

AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

Addis Ababa, ETHIOPIA

P. O. Box 3243

Telephone : +251-115- 517 700

Fax : +251-115- 517844

website : www.africa-union.org

REPORT OF THE COMMITTEE OF EMINENT AFRICAN JURISTS ON
THE CASE OF HISSENE HABRE

**REPORT OF THE COMMITTEE OF EMINENT AFRICAN JURISTS
ON THE CASE OF HISSENE HABRE**

I. INTRODUCTION

1. At the Summit of African Union Heads of State and Government in Khartoum, The Sudan, in January, 2006, a decision was taken by the Assembly Assembly/AU/Dec.103 (VI) to set up a Committee of Eminent African Jurists to be appointed by the Chairperson of the African Union in consultation with the Chairperson of the Commission of the African Union. The Committee was mandated to consider all aspects and implications of the Hissène Habré Case as well as the options available for his trial, taking into account the following benchmarks:

- (a) Adherence to the principles of total rejection of impunity;
- (b) Adherence to international fair trial standards including the independence of the judiciary and impartiality of proceedings;
- (c) Jurisdiction over the alleged crimes for which Mr. Habré should be tried;
- (d) Efficiency in terms of cost and time trial
- (e) Accessibility to the trial by alleged victims as well as witnesses;
- (f) Priority of an African mechanism.

2. The Committee was also mandated to make concrete recommendations on the above matter as well as ways and means of dealing with issues of a similar nature in the future and submit a report to the next Ordinary Session of the Assembly in July, 2006.

Membership*

3. Seven (7) persons appointed by the Chairperson of the AU in their personal capacities as eminent jurists attended the meeting. They are:

- | | |
|--|------------------------|
| ➤ M. le Juge. Guibril CAMARA | -- Senegal |
| ➤ Mme la Prof. Delphine EMMANUEL born ADOUKI | -- Congo - Brazzaville |
| ➤ Prof. Michael Ayodele AJOMO | -- Nigeria |
| ➤ Robert DOSSOU Esq. | -- Benin |
| ➤ Judge Joseph S. WARIOBA | -- Tanzania |
| ➤ Anil Kumarsingh GAYAN Esq. | -- Mauritius |
| ➤ Prof. (Mrs.) Henrietta J.A.N. MENSA-BONSU | -- Ghana |

* Note: The current Chairman of the Union, in consultation with the Chairperson of the Commission, requested the Republic of Tunisia to nominate an eminent female jurist but the latter had not submitted any name by the time the meeting took place. Additionally, Justice Richard Goldstone (South Africa) who had been appointed as a member of the Committee did not attend.

II. MEETING

4. The meeting convened in Addis Ababa from 22nd, 23rd and 24th May. Members were welcomed by H.E. Patrick Mazimpaka, the Deputy-Chairperson of the AU Commission. He explained the purpose of the meeting and charged members to maintain absolute confidentiality to enable the Heads of State and Government to take a decision free from pressure from the press and other interest groups.

Election of Bureau

5. The Bureau to direct affairs of the Committee was elected as follows:

- | | |
|-----------------------------------|-----------------------------|
| ➤ Robert Dossou Esq. | -- Chairman (Benin) |
| ➤ Judge J.S Warioba | -- Vice-Chairman (Tanzania) |
| ➤ Prof. (Mrs.) H.JA.N Mensa-Bonsu | -- Rapporteur (Ghana) |

6. The Draft Agenda was adopted and the meeting proceeded according to that format.

III. APPRECIATION

7. The Committee expresses its appreciation to the Chairperson of the African Union for the confidence reposed in us, and to the Office of Legal Counsel for the cooperation and support we enjoyed during the period of our work.

IV. PROCEEDINGS

A) Methodology

8. The Committee determined what was required of it by the instructions of the Heads of State and Government. The Committee decided to consider its work in two parts:

- the specific case of Hissène Habré; and
- what to do for the future.

9. The committee must also help design a mechanism for dealing with impunity specifically in the African context.

10. The Committee decided to discuss all the options available and then to recommend what would be the best option given the benchmarks provided by the Heads of State and Government.

11. The discussion commenced on the benchmarks that are recommended by the Heads of State to the Committee to be taken into account.

B) Benchmarks

i) Impunity

12. The rejection of impunity was accepted in total by the Summit. The Committee sees no difficulty since this is a principle that has been recognised since World War II and is now upheld worldwide following the establishment of ICC. All need to understand that African States have to operate in a global environment and not in isolation. Africa must take account of recent developments in the international criminal law arena, such as the Pinochet, Taylor, etc., cases have demonstrated.

13. The Committee considered that Hissène Habré cannot shield behind the immunity of a former Head of State to defeat the principle of total rejection of impunity that was adopted by the Assembly.

14. The Committee also considered that in view of the nature and gravity of the crimes alleged against him, Hissène Habré cannot benefit from any period of limitation (i.e. prescription).

ii) Adherence to Fair Trial Standards.

15. The trial of Hissène Habré should proceed in accordance with international fair trial standards, including impartiality of judiciary and impartiality of proceedings.

iii) Jurisdiction

16. The Committee within the framework of an African solution considered, in the first instance, the two (2) African States, Senegal and Chad, which have the necessary link to the Hissène Habré case. Both countries have ratified the Convention Against Torture.

Senegal:

17. Since Habré is within its territory Senegal should exercise jurisdiction over him. As a State party to the Convention Against Torture, Senegal is under an obligation to comply with all its provisions.

18. The Committee was apprised of the decision of United Nations Committee on Convention Against Torture taken on 17th May, 2006 concerning Hissène Habré that Senegal's conduct was in violation of Articles 5 (2) and 7 of the Convention Against Torture. It is therefore incumbent on Senegal in accordance with its international obligations, to take steps, not only to adapt its legislation, but also to bring Habré to trial.

19. The Committee considered that in the event that Senegal proceeds with the trial of Habré, Senegal should confer special powers upon the court to proceed to Chad or to any other country to take evidence of witnesses and do whatever is necessary to achieve its mandate.

Chad:

20. Hissène Habré is a former President of Chad. The crimes were committed in Chad. The victims are mostly Chadians. By virtue of Art 5(1) of the Convention AT Chad may put Habré on trial and ask for extradition from Senegal. Chad is therefore under an obligation to provide all the required juridical assistance, more particularly as far as access of victims and witnesses, is concerned.

Other locations:

21. All African countries that have ratified the Convention Against Torture are eligible as venues to try this case. At the present date, forty-five countries have ratified the Convention against Torture.

Ad hoc Tribunal:

22. The Committee considered the establishment of an *ad hoc* tribunal as another good opportunity for an African solution to be found.

23. The power of the Assembly to set up such an *ad hoc* tribunal is based upon Article 3 (h) 4(h) and (o) 9(1) (d) and Article 5(1)(d) of the Constitutive Act of the African Union.

24. A tribunal composed of five (5) judges from the highest courts in their respective countries should be appointed.

25. An *ad hoc* tribunal, in whatever form, would, cost a lot of money and create further delay in the trial of Habré . However, where there is a will, there is a way and the process could be expedited.

C) Regional Jurisdictions

26. The African Court on Human and Peoples Rights whose Protocol has already entered into force and the Court of Justice of the African Union whose Protocol is still under the ratification process, do not have jurisdiction to hear criminal matters at the present time. Therefore, these two institutions cannot hear the Habré case.

V. RECOMMENDATIONS ON THE HABRÉ CASE

27. The Committee recommends that an African option should be adopted.

28. Habré should be tried by an African member State - Senegal or Chad in the first instance, or by any other African country.

29. Senegal is the country best suited to try Habré as it is bound by International law to perform its obligations.

30. Chad has the primary responsibility to try and punish Hissène Habré. It should therefore cooperate with Senegal.

Ad hoc tribunal

31. Another option is the establishment of an ad hoc tribunal. This tribunal can be set up within any African country.
32. Whatever the solution chosen, (national jurisdiction or ad hoc regional jurisdiction) the African Union has to commit itself to assist the African State which will assume responsibility for the trial of Hissène Habré or host the ad hoc tribunal.
33. A third option is for any African state which has ratified the Convention Against Torture to take on the responsibility and exercise jurisdiction.

VI. THE FUTURE

Observations

34. On the ways and means of dealing with issues of a similar nature in the future, the Committee observed that there is urgency in sending strong signals throughout Africa that impunity is no longer an option. In this regard the Committee considered various measures and different mechanisms available, including the possibility of conferring criminal jurisdiction on the African Court of Justice [to confer criminal competence that can be adopted by States within a reasonable time-frame,] to make the respect for human rights at national, regional and continental levels a fundamental tenet of African governance.
35. The Committee discussed the prospects for the creation of the African Court of Justice and Human Rights based on the project to merge the African Court of human and People's Rights and The African Court of Justice. The Committee proposes that this new body be granted jurisdiction to undertake criminal trials for crimes against humanity, war crimes and violations of Convention Against Torture. The Committee also noted that there is room in the Rome Statute for such a development and that it would not be a duplication of the work of the International Criminal Court.

VII. RECOMMENDATIONS

36. **All African States** should be called upon to accede to the Convention against Torture and its Optional Protocol so as to enable the Convention to be applicable all over the continent. The relevant Declarations under Art. 22 must also be made to enable it offer real protection to the rights of the citizens. Accession is important also for the prevention of torture since the reporting requirements of Convention against Torture imposes an obligation on States to monitor their own compliance with the standards and so prevent torture within their national territories. The Committee recommends that countries that have not acceded to the various human rights instruments must do so.
37. All States must take steps to enact legislation to domesticate the Convention against Torture.

38. There is need to strengthen national and regional institutions to effectively protect human rights. In particular, there is the need to ensure appropriate human rights education and exposure to international criminal law norms for judges and law enforcement agencies in Africa, to ensure that they are equipped to handle such international crimes.

39. The African Court should be granted jurisdiction to try criminal cases. The Committee therefore recommends that the on-going process that should lead to the establishment of a single court at the African Union level should confer criminal jurisdiction on that court. The Committee further recommends that the text should be adopted through the quickest procedures possible.

40. The Court must be allowed to operate as an independent institution free from all forms of pressure, so that it can be impartial, and be seen to be impartial.

41. There should be a rapid response mechanism within the Court to ensure that Africa can act with dispatch in situations of gross violations and so give teeth to the notion of "total rejection of impunity".

42. There should be an ad hoc monitoring mechanism to ensure that the independence and impartiality of the institutions would exist both in theory and in fact. Such monitoring would affirm the credibility of the regional institutions and so offer credible regional options.