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PROGRESS REPORT OF THE COMMISSION
ON THE HISSENE HABRE CASE

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I. INTRODUCTION

1. The Assembly of the African Union meeting at its Seventeenth Ordinary Session held in Malabo, Equatorial Guinea on 30 June and 1 July 2011 following due consideration of the Progress Report of the Commission on the implementation of the previous decisions on the Hissene Habre case adopted Decision Assembly/AU/Dec.371 (XVII) on the Hissene Habre Case, which stipulated, *inter alia*, as follows:

“3. REITERATES its decision in January 2011 confirming the mandate given to Senegal to try Hissene Habre on behalf of Africa and **URGES** Senegal to carry out its legal responsibility in accordance with the United Nations Convention against Torture the decision of the United Nations (UN) Committee against Torture as well as the said mandate to put Hissene Habre on trial expeditiously or extradite him to any other country willing to put him on trial;

4. CALLS ON other Member States, Parties to the United Nations Convention against Torture willing to try Hissene Habre to notify the Commission of their willingness to do so and to take necessary measures to put Hissene Habre on trial;

5. REQUESTS the Commission to closely monitor the implementation of this Decision and to report to the next ordinary session of the Assembly in January 2012”.

2. The present Report has been prepared pursuant to the above Assembly Decision with a view to updating the Assembly on the status of the preparation of the Hissene Habre trial and of developments which occurred since the last reporting period.

II. DEVELOPMENTS SINCE THE MALABO SUMMIT

a) **Decision of the President of the Republic of Senegal to send back Mr. Hissene Habre to Chad and the Request of Belgium for the Extradition of Mr. Habre**

3. It is to be recalled that following the adoption of the Malabo Decision on the Hissene Habre Case, the President of the Republic of Senegal informed the Chairperson of the Commission by a letter dated 5 July 2011 that he would be sending Mr. Hissene Habre back to Chad on 11 July 2011. The President of the Republic of Chad was also informed of same. Accordingly, the Government of Chad through its Minister of Communications took note in a public statement of the decision of Senegal and indicated that Chad would take all necessary measures to receive Mr. Hissene Habre.

4. However, following a request by many stakeholders including the Office of the United Nations High Commissioner for Human Rights (UN-OHCHR), President Wade suspended his decision to send back Hissene Habre to Chad. In a Communique issued on 10 July 2011, the Government of Senegal indicated that it would immediately undertake consultations with the African Union and the UN-OHCHR in order to find a solution to the Hissene Habre case. By the time of finalization of this updated Report no consultations had yet been undertaken with the Commission.

5. Additionally, it should be noted that following the request of Belgium for the extradition of Mr. Hissene Habre dated 11 July 2011, the Appeal Court of Dakar ruled that the request was irreceivable for non-compliance with the procedural and substantive provisions of the Law of Senegal on extradition.

6. To comply with the Law of Senegal on extradition, the Government of Belgium submitted to the Government of Senegal through its Embassy in Brussels on 5 September 2011, a new request for the extradition of Mr. Hissene Habre to Belgium including the arrest warrant issued against Hissene Habre and its annexes.

7. The new request is under consideration by the Appeal Court of Dakar. By the time of finalization of this Report, the Appeal Court of Dakar had not yet ruled on the case.

b) Decision of the Republic of Chad to support the demand of the victims and human rights Groups for a trial in Belgium

8. A delegation of the Government of Chad led by Mr. Moussa Faki Mahamat, Minister of Foreign Affairs carrying a message from the President of the Republic of Chad was received at the Commission by the Deputy Chairperson of the Commission on 21 July 2011 and delivered a message from the President. The Minister took this opportunity to inform the Commission that the Government of Chad had decided to support the extradition of Mr. Hissene Habre to Belgium as requested by the Association of victims of the Hissene Habre regime and the Human Rights Defense Groups. In the letter conveyed by the Minister of Foreign Affairs, the President of the Republic of Chad invited the Commission to support the extradition to Belgium and to take all necessary measures as soon as possible to that effect.

9. Additionally, delegations from Chad visited the Chairperson of the Union and the Office of the UN High Commissioner for Human Rights with a view to informing them about the decision of Chad to support the extradition of Mr. Hissene Habre to Belgium.

10. On 22 July 2011, the Government of Chad issued a Communique which reaffirmed its decision to support the request for the extradition of Mr. Hissene Habre to Belgium emanating from the Association of Victims of the Hissene Habre Regime and the Human Rights Defense Groups. In this regard, it should be recalled that on the basis of its national law on universal jurisdiction, Belgium issued in 2005 an arrest warrant against Mr. Hissene Habre and accordingly submitted to the government of Senegal a

request for his extradition to Belgium in May 2005, March 2011, July 2011 and September 2011 respectively.

c) Decision of the Republic Rwanda to Handle the Trial of Mr. Hissene Habre

11. As indicated in paragraph 4 of the Assembly Decision, the Assembly called on other Member States, Parties to the UN Convention against Torture willing to try Hissene Habre to notify the Commission of their willingness to do so and to take necessary measures to put Hissene Habre on trial.

12. In implementation of the Assembly Decision, the Government of the Republic of Rwanda was approached by the Commission in July 2011 taking into account its wide experience in undertaking trials for international crimes to consider putting Hissene Habre on trial on behalf of Africa. Subsequently, the Government of the Republic of Rwanda informed the Commission vide a letter dated 27 July 2011 that Rwanda was willing to handle the trial of Mr. Hissene Habre. According to the Government of Rwanda its decision is motivated by Rwanda's belief in providing, to the extent necessary, home grown solutions to different challenges on the African continent.

13. However, since the judgment of the Appeal Court of Dakar with regard to the extradition of Mr. Hissene Habre to Belgium is pending, the AU Commission has not yet started substantive discussions with Rwanda on the trial of Mr. Habre. Nonetheless, if the Court of Appeal does not order Mr. Habre's extradition to Belgium, it is imperative that other options, including holding the trial in Rwanda, are considered.

III. PROPOSALS ON THE WAY FORWARD

14. Taking into account the marginal progress made in the organization of the Hissene Habre trial since 2006 and following the latest developments, it is advisable that within the framework of a priority for an African solution, the Assembly looks at the following options other than that of Senegal: **1) Organization of the trial in Rwanda; 2) Extradition to Belgium.**

1) OPTION I: Extradition to Belgium

15. Extradition to Belgium is the option preferred by the Government of the Republic of Chad, the Victims and Human Rights Groups, but it would be recalled that the Committee of African Eminent Jurists proposed the framework of an African solution which had been endorsed by the Assembly in Banjul, The Gambia in July 2006. Indeed, when the establishment of the Committee was approved by the Assembly in January 2006, one of the factors set forth by the Assembly, was "priority for an African mechanism." However, due to the difficulty of finding an African solution, this option may have to be revisited by the Assembly within the context of the principle of rejection of impunity, as enshrined in Article 4 (h) and (o) of the Constitutive Act of the African Union.

16. According to the Government of Chad and the Victims, a trial could be organized quickly in Belgium, which is essential given that many of the survivors of the Hissene Habre regime have already died. Indeed, a Belgian investigating judge, with the assistance of police detectives specialized in the prosecution of crimes against humanity, examined the charges for four (4) years. The team visited Chad and interrogated Habre's former accomplices, and visited detention centers and former mass graves. It seized and analyzed copies of thousands of documents of Habre's political police (the "DDS"), which revealed the identity of 1,208 people who died in detention and 12,321 victims of torture or other human rights violations. It is on the basis of the strong evidence that the Belgian judge indicted Habre for crimes against humanity, war crimes and torture, and allowed Belgium to request for his extradition.

2) OPTION II: Organisation of the trial in Rwanda

17. Vide its Decision Assembly/AU/Dec.371 (XVII) on the Hissene Habre Case, the Assembly called on other Member States, Parties to the UN Convention against Torture willing to try Mr. Hissene Habre to notify the Commission of their willingness to do so and to take necessary measures to put Hissene Habre on trial. As of now, Rwanda is the only other Member State which has indicated its willingness to do so.

IV. CONCLUSION AND RECOMMENDATION

18. The trial of Hissene Habre is a challenge that the AU and its Member States must address vigorously in the context of the principle of rejection of impunity, as enshrined in Article 4 (h) and (o) of the Constitutive Act of the African Union. In this regard, Member States, Partner countries and institutions should support the process of organizing the Hissene Habre trial.

19. Taking into account the marginal progress made in the organization of the Hissene Habre trial since 2006, and bearing in mind that the Appeal Court of Senegal has not yet ruled on the request by Belgium for extradition of Hissene Habre to Belgium, as well as the fact that the pending case between Belgium and Senegal at the International Court of Justice will now be heard from 12 to 21 March 2012, the Assembly should consider taking note of this matter and deferring it to its next ordinary session in June/July 2012. .

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Progress report of the commission on the Hissene Habre case

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