed – first in Senegal and subsequently in Belgium – by some of the victims of human rights violations during his stay in power in the 1980’s. The AU Assembly decided to establish a Committee of Eminent African Jurists (Committee of Experts) to advise the Assembly on the possible forums to try Hissène Habré. The Committee is due to submit its report at the Seventh Ordinary Session of the AU Assembly in July 2006 in Banjul, The Gambia.

The decision by the AU to establish this Committee represents an important step in the legal battle that has been fought for more than 15 years by victims of the abuses committed during the government of Hissène Habré, who was forced out of power in 1990. He has been staying in Senegal since he vacated power. For 15 years, in violation of its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), Senegal has neither undertaken any investigation nor, if there is sufficient evidence, commenced legal proceedings against Hissène Habré for the allegations of human rights violations against him. Senegal has also refused to extradite him to a third country willing and able to try him in accordance with fair trial standards and without the death penalty.

Amnesty International recognizes that the Committee of Experts can play a key role in this case, but regrets that the process of nomination of candidates and the appointment of members of such an important body has taken place in complete secrecy, without any consultation with civil society. At the time of writing, neither the names of members of the Committee nor the agenda of its meeting had been made public.¹

¹ On 23 March 2006 Amnesty International sent an open letter to the President of the AU, Denis Sassou Nguesso, President of the Republic of the Congo, outlining the organization’s recommendations concerning the mandate of the Committee as well as the options for the trial of Hissène Habré. See *Open letter from Amnesty International to the Chairperson of the African Union on the options for trial of Hissène Habré* (AI Index: IOR 63/001/2006). At the time of completing this report, Amnesty International had not yet received any response or reaction to its open letter.

Amnesty International believes that it is essential that the Committee of Experts conducts its activities transparently, agreeing to the participation of civil society, and, most crucially, that of the African victims of crimes committed during Hissène Habré's rule, as well as their families.

This report aims to provide a voice to some of the African victims who have filed complaints against Hissène Habré and to enable them to appeal directly to the Committee of Experts, the AU and the wider international community. All these victims have spoken of their craving for justice and their long struggle to ensure that Hissène Habré is held accountable by a competent and impartial court for the crimes for which he has been indicted.

The report concludes with recommendations to the Committee of Experts and the AU Assembly. These recommendations are based on the obligations of Senegal and other AU member States under the Constitutive Act of the AU as well as other regional and international human rights treaties, in particular the African Charter on Human and Peoples' Rights and the Convention against Torture. Whatever the form of trial adopted by the AU to try the former Chadian President, and wherever this trial may be held, it is essential that fair trial standards be respected and the death penalty excluded. With the trial of Charles Taylor, former President of Liberia, for war crimes and crimes against humanity before the Special Court for Sierra Leone, the AU has now another opportunity to demonstrate to Africans in particular and the whole international community in general its express commitment to tackle impunity in Africa and to do so comprehensively and consistently by affording effective remedy to African victims of Hissène Habré. The trial of Hissène Habré would send a strong message to other African leaders that those who commit human rights violations will be held to account and may help prevent further human rights violations in Africa. This is the overriding wish of the victims of abuses committed during Hissène Habré's rule: they want their suffering to be acknowledged, and the trial of the principal alleged perpetrator of these crimes to be a strong signal that such abuses will no longer be tolerated with impunity.

2. "A TERRIFYING TOLL"

Throughout Hissène Habré's rule from 1982 to 1990, the Chadian security forces and intelligence services were responsible for extrajudicial executions, "disappearances", and arbitrary detention followed by torture or ill-treatment, which were perpetrated systematically and with absolute impunity. During this period, Amnesty International investigated the human rights abuses committed in Chad and publicly urged that the victims receive reparations and that the perpetrators of these abuses be brought to justice.²

² A list of all the documents published by Amnesty International during Hissène Habré's rule is given in Appendix II of the report published in 2001, Amnesty International, *Chad: the Habré Legacy* (AI Index: AFR 20/004/2001), October 2001.

Himself coming to power by force, Hissène Habré adopted a deliberate policy of repression in order to discourage any form of dissent. Real or suspected opponents and their families were the targets of serious human rights violations. Unarmed civilians were victims of extrajudicial executions – committed in reprisal for the activities of armed opposition groups – purely on the grounds of their ethnicity or geographic location. Thousands of people suspected of failing to support the government were arrested and held in secret detention by agents of the Direction de la documentation et de la sécurité (DDS), an intelligence service and instrument of repression created by and under the direct responsibility of Hissène Habré. Many detainees, including political prisoners held in N'Djamena in secret detention centres under the control of the DDS, were extrajudicially executed or “disappeared”; others were burned alive or poisoned.

Under Hissène Habré's rule, the Chadian authorities completely disregarded the provisions of international human rights law and national legislation governing the detention and treatment of prisoners. Many detainees had no way of establishing the reasons for their arrest or of challenging their detention before a court, and they had no protection against torture.

A large number of prisoners died as a result of torture, inhuman conditions of detention or lack of food or medical care. Their families could remain for years without knowing whether their detained relatives were alive or dead. This was a deliberate strategy to increase the climate of repression and further intimidate the population.

Conclusions of the Chadian Commission of Inquiry created in 1990

The crimes committed under Hissène Habré's rule were the object of a long investigation undertaken by a Commission of Inquiry created by decree in 1990, a few days after Idriss Déby came to power after overthrowing Hissène Habré. The Commission was responsible for investigating unlawful detentions, killings, “disappearances”, torture, barbaric acts, ill-treatment, malicious injury and other human rights violations, as well as cases of drug trafficking and misappropriation of funds, committed under Hissène Habré's rule.

This Commission drew up a list of 3,806 people, including 26 foreign nationals, who had died in detention or been extrajudicially executed during the period 1982-1990, and calculated that the final figure could reach 40,000 deaths. It documented 54,000 prisoners (both dead and alive) during the same period.³

³ According to figures given by the UN Food and Agriculture Organization (FAO), in 1990 the population of Chad stood at six million, http://www.fao.org/faostat/foodsecurity/Countries/FR/Chad_f.pdf.

The Commission believed that the work it had carried out represented only 10 per cent of the violations and crimes committed while Hissène Habré was in power and concluded its investigation in the following terms:

*“The toll left by Habré after his eight years in power is terrifying. The Commission never ceased to wonder how a citizen, a child of the country, could have inflicted so much harm and so much cruelty on his people.”*⁴

The Commission also noted that former agents of the DDS who were suspected of human rights violations had avoided any punishment and that a number of them had been integrated into the army and other branches of the security forces. The Commission requested that members of the security forces who were implicated in large-scale human rights violations under Hissène Habré's rule be suspended from their duties, placed under preventive detention and brought to justice. To date, however, with the exception of the establishment of a National Human Rights Commission, most of the recommendations of the Commission of Inquiry remain unimplemented.⁵

In 2001, in order to support the fight for justice of victims of Hissène Habré who had filed complaints against the former Chadian president in Senegal, Amnesty International published the report *Chad: The Habré Legacy* which demonstrated the gravity and massive scale of the violations committed under Hissène Habré's rule, and emphasized that these violations had continued under his successor, Idriss Déby, the current Chadian President. The report also highlighted the complicity of foreign countries in the violations committed under Hissène Habré's rule and demonstrated the negative consequences of the impunity that has prevailed for so many years in Chad. Amnesty International remains concerned about the continuing culture of impunity in Chad.

In this report, Amnesty International emphasizes that responsibility for every abuse committed during his rule cannot be levelled at Hissène Habré alone. In addition, the organization draws attention to the fact that dozens of members of the security forces,

⁴ Report of the National Commission of Inquiry of the Chadian Ministry of Justice, *Les crimes et détournements de l'ex-Président Habré et de ses complices*, 1993, L'Harmattan, p. 97. The Commission of Inquiry discovered more than 50,000 letters and postcards sent by Amnesty International members from 25 different countries. In its report, the Commission stated: “Thanks to its formidable spirit of human solidarity, Amnesty International gave back hope to thousands of detainees and their families.”, op.cit. p. 92.

⁵ In April 1996, during a visit to Chad, Amnesty International raised with government authorities the question of the failure to implement the recommendations contained in the report of the Commission of Inquiry, and also asked whether investigations were going to be undertaken into violations committed since General Déby came to power. One of the ministers whom Amnesty International met stated that the report of the Commission of Inquiry was widely disputed within the government and that if any sanctions were to be taken, the whole of Chad ought to be tried.

including some very high officials, suspected of having participated in large-scale human rights violations continue to exercise their duties within Chadian state institutions.

For example, at the beginning of September 1984, the armed forces and members of the Presidential Guard led by Major Idriss Déby, at that time army Chief of Staff, were deployed in the south of the country and were reported to be responsible for large-scale killings.⁶ However, many of the suspected perpetrators continue to enjoy impunity. The perpetrators of crimes under international law should not under any circumstances enjoy impunity. It is therefore important to address the responsibility of all those implicated in abuses, regardless of their rank.

The responsibility of the international community must also be stressed. Throughout the eight years of Hissène Habré's government, the international community remained largely silent in the face of the large-scale violations denounced by several human rights organizations, including Amnesty International. Worse still, some governments, in particular the USA and France, financed the security forces, supplied arms, trained the military and actively collaborated with the intelligence services – which facilitated human rights violations in Chad, including crimes under international law.

Amnesty International has on many occasions publicly denounced the detrimental effect on respect for human rights of military, security and police transfers provided by some countries, including France and the USA, to various Chadian governments. Amnesty International has also repeatedly recommended that no military equipment or other military assistance likely to aggravate the human rights situation be provided to Chad. Such transfers continued, however, after the fall of Hissène Habré, and the government of Idriss Déby has continued until now to enjoy significant support from some foreign countries despite the large number of human rights violations, including crimes under international law, committed by the Chadian security forces.

To the extent that the crimes facilitated by such military assistance constitute war crimes, crimes against humanity or crimes of torture, such states incur state responsibility, including the obligation to award reparations, to Chad for serious breaches of obligations under peremptory norms of general international law.⁷

⁶ See Amnesty International, *Chad: the Habré Legacy* (AI Index: AFR 20/004/2001), October 2001, p. 20-21.

⁷ See Article 40 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2000)

3. A QUEST FOR JUSTICE LASTING FOR MORE THAN 15 YEARS : JUSTICE DELAYED IS JUSTICE DENIED

Since Hissène Habré's fall from power in 1990, some of the victims and civil society organizations have exerted considerable efforts to establish the truth and bring the perpetrators of human rights violations to justice. For example, in 1991, the Association des victimes de crimes et répressions politiques au Tchad (AVCRP), Association of Victims of Crime and Political Repression in Chad, was created with the aim of starting legal proceedings against those responsible for the repression and crimes committed during Hissène Habré's rule.

In spite of these efforts and the recommendations of the Commission of Inquiry mandated to investigate the crimes during Hissène Habré's rule, however, the Chadian authorities have proved themselves to be reluctant to deliver justice to the victims and to prosecute the alleged perpetrators of these abuses. This refusal to investigate past crimes can be explained in particular by the fact that many Chadian officials, not least the current President, Idriss Déby, were suspected of having taken part in human rights violations committed under Hissène Habré's rule. Confronted by the complicit inertia of the Chadian authorities, some Chadian victims have turned towards Senegal where the former Chadian president had sought refuge after being removed from power.

Brief chronology of complaints that have been brought against Hissène Habré

- 26 January 2000: seven Chadian victims and the AVCRP filed a complaint in Dakar against Hissène Habré for torture and crimes against humanity.
- 4 July 2000: the Court of Appeal in Dakar ruled that Senegalese courts had no jurisdiction to try Hissène Habré on the grounds that it had no jurisdiction to try a foreign national who had committed crimes of torture in another country.
- October 2000: 17 victims filed a complaint in Chad for torture, murder and "disappearance" against various members of the administration in place under Hissène Habré (heads government departments, heads of the security and intelligence services, members of the DDS).
- 30 November 2000: three victims – Belgian nationals of Chadian origin – filed a complaint in Brussels against Hissène Habré for crimes against humanity, and crimes of torture, arbitrary detention and abduction. Since then, some 20 other victims have added their names to these complaints.
- 20 March 2001: the Senegalese Court of Cassation announced that Senegal did not have jurisdiction to try the crimes committed by Hissène Habré.

- 19 September 2005: after a four-year investigation by a Belgian judge, an international arrest warrant against Hissène Habré was issued, charging him with crimes against humanity, war crimes and crimes of torture. Belgium requested Senegal to extradite Hissène Habré, citing in particular Article 8(2) of the Convention against Torture.
- November 2005: Hissène Habré was arrested by the Senegalese authorities but the Court of Appeal in Dakar declared that it had no jurisdiction to rule on the extradition request and the former Chadian president was released.
- 23-24 January 2006: the AU decided to establish a Committee of Eminent African Jurists to recommend possible options for the trial of Hissène Habré.

i. Senegal's obligations under international human rights law

As soon as Hissène Habré arrived in Senegal, the Senegalese government was under an obligation, under the provisions of the Convention against Torture, to investigate the allegations of human rights abuses, including torture, and if there was sufficient admissible evidence, to prosecute him. However the Senegalese courts have on several occasions ruled on complaints filed by victims of abuses committed under Hissène Habré's rule and have continuously rejected the competence to try Hissène Habré on the grounds that the courts did not exercise jurisdiction over a foreign national who had committed crimes of torture in another country. The Senegalese courts based their decision on the fact that Senegal, although it had ratified the Convention against Torture in 1986, had not adopted the necessary implementing legislation.

As early as May 1995, when considering Senegal's second periodic report, the Committee against Torture (CAT) - the body charged with overseeing state parties compliance with the Convention against Torture - recommended in its concluding observations that Senegal explicitly introduce into 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 Article 5 et seq. of the Convention*". The CAT also recommended 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*". Instead, in clear violation of its obligations under the Convention against Torture, Senegal has failed to enact the necessary legislation to allow Hissène Habré to be tried in Senegal and it has refused to extradite him to another country able and willing to try him in fair proceedings without the death penalty.

ii. Communication submitted to the United Nations Committee against Torture

Those victims who filed complaints against Hissène Habré in Senegal also submitted a communication to the CAT on Senegal's violation of its obligations under Article 5(2) and 7 of the Convention against Torture.⁸ This communication was submitted shortly after Senegalese President Abdoulaye Wade had requested Hissène Habré, in April 2001, to leave Senegal. In response to this communication, the CAT indicated that it had officially requested the government of Senegal "*not to expel Hissène Habré and to take all necessary steps to prevent M. Habré leaving Senegalese territory other than under an extradition order*". Five months later, on 27 September 2001, President Abdoulaye Wade maintained in an interview to the Swiss newspaper *Le Temps* that he had decided not to allow Hissène Habré to leave Senegal before there had been a ruling on the extradition order against him.

At the time of writing, the communication submitted to the CAT by the victims was still being considered.

iii. Complaints filed in Chad and Belgium

After the decision by Senegal that its courts did not have jurisdiction to try Hissène Habré, some victims decided to file complaints in Chad and Belgium. In October 2000, 17 victims filed complaints in Chad for torture, murder and "disappearance" against various members of the administration in place under Hissène Habré. A month later, in November 2000, three victims – Belgian nationals of Chadian origin – filed a complaint in Brussels against Hissène Habré for crimes against humanity and crimes of torture, arbitrary arrest and abduction. Since then, some 20 other victims have added their names to these complaints.

On 19 September 2005, after a thorough investigation undertaken over four years by a Belgian judge – which included in particular investigations in Chad – an international arrest warrant was issued against Hissène Habré on charges of war crimes, crimes against humanity and crimes of torture. Belgium requested Senegal to extradite him, on the basis of, among others, Article 8(2) of the Convention against Torture. On 5 October 2005, the United Nations Secretary-General stressed that "*the indictment of the [Belgian] court ought to be*

⁸ Article 5(2) of the Convention against Torture provides that: "Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article." Article 7 provides that: "The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution."

respected and countries around the world should cooperate".⁹ In addition, on 18 November 2005, the United Nations Special Rapporteur on torture requested the Senegalese government to extradite Hissène Habré to Belgium as soon as possible.

iv. Senegal refers the Habré case to the African Union

Despite appeals from victims and non-governmental human rights organizations, in November 2005 the Senegalese courts denied jurisdiction on the extradition request, arguing that, as a former head of state, Hissène Habré enjoyed immunity from prosecution before a foreign court for crimes under international law such as torture.

Former heads of state, however, do not enjoy immunity from prosecution for torture before a foreign court, as the United Kingdom's House of Lords recognized when in 1999 it authorized the extradition of Augusto Pinochet, the former President of Chile. In addition, the Chadian authorities have publicly stated that Hissène Habré "*cannot claim to enjoy any immunity whatsoever*" in Chad. Furthermore, in November 2005, shortly before Senegal's decision to refer the Hissène Habré case to the AU, Chadian President Idriss Déby requested Senegalese President Abdoulaye Wade to honour Senegal's obligations under the Convention against Torture and extradite the former Chadian president to Belgium.¹⁰

Faced with international protest, the Senegalese authorities referred the case to a political authority, namely the Assembly of Heads of State and Government of the AU. The AU Assembly considered the case of Hissène Habré at its Sixth Ordinary Session held in Khartoum on 23 and 24 January 2006. The AU Assembly decided to establish a Committee of Eminent African Jurists to recommend the possible options for the trial of Hissène Habré. The Committee's mandate is "*to consider all aspects and implications of the proceedings against Hissène Habré as well as the available options for his trial*". The AU Assembly also requested the Committee to "*finalize its work and submit a report to its next Ordinary Session in July 2006*". Amnesty International welcomes the establishment of this Committee but regrets the lack of transparency surrounding the appointment of its members and its work. It is essential that the Committee's report be made public before the AU's Ordinary Session in July 2006 in order to allow member states, the African Commission on Human and Peoples' Rights and civil society the possibility of participation in the process so that the AU Assembly is in a position to take a fully informed decision.

⁹ See *Secretary-General's press encounter following his remarks in the ECOSOC Chamber*, 5 October 2005, <http://www.un.org/apps/sg/offthecuff.asp?nid=776>.

¹⁰ On 25 November 2005, during a visit to Brussels, the Chadian President, Idriss Déby, stated: "*President Wade has said publicly that if a country requests [...] that Hissène Habré be tried, he would be ready to have him extradited and to place him at the disposition of that country. I would say to my brother President Wade to put his words into action.*" *Le Monde*, 25 November 2005.

4. APPEALS BY VICTIMS TO THE AFRICAN UNION AND THE COMMITTEE OF EXPERTS

As stated above, Amnesty International believes that it is essential that the Committee of Experts appointed by the AU Assembly meets and listens to those victims who have filed complaints against Hissène Habré in order to appreciate fully the suffering that they have endured and their need for justice.

This section of the report therefore briefly describes the cases of 10 of the victims who have filed complaints, and shares their expectations of the decision that the AU must take in relation to bringing Hissène Habré to justice. These accounts and testimonies were obtained by Amnesty International from the victims in March 2006. It should be noted that all those whom Amnesty International met emphasized the need for justice, not vengeance. All spoke of the necessity to bring Hissène Habré before a court with full guarantee of impartiality and independence and none called for the former Chadian president to be sentenced to death for his crimes. Several expressed the distress of not seeing Hissène Habré held accountable for his actions before a court in their lifetime.¹¹ This hope was expressed in the following terms by Mme **Zenaba Bassou Zenaba**, the widow of **Saleh Gaba**, a journalist with *Associated Press* who was arrested in 1987 and whose body has never been recovered: “For 15 years, we have been calling for Hissène Habré to be tried. After Senegal’s refusal, we don’t know where to turn. The African Union cannot let us down. We have waited for 15 years; it’s too long.”¹²

i. Torture and “disappearances” of members of armed opposition groups

Hundreds of people were captured and subsequently killed by government forces in the context of counter-insurgency operations against armed opponents in the south of the country between 1982 and 1984. These acts violated common Article 3 of the Geneva Conventions which states that: “Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without adverse distinction...”.

In 1983 hundreds of combatants and civilian members of the Gouvernement d’union nationale de transition (GUNT), Transitional Government of National Union, a coalition led

¹¹ Since judicial proceedings were brought against Hissène Habré in 2000, two of those who had filed complaints against the former Chadian president have died as a result of illness: Sabadet Totodet and Masrangar Rimram.

¹² The case of the “disappearance” of Saleh Gaba is described in detail in Amnesty International, *Chad: The Habré Legacy* (AI Index: AFR 20/004/2001), October 2001, p. 32.

by Goukouni Oueddeï,¹³ were extrajudicially executed. Around a thousand combatants and civilians members of the GUNT were arrested in July 1983 when government troops retook the town of Faya-Largeau (in the north of Chad) from GUNT forces. Many witnesses reported that more than 200 of them were summarily executed at Faya-Largeau or during their transfer to N'Djaména.

Bechir Bechara Dagachène, a member of the Conseil démocratique révolutionnaire (CDR), Democratic Revolutionary Council, an armed opposition group, was among this group of detained combatants. He was arrested on 30 July 1983 in the town of Faya-Largeau during fighting between government troops of Hissène Habré and combatants of the armed opposition. Transferred to the prison in N'Djaména, he witnessed dozens of prisoners being taken from the prison to be extrajudicially executed.

“Three days after my arrest, members of the DDS came between 5pm and 6pm. They made us go out into the courtyard and they picked out some 150 prisoners on the basis of their ethnic origin; most of them were Arabs and were accused of being pro-Libyan. I later learned that all but one had been massacred at Ambing, a village to the north of N'Djaména. Only one person [Bichara Djibrine Ahmat] managed to survive – by pretending to be dead – and he filed a complaint at the same time as me in Belgium.”

Bechir Bechara Dagachène was released in December 1988 following a peace agreement between the various Chadian parties to the conflict (the Baghdad Agreement). He decided to file a complaint on behalf of his companions who had died in detention. He confided to Amnesty International in March 2006: *“I have seen a lot of crimes; I am a survivor. When I was arrested, we numbered between 800 and 1,000 prisoners and when we were released, we were no more than 312. The trial of Hissène Habré must become an example so that this never happens again either in Africa or anywhere else in the world. Thank God that Belgium has opened its arms to us.”*

Bechir Bechara Dagachène's appeal to the African Union and the Committee of Experts

“African heads of state have an historic opportunity to set an example to the whole world by taking a position in favour of bringing Hissène Habré to trial. International obligations have neither borders nor nationality. African heads of state do not have the right to let down the victims from Chad who have been waiting for justice for nearly 20 years.”

¹³ The former President of Chad, forced from power by Hissène Habré in 1982.

ii. Repression of real or alleged political opponents

Real or alleged political opponents could at any time be arrested, tortured or made to “disappear” by the Chadian security forces and intelligence services. Such was the case of **Clément Abaifouta**, who was arrested in July 1985 by agents of the DDS just after he had passed his baccalaureate and enrolled at the faculty of arts in N’Djaména.

In December 2005 Clément Abaifouta described to Amnesty International his conditions of detention: “*When I arrived at the headquarters of the political police [the DDS], I was accused of being involved with the opposition; they hit me and took me to a small cell where other people were being held.*” After two weeks, he was transferred to the “*locaux*”, a DDS prison where his task was to bury those who had died in detention. “*Twice a day, I went to bury between seven and 10 detainees who had just died in a mass grave outside N’Djaména.*” Clément Abaifouta was detained without trial for four years. “*That was four years deprived of food, four years of being regularly beaten. To clothe myself, I was forced to take the clothes of those who had died. I lost my hair, my teeth and I was unable to walk for six months.*”

Clément Abaifouta filed complaints in Chad, in Senegal and subsequently in Belgium. He told Amnesty International in December 2005: “*Since filing a complaint against Hissène Habré, I feel liberated and filled with renewed hope, hope of seeing my suffering finally acknowledged and of seeing the perpetrator of these atrocities held accountable for his actions before the law.*”

Clément Abaifouta’s appeal to the African Union and the Committee of Experts

“I am delighted that the African Union has taken on this case and acknowledges what we have been asking for for 15 years, namely that Africa must combat impunity for the crimes committed under Hissène Habré’s rule. I would point out, however, that it has had to wait for a foreign court to say that it is prepared to try Hissène Habré for Africa to wake up.

I ask the Committee of Experts to consider the judicial basis of the Habré case outside of any foreign interference. The arrest warrant is not addressed to the African Union, it is addressed to Senegal and it is Senegal that has the responsibility to try or extradite Hissène Habré. The reality is that Hissène Habré has to be held accountable for his actions before the Belgian courts.”

Others were accused of having recruited armed combatants for the opposition. Such was the case of **Souleymane Guengueng** who was arrested at his office in N’Djaména in 1988 by the DDS, Hissène Habré’s political police. He was held at the Camp des Martyrs,

not far from the “*piscine*” (swimming pool), a former baths that had been covered over with concrete and divided into several cells below ground level. At the “*piscine*”, detainees were subjected to torture. They suffered electric shocks, their nails were torn out and they were subjected to the “*arbatachar*”, a form of torture that consists of choking the prisoner by tying his wrists to his ankles from behind. *“From the depths of my cell, from the depths of this madness, I swore before God to fight for truth and justice if I came out alive. I was convinced that if God had protected my life it was to accomplish this mission and obtain justice as a tribute to those who had died or disappeared.”*

Souleymane Guengueng was released in December 1990 shortly after Hissène Habré's fall from power. Fifteen years later, his body still bears the scars of the torture he suffered and he continues to suffer serious problems with his eyesight despite several operations on both eyes. After his release Souleymane Guengueng devoted himself to combating impunity by collecting the testimonies of those who had survived Hissène Habré's prisons. *“We have compiled more than 1,000 dossiers of victims in order to encourage them to file a complaint. Some have filed complaints in Chad, Senegal and in Belgium. I have pursued this fight in memory of my companions who ‘disappeared’ or who died in my arms. The refusal by Senegal to bring Hissène Habré to trial has been an enormous disappointment for us,”* Souleymane Guengueng told Amnesty International in December 2005. *“It is a defeat for the whole of Africa. This is why we have turned towards Europe. Our only hope now is that the African Union will take account of our craving for justice.”*

Souleymane Guengueng's appeal to the African Union and the Committee of Experts

“I am appealing to the heads of state of the African Union to respect the commitments that they have made by ratifying the United Nations Convention against Torture. Africa is not cut off from the rest of the world; it must respect its international obligations.

For 15 years, victims have done everything possible to bring Hissène Habré to trial. They have approached Senegal, the African country where Hissène Habré is living, but Senegal has refused to try him. Neither Chad nor any other African country has wanted to try him. This is why we have turned towards Belgium. The heads of state of the African Union must acknowledge the thirst for justice of Hissène Habré's victims.”

During Hissène Habré's rule, merely travelling from one place to another could arouse suspicions among the Chadian intelligence services and lead to arrests and “disappearances”. Thus, men and women who travelled, who crossed the N'Diguel bridge or the Chari river in pirogues to go to Cameroon to buy goods or visit friends, were routinely suspected of visiting opponents, conveying correspondence or transporting arms.

The case of **Gabin Koumandje** illustrates this. His trips to several African countries earned him the label of “the agent of Goukouni Oueddeï”. On 12 July 1987, when he returned from Ouagadougou, the capital of Burkina Faso, where he had just enrolled at a school to complete his studies, Gabin Koumandje was arrested and accused of possessing explosives allegedly given to him by armed opposition groups based abroad.

Gabin Koumandje, who still bears the scars of the torture to which he was subjected in prison, explained to Amnesty International his reasons for filing a complaint in Belgium against Hissène Habré: “*I filed a complaint because I want justice to be done and to prevent the same wrongs being repeated. I want justice to try to rebuild our lives. I can't manage to piece my life together again and I am waiting to die.*”

Gabin Koumandje's appeal to the African Union and the Committee of Experts

“Habré has left but Chad remains and Africa must accept its responsibilities. Hissène Habré detained us for no reason and without trial; we want him to be tried. If the members of the Committee could only come to Chad and see the men that Habré detained and who have gone mad because of their torture and detention. The African Union must act quickly before all Hissène Habré's victims die.”

iii. Arrest and torture of relatives of real or alleged opponents

When the security forces failed to arrest the real or alleged opponents they were pursuing they often took it out on their families. Many cases have been compiled of people who were arrested because the security forces were looking for members of their immediate family or other relatives.

Haoua Brahim, known as Mardjié, is a case in point: she was arrested in N'Djaména on 4 June 1985 by agents of the DDS and soldiers looking for her mother who was suspected of complicity with the GUNT. Haoua Brahim described her conditions of detention to Amnesty International in March 2006: “*I was 13 years old when I was arrested. They were looking for my mother but they couldn't find her and so they arrested me instead. They interrogated me and one of the officials of the security forces said to me: 'We are going to keep you until your mother comes, even if we have to wait 10 years.'* I was held for three years in inhuman conditions in the “*locaux*”, a DDS detention centre behind the Presidency. Then I was transferred with eight other women to Oum Walidou, in the north of the country. There, we were held in a room; the soldiers treated us badly; me, I wasn't raped because I was too young but the other women were raped by the soldiers.”

Released in 1989, Haoua Brahim sought refuge in Cameroon until Hissène Habré's fall from power. *"Before being released, they asked us to swear on the Koran to say nothing about what we had seen, or about those who had died, or about the torture, the food etc. They said: 'If anyone asks you questions, you reply that it's God who put us in prison, it's He who released us. If anyone asks you questions, you come and see us.'"*

She further explained to Amnesty International why she had decided to file a complaint against the former Chadian head of state: *"I decided to file a complaint because, for four years, they destroyed my future; I lived in terrible conditions; I was often ill-treated during that time. I was shocked and disgusted by the decision of Senegal's courts that they lacked jurisdiction, and I had to file a complaint in Belgium."*

Haoua Brahim's appeal to the African Union and the Committee of Experts

"More than 15 years have gone by and our wounds have not healed. I ask the African Union to take the decision to try Hissène Habré. If I don't die, I shall fight to the end to see Hissène Habré tried."

In their pursuit of opponents and their families, the Chadian security forces and intelligence services spared neither women, children nor the sick. A case in point is that of **Ginette Ngarbaye**, a young woman of 23, who was pregnant when she was summoned to the DDS headquarters in N'Djaména on 16 January 1985.

"I told them that I was four months pregnant but despite that they tortured me for four days," Ginette Ngarbaye told Amnesty International. Accused of being in contact with political opponents, she was beaten and subjected to electric shocks. *"I repeatedly lost consciousness when they beat me; I no longer knew what they were doing to me when I fainted. Other people were screaming while they were being tortured; several of them died in the DDS and women were raped."* After being held for several months at the DDS, she was transferred to the central prison where she gave birth in July 1985. She was released without charge or trial with her daughter two years later in February 1987.

Ginette Ngarbaye is among the group of victims who have filed complaints against Hissène Habré in Chad, Senegal and subsequently in Belgium.

Ginette Ngarbaye's appeal to the African Union and the Committee of Experts

"We have waited for more than 15 years. The Senegalese courts have ruled that they do not have jurisdiction; the African Union must take a decision to respond to our thirst for justice. We want justice to be done; Hissène Habré must account for his crimes. To those who say that, for the sake of hospitality, you cannot try an African head of state, I would say: 'It is us who bear the scars, they felt nothing and said nothing while we were being killed here.' We don't want to die before Hissène Habré is brought to trial."

iv. Persecution of ethnic groups

On several occasions, the security forces and intelligence services under Hissène Habré carried out mass arrests of people belonging to different ethnic groups who, for one reason or another, were considered to be suspects.

In 1987 the security forces targeted the Hadjerai, originating mainly from the prefecture of Guéra in the centre of the country, because some of the leaders of opposition groups belonged to the Hadjerai community. It was for this reason, for example, that some Hadjerai villages were burnt down by government troops in the region of Bitkine in June and July 1987.

The case of **Mahamat Nour** clearly illustrates the indiscriminate nature of the repression levelled against the Hadjerai. Mahamat Nour was 17 years old when he was arrested on 28 May 1987. He was arrested with several members of his family because he was the son of Ahmat Dadj, leader of the Hadjerai.

Mahamat Nour described to Amnesty International the circumstances of his arrest: *"I still remember that night of Tuesday to Wednesday in May 1987 when a black Mercedes carrying the letters PR came to fetch my father. I thought it was normal because he knew President Habré well and the two of them often spent the evenings discussing together. However, I did not understand why, 15 minutes later, my two brothers, my father's body guards and myself were taken to the Brigade spéciale d'investigation et recherche [special investigation unit]. I was then transferred to the "piscine" where I still have the memory of the ill-treatment suffered by a Hadjerai soldier who had his fingernails torn out with pliers by one of the DDS agents. I was released after two weeks but I never saw my father again."*

Mahamat Nour decided to file a complaint in Belgium because he wanted *"to know who had killed [his] father and why"*.

Mahamat Nour's appeal to the African Union and the Committee of Experts

"Some people are against bringing Hissène Habré to trial so as to prevent it setting a precedent. The African Union must do whatever is necessary to ensure that Hissène Habré is tried, that his trial becomes a textbook case. Habré should be granted a fair trial as soon as possible; the victims have waited for many years; they shouldn't be made to endure yet further anguish."

Similarly, in 1989, following accusations against Idriss Déby and several influential members of the Zaghawa community who were suspected of having wanted to overthrow the government, the security forces indiscriminately attacked members of the Zaghawa ethnic group, based mostly in the north-east, near the Sudanese border. More than 200 members of the Zaghawa community were arrested and held in detention from April and May 1989. Most of them died in detention. Many of them had clearly been arrested because of their kinship with other opponents of the government or because of their ethnic origin.

Thus, many people linked by kinship to Hassane Djamous¹⁴ and Idriss Déby were arrested and some "disappeared". **Zakaria Fadoul**, a professor of linguistics at the University of N'Djaména, was arrested on 26 April 1989 because of his kinship with people accused of being associated with Idriss Déby and Hassane Djamous, who had both fled the Chadian capital shortly before taking up armed opposition. Held for two weeks at the DDS, he was released as a result of pressure from US, German and French academics.

Zakaria Fadoul described to Amnesty International in March 2006 his conditions of detention and his state of health at the time of his release: *"They took me to the "piscine"; I didn't know why they had arrested me. At the "piscine", I found out that my two brothers, Mahamat and Ali, had also been arrested and held at the "piscine". Following intervention by American, German and French academics, I was released. My two brothers were not so lucky; I never saw them again. In prison the heat was intolerable. The food was appalling and contained as much sand as millet. We had to mix it with water to let the sand settle at the bottom to be able to eat the rest. When I left prison, I couldn't walk, my hair was falling out, I suffered from desquamation [a skin condition], I shed skin like a snake."*

Zakaria Fadoul filed a complaint in Belgium against Hissène Habré, because, he explained to Amnesty International: *"I believe that I have the right to know what happened to my two brothers. Hissène Habré has found refuge in Senegal, in a Muslim country. Some people are against the extradition and trial of Hissène Habré because he a Muslim. I would like Africa and the world to know that Hissène Habré killed many Muslims in Chad. The*

¹⁴ A former major in the Chadian army who was apparently implicated in a coup attempt, together with Idriss Déby, against Hissène Habré in 1989.

victims are waiting for reparation and that will come about through the trial of Hissène Habré.”

Zakaria Fadoul's appeal to the African Union and the Committee of Experts

“When it comes to murder, we are first and foremost human beings before being black, white, Muslim, Christian etc. And because no human being has a right to take away the life of another, emotions and sentiments (which often lead to mistakes) have no place in bringing about justice. It also has to be realized that the concept of honour is quite subjective and ought therefore to be avoided if we are seeking to dispense equitable justice. I ask the African Union to meet the need for justice of the victims of Hissène Habré.”

Senior civil servants belonging to the Zaghawa ethnic group were also the targets of this repression. **Bachar Bong**, director of the department for natural disasters at the Office national du développement rural (ONDR), National Office for Rural Development, was arrested by members of the security forces around 1pm on 3 April 1989.

His wife, **Mariam Abdramane**, told Amnesty International in March 2006: *“My husband telephoned me to say that he was going to come back for lunch. When he didn't arrive, I became worried. That day, at about 11pm, three DDS agents and six soldiers came to search my house and they took away some papers. My husband was with them, his shirt was torn and his cheeks were swollen but, no doubt in order to reassure me, he told me that it wasn't anything serious. I never saw him again. Some time later, I approached one of the DDS agents to ask him where my husband was and he replied that he couldn't say anything. At that time the climate of fear was such that I didn't dare take any other steps.”*

After Hissène Habré's fall from power, a document found in the archives of the DDS indicated that Bachar Bong's arrest was due to the fact that he was suspected of being implicated in Idriss Déby's escape. His body has never been recovered.

In March 2006, Mariam Abdramane explained to Amnesty International her reasons for filing a complaint against Hissène Habré: *“My two children urged me to do it. In 1997-1998, after they passed their baccalaureate, I talked to them about their father and they said: 'You must file a complaint. If you die, we'll continue your fight'.”*

Mariam Abdramane's appeal to the African Union and the Committee of Experts

"For more than 15 years, I've waited for Hissène Habré to be tried. The African Union must ensure that Hissène Habré is held accountable for his actions. Africa has already failed; he must be tried in Belgium."

Another senior Zaghawa official, **Ismaël Hachim**, former principal private secretary to the Minister of the Interior, was arrested on 2 April 1989 by four DDS agents armed with revolvers who burst into his home at 2am. Considered to be a "special prisoner", his name did not appear in the register at the police station, and for three days he received no food and was subjected to torture and ill-treatment. He was detained at the "piscine" where he witnessed the "disappearance" of dozens of detainees from the Zaghawa ethnic group.

"I was there when our brothers were taken away and I was told that they had been executed. I have been through the experience of people being killed by the heat, from lack of water and oxygen. The detainees clung to the slits in the cell door in order to try to breathe. When some of them died, the detainees laid down on the corpses because they gave off some coolness. I witnessed the transformation of a human being into an automaton."

Released on 1 December 1990, shortly after Hissène Habré's fall from power, Ismaël Hachim has continued to experience the physical and psychological after-effects, as well as the handicaps, resulting from the torture that he underwent in detention. In March 2006, he told Amnesty International: *"Still today, I am in prison when I hear the accounts of what we went through."*

Ismaël Hachim's appeal to the African Union and the Committee of Experts

"The African Union must accept its responsibilities, it must find a solution. One talks of African pride in opposing the extradition of Hissène Habré. Nobody lifted a finger when we were in prison. Justice doesn't have a colour. Some say that they are proud to be African but where is justice?"

The African Union must ask Senegal to extradite Hissène Habré to Belgium, that would be the quickest solution. If they insist that the trial take place in Africa, an African court could be created and, in order to save time, the Belgian and Senegalese justice systems which are already familiar with the case could be brought in."

Children were not spared persecution on the grounds of ethnic origin. On 9 September 1989, **Souleymane Abdoulaye Tahir**, a 14-year-old schoolboy, was arrested by the security forces while he was at school. He was imprisoned because of his family links with several people belonging to the Zaghawa ethnic group who were accused of planning a coup against President Hissène Habré. He was held at the "piscine".

"The cell where I was held was nine square metres; I was the youngest and the smallest; we were all crammed together standing up and the taller ones put me on their shoulders so that I could breath better. It was extremely hot in the "piscine" and we were crushed one against the other. After some of the detainees died, we rushed over to put our heads on the body of the victim because we had noticed that after they died their body was cool; that didn't last longer than three hours. Members of the DDS sometimes came in the evening to call some of the detainees; they made a selection on the basis of first names; I remember that on Friday, 22 September [1989] all the "Hassanes" were called one by one; we never saw them again afterwards."

When he was released in December 1990, after Hissène Habré's fall from power, Souleymane Abdoulaye Tahir was unable to walk. *"Sitting on my buttocks, I moved forward by using both my hands in order to get from one place to another. According to the doctors, the swelling of my feet linked to deficiency in nutrition caused my shoes to split. My parents sent me to Cameroon where I underwent intensive care by Chinese doctors who practised acupuncture."*

**Souleymane Abdoulaye Tahir's appeal to the African Union
and the Committee of Experts**

"The African Union has entrusted a Committee of Experts with the task of making a decision on the suffering of the Chadian people. I want it to hear the victims' suffering before taking a decision. The African Union must call for Hissène Habré to be brought to trial.

After Senegal's decision refusing to try Hissène Habré, we turned towards Belgium, in memory of our dead and our suffering. African intellectuals who now talk of African pride, where were they when we were in prison and when our brothers disappeared? My hope is that the African Union will send Hissène Habré to Belgium so that he will be tried."

5. CONCLUSION AND RECOMMENDATIONS

The AU Assembly and individual African heads of state and government have a duty to meet the expectations conveyed by the victims of Hissène Habré. All the testimonies collected by Amnesty International in the preparation for this report stress the victims' need for justice – not vengeance. All these people have spoken of the necessity of bringing Hissène Habré before a court that provides full guarantees of impartiality and independence and not a single one has called for the former Chadian president to be sentenced to death for his crimes. Several of them have expressed the anguish of not living to see Hissène Habré be held accountable for his actions before a court.

Amnesty International sets out below recommendations addressed to the AU Assembly so that it will ensure that the Committee of Experts is able to undertake its work in the best possible conditions, in particular by drawing on civil society and on the testimonies of those victims who have filed complaints against Hissène Habré. The organization also provides its analysis of the criteria set out by the AU Assembly that should inform the work of the Committee. These criteria are necessary for holding a fair trial in the prospect of bringing the former Chadian president to justice.

Amnesty International calls on the AU Assembly to:

- ensure that the Committee carries out its activities transparently, allowing participation by civil society and also, in particular, by the African victims of crimes committed under Hissène Habré's rule, as well as their families;
- ensure that the victims, as well as their families and representatives, are heard and that their views are carefully considered;
- examine closely authoritative interpretations of international law concerning the obligations of states with regard to investigation and prosecution of crimes under international law, in particular the crime of torture, as well as reparations for these crimes. These obligations are provided for in international and regional human rights treaties as well as by customary international law. Interpretations are formulated by, among others, the African Commission on Human and Peoples' Rights, the United Nations Committee against Torture, the United Nations Human Rights Committee, and the Special Rapporteurs on torture and on extrajudicial, summary and arbitrary executions;
- ensure that the report of the Committee is made public well in advance of the Seventh Ordinary Session of the AU in July 2006 in order to provide member states, the African Commission on Human and Peoples' Rights and civil society the opportunity to contribute so that the AU Assembly is able to take a fully informed decision;

- ensure that Hissène Habré is tried within a reasonable time, and in accordance with the fundamental principles of fair trial and international justice that should be respected by all states. These standards include adherence to the principles of total rejection of impunity – excluding the death penalty and any other form of cruel, inhuman or degrading punishment –; taking into account efficiency in terms of the cost and length of the trial; and also ensuring that alleged victims and witnesses have access to the trial.

Criteria for a fair trial

Amnesty International believes that the criteria set out in the decision by the AU Assembly to assess the options for the trial of Hissène Habré are a step forward in resolving of this issue that would be fully consistent with Senegal's obligations under international law and the fundamental principles of fair trial. Whatever the final decision of the AU Assembly concerning the forum for Hissène Habré's trial, Amnesty International believes that these criteria should be applied in order to ensure that the former Chadian president receives a trial that is fair and excludes the death penalty.

i. Adherence to the principles of total rejection of impunity

Amnesty International welcomes the total rejection of impunity, which means that all those responsible for crimes against humanity, including torture, and war crimes committed during Hissène Habré's rule must be brought to justice; that the truth about these crimes must be established; and that reparations must be awarded to every victim.

ii. Respect of international fair trial standards

Criminal proceedings and those relating to reparations must conform to the right to a fair trial, as set out in international law and the standards that derive from it. They must also exclude the death penalty or any other form of cruel, inhuman or degrading punishment.

iii. Jurisdiction over the alleged crimes for which Hissène Habré should be tried

In reviewing the national laws of various countries or possible options for the trial of Hissène Habré, the Committee must make sure that, among other things:

- national law defines the crimes of which Hissène Habré is suspected in a way that is consistent with the strictest international standards as set out 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, as well as customary international law;

- the court can exercise jurisdiction over all crimes committed in Chad;
- the law does not allow any form of immunity, including to those currently or previously holding office, such as a head of state, head of government or government minister, member of parliament, or other elected or government official;
- the strictest standards of superior command and responsibility apply;
- there is no statute of limitations;
- superior orders, duress and necessity are not permissible forms of defense, although they may be taken into account in some cases as mitigating circumstances.

iv. Efficiency in terms of the cost and length of the trial

African victims of the crimes committed during Hissène Habré's rule, as well as their families, have waited for more than 15 years for justice to be achieved, for the truth to be established and for reparations to be awarded. The procedural delays since Belgium's request for extradition are a further denial of justice. The options for the trial of Hissène Habré should therefore guarantee that the court responsible for prosecuting Hissène Habré will be able to use the results of the investigations that have already been reliably undertaken and to start its work immediately. Amnesty International firmly believes that the cost of any alternative solution must not exceed that of a trial in Belgium and must not take any longer.

v. Access to the trial by alleged victims and witnesses

Victims and their families must not only have the possibility of participating in all stages of the proceedings, but their access must be equal to that which they would have in Belgium or before the International Criminal Court. They must also have the same protection and support that they would have in Belgium.

vi. Criteria to be respected if priority is given to an African mechanism

At the time of writing, no African state had requested the extradition of Hissène Habré. The AU Assembly, however, in Decision 103, adopted in Khartoum in January 2006, invited the Committee to give "*priority to an African mechanism*". The principles set out above must be respected when considering the judicial options for bringing Hissène Habré to trial in an African state. The Committee responsible for this must, in particular, assess whether the courts in that state:

- have jurisdiction over the crimes committed in Chad during Hissène Habré's rule as president;

- possess legal definitions of war crimes, crimes against humanity and crimes of torture, as well as principles of criminal responsibility and the rights to defense, which are consistent with standards of international law;
- demonstrate the ability to conduct criminal proceedings promptly and in a manner that respects fair trial guarantees, including the presumption of innocence;
- have put into place effective victim and witness support and protection programs;
- permit victims to participate in all stages of the proceedings;
- guarantee the victims the right to reparations in effective procedures;
- exclude the death penalty.

These recommendations reflect fundamental principles of fair trial and international justice that should be respected by all states. Any “mechanism”, whether African or otherwise, that does not meet all the above criteria will fall short of what is required under international law to try Hissène Habré for the crimes that he is suspected of having committed.

In order to heal the wounds of the past and prevent abuses in the future, Hissène Habré must be tried promptly and impartially. The thirst for truth and justice that victims have experienced for more than 15 years must be met with an adequate response. The AU Assembly should not and cannot disappoint their hopes and expectations.