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African Commission on Human and Peoples' Rights: Oral statement on options for trial of Hissene Habre

Chairperson, Commissioners,

Throughout the eight years of Hissène Habré's Presidency, the Chadian government actual and suspected government's opponents and their families were victims of serious violations of their rights. The report of the commission set up by decree in 1990 by the Chadian government and charged with investigating the alleged crimes and embezzlement committed by the ex-President Habré and others during his presidency, determined in 1992 that the government was responsible for the "disappearance", torture, and execution of thousands of individuals in Chad.

Victims, their families and civil society organizations have campaigned for more than fifteen years against the impunity of those responsible for the massive human rights violations committed under the government of Hissène Habré. Hissène Habré was indicted on the 3 February 2000 by the Dakar Regional Court for "crimes against humanity, acts of torture and barbarity", before the Senegalese courts ruled that they did not have jurisdiction to try acts of torture committed by a foreigner outside of its territory.

For fifteen years, Senegal, in disregard of its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), has failed either to investigate and, if there is sufficient admissible evidence, to prosecute Hissène Habré for the crimes he is suspected to have committed or to extradite him to face trial in another country willing and able to do so in a fair trial without the death penalty.

Only after the Dakar Court of Appeals decided in July 2000 that Senegalese courts had no jurisdiction over these crimes did victims seek justice in other countries, including Chad and Belgium. The Belgian investigating judge indicted Hissène Habré on 19 September 2005 for crimes against humanity, acts of torture, and war crimes of war, and that the Belgian authorities have issued an international arrest warrant for the former Chadian president. However, on 25 November 2005 the Dakar Court of Appeals decided that it had no jurisdiction on the extradition request of Belgium.

The African Union Assembly considered the case of the trial of Hissène Habré at its 6th Ordinary session in Khartoum (Sudan) in January 2006. The AU Assembly decided to establish a Committee of Eminent African Jurists "to consider all aspects and implications of the Hissène Habré case as well as the options available for his trial" [See Assembly/AU/Dec.103 (VI).] This committee is due to report to the Assembly by the 7th Ordinary Session, in July 2006, but the AU Assembly has not made any commitment to act favourably or act at all on the report.

The Constitutive Act of the AU recognizes among its fundamental principles and objectives the "condemnation and rejection of impunity". At the 38th Ordinary Session, in Banjul (the Gambia) in November 2005, the African Commission has called on AU member states "to ensure that the perpetrators of crimes under international human rights law and international humanitarian law should not benefit from impunity"

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, including the Constitutive Act of the AU.

In particular, Amnesty International notes that to ensure the trial of Hissène Habré in accordance with fundamental international principles of fair trial and justice:

- the court must have jurisdiction to try Hissène Habré for the crimes committed in Chad under his presidency;
- the national laws must define war crimes, crimes against humanity and torture, principles of criminal responsibility and defences, consistently with the standards of international law;
- the court must have demonstrated ability to conduct criminal proceedings promptly and in a manner respecting fair trial guarantees, including the presumption of innocence;
- there must be effective victim and witness support and protection programmes;
- victims must be permitted to participate at all stages of the proceedings;
- victims the right of reparations in effective procedures must be guaranteed; and
- the recourse to the death penalty must be excluded.

Amnesty International urges the African Commission to reiterate its stance against impunity for human rights violations in Africa by adoption a resolution:

- urging the government of Senegal to guarantee that Hissène Habré will either be prosecuted or extradited so that he can respond to the charges against him in a fair trial without recourse to the death penalty;
- inviting the AU to ensure that Senegal immediately honours international obligations, including those of a state party to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- requesting the Chairperson of African Commission on Human and Peoples' Rights to establish contacts with the Senegalese authorities and to request information on the steps taken by Senegal to comply with its obligations under international law and to report back to the Commission at its next session.