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**REPORT OF THE COMMISSION ON THE
HISSENE HABRE CASE**

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I. INTRODUCTION

1. By virtue of Decision Assembly/AU/Dec.103(VI) adopted in Khartoum, the Sudan, in January 2006, the Assembly of the Union set up a Committee of Eminent African Jurists which was mandated to consider all aspects and implications of the Hissene Habre Case as well as the options available for his trial.

2. Within the framework of “priority for an African solution” as directed by the Assembly, the Committee made concrete recommendations thereon as well as on ways and means of dealing with issues of a similar nature in the future and submitted a report to the Ordinary Session of the Assembly held in Banjul, the Gambia in July 2006.

3. Following consideration of the said Report, the Assembly adopted Decision Assembly/AU/Dec.127(VII) on the Hissene Habre case and the African Union, which stipulated, inter alia:

“**2. TAKES NOTE** of the Report presented by the Committee of Eminent African Jurists appointed in conformity with the above-mentioned Decision;

3. OBSERVES that, according to the terms of Articles 3 (4), 4 (h) and 4 (o) of the Constitutive Act of the African Union, the crimes of which Hissene Habre is accused to fall within the competence of the African Union;

4. CONSIDERING that, in its present state, the African Union has no legal organ competent to try Hissene Habre;

5. CONSIDERING the jurisdiction of the International Court of Justice in this case, and the ratification by Senegal of the United Nations Convention against Torture;

- i) **DECIDES** to consider the Hissene Habre case as falling within the competence of the African Union;
- ii) **MANDATES** the Republic of Senegal to prosecute and ensure that Hissene Habre is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial;
- iii) **FURTHER MANDATES** the Chairperson of the Union, in consultation with the Chairperson of the Commission, to provide Senegal with the necessary assistance for the effective conduct of the trial;

- iv) **REQUESTS** all the Member States to cooperate with the Government of Senegal on this matter;
- v) **CALLS UPON** the International Community to avail its support to the Government of Senegal;”

4. The present Report has been prepared pursuant to the implementation of the above Assembly Decision on the Hissene Habre Case.

II. FUNDING OF THE HISSENE HABRE CASE

5. A donors Round Table for the funding of Hissene Habre trial took place in Dakar, Senegal on 24 November 2010. It was attended by some AU Member States, Partner countries and the followings institutions: African Union, Chad, Senegal, European Union, Belgium, Canada, France, Germany, Luxembourg, The Netherlands, Spain, Switzerland, the United Kingdom, the United States of America (USA), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Office for Project Support (UNOPS).

6. The total financial pledges made during the Donors Round Table was Euro Eight million Six Hundred Thousand (EUR) 8,600,000).

7. Furthermore, the Donors Round Table established an International Multi-Donor Trust Fund to support the trial of Hissene Habre and adopted the modalities for the administration of the said Trust Fund. In this regard, the parties agreed on the governance and operational arrangements for the Trust fund which is composed of a Management Committee and Fund Manager. In addition, the management of the fund is undertaken by the United Nations Office for Project Support (UNOPS).

III. ACTIONS TAKEN TO IMPLEMENT THE DECISION ASSEMBLY/AU/Dec.127 (VII) ON THE HISSENE HABRE CASE

8. As indicated above, the Assembly Decision requested the Commission to undertake consultations with the Government of Senegal in order to finalise the modalities for the Expeditious trial of Hissene Habre through a special tribunal with an international character consistent with the Economic Community of West African States (ECOWAS) Court of Justice Decision.

9. On 22 August 2012, the African Union and the Government of the Republic of Senegal signed the Agreement on the establishment of the African Extraordinary Chambers (AEC) in the courts of Senegal to prosecute person(s) most responsible for international crimes committed in Chad between 1982 and 1990. Following the signing of this Agreement, significant progress has been made in respect of organizing the trial of Mr. Habre, in application of various decisions of the Assembly.

10. Among the achievements, it will be recalled, was the operationalization of the AEC; the appointment of Prosecutors and Judges by the Chairperson of the AU Commission, judicial activities leading to the indictment and placement in custody of Mr.

Habre since July 2, 2013, for war crimes, crimes against humanity and the crime of torture. The AEC issued five (5) arrest warrants against alleged accomplices of Mr. Habre.

11. The purpose of this Report is to update the Assembly on the developments that occurred from 2012 to 2016.

IV. THE ESTABLISHMENT OF A DEFENCE UNIT WITHIN THE AFRICAN EXTRAORDINARY CHAMBERS

12. To establish the Defence Unit within the African Extraordinary Chambers (AEC), the Commission developed a Draft Additional Agreement to the Agreement establishing the AEC concluded on 22 August 2012 between the AU and the Government of Senegal. The said Additional Agreement was discussed and signed by both Parties in the margins of the 5th Ordinary Session of the Steering Committee held in Dakar, Senegal on 24 July 2014.

V. JUDICIAL ACTIVITIES OF THE AFRICAN EXTRAORDINARY CHAMBERS

13. As part of investigations, the Investigating Judges and Prosecutors of the AEC undertook in Chad the fourth International Rotatory Commission (IRC) from 24 May to 9 June 2014. This mission was devoted to analyzing bones and remains discovered in sites harboring supposed mass graves and continuing the hearings of victims and witnesses. The Judges and Prosecutors were accompanied by forensic anthropologists' medical experts.

14. The African Chambers commenced with the substantive trial on 20 July 2015, but had to postpone the trial to the next day when the accused person failed to appear in his defence. In the interest of justice and in keeping with international judicial practice, the Chamber appointed three (3) lawyers to defend the accused and deferred the hearing to 07 September 2015 to allow the newly assigned lawyers to acquaint themselves with the case of the accused.

15. The trial resumed on 07 November 2015. In total, ninety-two (92) witnesses and ten (10) international expert witnesses were heard by the Court with the last witnesses concluding evidence on 15 December 2015.

16. During the 10th Session of the Steering Committee, the Committee considered and adopted the recommendations contained in the report of the Activities of the President of the African Extraordinary Chamber. In the report, the President requested that the mandate of the trial Judges be extended until 31 July 2016 to enable the Trial Chamber finalize its work, which involved giving the parties reasonable time to prepare closing arguments, rendering the judgment and sentencing. The Committee recommended the requested extension to the Chairperson of the AU Commission for approval.

VI. ACTIVITIES OF THE STEERING COMMITTEE FOR THE FUNDING OF THE AFRICAN EXTRAORDINARY CHAMBERS

17. The Steering Committee for the Funding of the Hissene Habre Trial was established pursuant to Article 7 of the Joint Financial Agreement for the Funding of the Hissene Habre Trial signed by the African Union (AU), Chad, Senegal and various Partners on 15 January 2013.

18. The Steering Committee for the Funding of the African Extraordinary Chambers under the Chairmanship of the African Union held eleven (11) sessions in Dakar (Senegal). These sessions were attended by the Representatives of the following members of the Committee: *African Union, Senegal, Chad, Belgium, France, Germany, Luxemburg, Netherlands, EU, USA and the Office of High Commissioner for Human Rights (OHCHR)*.

19. The Steering Committee during its various sessions recommended and adopted *inter alia*, the following decisions:

- i) The Financial and Activity Reports of the Administrator of the African Extraordinary Chambers subject to validation and approval by the AU Directorate of Audit and External Auditors;
- ii) The extension of the duration of the trial without financial implications;
- iii) The extension of the terms of office of the Judges of the Pre-trial Chamber and the Investigating Judges of the AEC as well as the Prosecutors of the AEC;
- iv) The approval of the restructured budget of the African Extraordinary Chambers;
- v) The establishment of a Defence Unit within the AEC; and
- vi) The Extension of the contract of the Judges to allow the finalization of the process and to give the parties reasonable time to prepare closing arguments and for the judgment and sentencing processes to be completed.

20. The Steering Committee during its 10th Ordinary Session discussed the issue of reparation for victims in accordance with the provisions of the Statute of the AEC and requested the African Union to explore the possibilities of setting up a voluntary victim's fund sponsored by the African Union Member States and partners for reparation of victims which is envisaged by the Statute.

21. The Steering Committee also decided on the need to operationalize the Appeals Chamber and requested the African Union to commence the process for the recruitment and installation of the Judges of the Appeals Chamber prior to the conclusion of the

proceedings of the Trial Chamber in July 2016. The Candidates for the Appeals Chamber have since been interviewed and medically screened for selection.

VII. VERDICT ON THE HISEN HABRE CASE

22. On 30 of May 2016 the African Extraordinary Chamber delivered its Judgment on the Hissene Habre case.

23. The Court Pursuant to Article 10(2) of the Statute, found Hissene Habre guilty of crimes against humanity, rape, forced slavery, intentional homicide, massive and systematic practice of summary executions, abduction of people followed by *enforced disappearance*, torture and inhumane acts in violation of Article 6(a), (b), (f) and (g) of the Statute. He was also found guilty of the autonomous crime of torture under Article 8 of the Statute.

24. Pursuant to Article 10 (4) of the Statute, the accused, Hissene Habre, was found guilty of the following war crimes: murder, torture, inhumane treatment and unlawful detention under Article 7 (1) (a), (b) and (f) of the Statute, and murder and war crimes, torture, and cruel treatment under Articles 7(2)(a) of the Statute.

25. The Chamber acquitted the accused of illegal transfer and war crime under Article 7(1)(f) of the Statute.

VIII. PENALTY

26. In assessing the sentence, the African Extraordinary Chamber took into account the extreme gravity and scale of crimes for which the accused was convicted. The Chamber sentenced Hissene Habre to life imprisonment.

27. The Chamber ordered Hissene Habre to file an appeal if any, within a period of 15 days from the date of delivery of the said judgment in accordance with Article 360 of the Criminal Procedural code of Senegal.

IX. NEXT STEPS AND RECOMMENDATIONS

28. The next steps involve the operationalization of the Appeals Chamber which will include, recruitment and installation of the Judges and finding a solution to the issue of Reparation for Victims.

29. Given that Hissene Habre may not have the means to compensate the victims, the Commission recommends that the African Union should organize a pledging conference in collaboration with the Government of Chad to raise funds for reparation for victims in order to comply with the provisions of the Statute on the reparation for victims.

30. Against the above, the Commission recommends the adoption of a Decision by which the Assembly will request the Commission to organize a pledging conference in collaboration with the Government of Chad to raise the necessary funds for the establishment of a Victims' Reparation Fund.

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