

Report of the Commission on the Hissene Habre Case – EX.CL/1040(XXXI)

EXECUTIVE COUNCIL

Thirty-First Ordinary Session
27 June – 1 July 2017
Addis Ababa, ETHIOPIA

Original: French

I. INTRODUCTION

1. Pursuant to decision Assembly/AU/Dec.103 (VI), adopted in Khartoum, The Sudan in January 2006, the Assembly of the African Union decided to set up a Committee of Eminent African Jurists mandated to consider all the aspects and implications of the Hissène Habré 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 the ways and means of addressing issues of a similar nature that may arise 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 Hissène Habré Case and the African Union, which stipulated, *inter alia*, that the Assembly:

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

3. **OBSERVES** that, according to the terms of Articles 3 (h), 4 (h) and 4 (o) of the Constitutive Act of the African Union, the crimes of which Hissène Habré is accused 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 Hissène Habré;

5. **CONSIDERING** the jurisprudence 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 Hissène Habré Case as falling within the competence of the African Union;

- ii **MANDATES** the Republic of Senegal to prosecute and ensure that Hissène Habré 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 Assembly may recall that on 30 May 2016, the Extraordinary African Chambers (EAC) ruling in the first instance, rendered its judgment on the Hissène Habré Case. The EAC, pursuant to Article 10(2) of the Statute, found Hissène Habré 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. The EAC also found Hissène Habré guilty of the autonomous crime of torture under Article 8 of the Statute.

5. The Assembly may also recall that pursuant to Article 10 (4) of the Statute, the accused, Hissène Habré, 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 Article 7 (2) (a) of the Statute. The EAC acquitted the accused of unlawful deportation or transfer and war crimes under Article 7 (1) (f) of the Statute. On the basis of the crimes for which Hissène Habré was convicted, he was sentenced to life imprisonment.

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

6. The Steering Committee for the Funding of the Hissène Habré Trial was established pursuant to Article 7 of the Joint Financial Agreement for the Funding of the Trial signed by the African Union, Chad, Senegal and various Partners on 15 January 2013.

7. The Steering Committee for the Funding of the Extraordinary African Chambers, under the Chairmanship of the African Union, held fifteen (15) sessions in Dakar, Senegal. The sessions were attended by the Representatives of the following members of the Committee: *African Union, Senegal, Chad, Belgium, France, Germany, Luxemburg, Netherlands, European Union (EU), United States of America (USA), and the Office of the High Commissioner for Human Rights (OHCHR)*.

8. At its various sessions, the Steering Committee recommended and adopted, *inter alia*, the following decisions:

- i The Financial and Activity Reports of the Administrator of the Extraordinary African Chambers, validated and approved 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 EAC, as well as the Prosecutors of the EAC;
- iv The approval of the restructured budget of the Extraordinary African Chambers;
- v The establishment of a Defence Unit within the EAC; and
- vi The extension of the contract of the Judges to allow the finalization of the trial and to give the parties reasonable time to prepare closing arguments, and for the judgment and sentencing process to be completed.

9. The Steering Committee also contributed to the operationalization of the Appeals Chamber. The Commission initiated the process for the recruitment and installation of the Judges of the Appeals Chamber, appointed by the Chairperson of the Commission, prior to the conclusion of the proceedings of the Trial Chamber in July 2016. The Appeals Chamber was then operationalised from July 2016. It rendered its decision on 27 April 2017.

10. The last meetings of the Steering Committee considered the Financial and Activity Reports of the EAC, issues concerning the end of the activities of the latter, and the Statute of the Victims' Reparation Fund identified within the framework of the Hissène Habré Case. At the Thirteenth, Fourteenth and Fifteenth Sessions of the Steering Committee matters arising from the end of activities of the Chambers and the Statute of the Victims' Reparation Fund were discussed.

11. The Statute of the Victims' Reparation Fund was developed by the Commission, then considered and validated by the Steering Committee at its Fourteenth Session.

12. Furthermore, at the request of the Commission, the Steering Committee decided on the payment of the balance of the EAC funding to the Victims' Reparation Fund (approximately three hundred million (350.000.000) CFA francs).

III. APPEAL FILED AGAINST THE DECISION OF THE ASSIZE CHAMBER

13. On 10 June 2016, the Defence filed an appeal against the Prosecution. Under the appeal, the Defence alleged: (i) procedural errors, (ii) factual errors, and (iii) errors of law.

- i The procedural errors focused specifically on six (6) grievances. Firstly, the alleged failure by the Assize Chamber to rule on the plea of nullity of the Committal Order entered *in limine litis* by the Defence. In addition, the Defence complained that the Assize Chamber simply read a summary of the judgment instead of a full reading of the Decision. Concerning the third

grievance, the Defence complained that the Assize Chamber failed to identify by means of identification cards the witnesses and the civil claimants in the statements that served to establish the guilt of the Accused. Furthermore, in the fourth grievance, the Defence cited the absence of the signatures by the Registrars in attendance on the Judgment, signatures which in their opinion constitute an essential formality for authentication for any judicial decision in Senegal, the absence of which constituted additional grounds for nullity. The fifth grievance concerned the unavailability of the judgment during the appeal period: the rights of the Defence were alleged to have been violated insofar as the Decision on the prosecution and recording the grounds for conviction was not available during the appeal period. Lastly, on procedural matters and as the sixth grievance, the Defence complained that the Judges of the Assize Chamber did not respond to pleas regarding the impossibility of the Assize Chamber validating the provisional measures taken by the Investigatory Chamber on the property of the Accused.

- ii On factual errors, the Defence referred to five (5) grievances concerning the Judgment of the Assize Chamber. Firstly, it alleged that several witnesses were present during the deliberations until they gave evidence, which could have changed their testimony. Secondly, the Defence argued that public broadcasting of deliberations influenced the testimonies. Thirdly, the Defence contended that the Assize Chamber committed a factual error by calling Mr Daniel Fransen as a witness when he had served as an investigating judge against the Accused within the framework of proceedings initiated in Belgium. As a fourth grievance, the Defence felt that the recognition of Hissène Habré's responsibility in the execution of prisoners of war resulted from lax evaluation of the evidence. Lastly, the Defence alleged that Assize Chamber concluded that Hissène Habré was liable in his capacity as hierarchical superior, while ignoring the relevant legal elements.
- iii Regarding the errors of law, the Defence contested Hissène Habré's liability for the crime of rape, and the fact that the decision of the Assize Chamber of N'Djamena was not taken into consideration.

14. It should be noted that the Defence and the civil parties also appealed the Decision on reparations rendered by the Assize Chamber. The grievances concern mainly the issue of the recognition of the civil plaintiffs, the rejection of collective and moral reparations, lack of precision concerning individual reparations and, lastly, the amount allocated to victims as compensation. Considering that on 10 June 2016, the Defence filed an appeal on the Decision on the prosecution and the Attorney General filed a cross-appeal, all the parties lodged their appellate briefs within the fixed deadline of 7 to 27 December 2016, and the appeal hearings were held from 9 to 12 January 2017.

IV. JUDICIAL ACTIVITIES OF THE APPEALS CHAMBER OF THE EAC

15. In ruling on the allegations of factual errors and errors of law made against the Assize Chambers by the Defence, the Appeals Chamber, in conformity with its mandate, first declared inadmissible the appeals of the Defence concerning the absence of the signatures of the Registrars on the judgment and the conviction of Hissène Habré for war crimes. It then overturned the Decision of the Assize Chamber on the Hissène Habré's liability for the crime of rape, acquitting him for that crime. The Appeals Chamber however confirmed the other provisions of the Decision rendered by the Assize Chamber, particularly concerning the sentencing of the Accused to life imprisonment, and rejected the other grounds for appeal, confirming the other provisions of the Prosecution's judgement.

16. Council may recall that the judgment in the first instance retained 4 866 victims to be compensated according to the principle of full reparation. The overall budget was therefore determined to be fifty billion nine hundred and twenty million (50.920.000.000) CFA francs, allocated as follows:

- 8 victims of rape and sexual enslavement to be compensated for the amount of 20 million each;
- 1 540 victims of arbitrary detention to be compensated for the amount of 15 million each;
- 2 754 indirect victims to be compensated for the amount of 10 million each.

17. Ruling on the Decision on reparations, the Appeals Chamber partially overturned the Decision of the Assize Chamber and carried out the necessary corrections by recognising 7 396 victims as civil plaintiffs, to whom the amount of eighty-two billion two hundred and ninety million (82 290 000 000) CFA francs was allocated as compensation. While condemning Hissène Habré to pay this amount, the Chamber acknowledged that the Accused's assets could not cover all the compensation to victims.

18. The Appeals Chamber, *inter alia*, (i) directed the Fund established by the African Union to implement the individual reparations, (ii) ordered that the proceeds of confiscated property and any other of the Defendant's assets that might be discovered should be deposited into the Fund, (iii) invited the Fund to contact the Government of Chad, interested States and organizations, and civil party associations on the possible realisation and implementation of collective and moral reparations.

19. Furthermore, the Appeals Chamber designated the Dakar High Court to hear any issues that may arise after the dissolution of the Extraordinary African Chambers.

V. NEXT STEPS AND RECOMMENDATIONS

20. The Commission would like to recommend to the Assembly the adoption of a decision:

- i Requesting the Commission to undertake the implementation of the Statute of the Fund, as approved by the Assembly, with a view to its rapid operationalization, particularly through the speedy appointment of the Secretary of the Fund and members of the Fund's Board of Directors by the Chairperson of the Commission, in conformity with the provisions of the Statute.
- ii Requesting the Commission to carry out the necessary consultations with the Chadian and Senegalese Authorities to decide on the Headquarters of the Fund, while bearing in mind that in conformity with the Decision of the EAC Appeals Chamber, the Senegalese courts have jurisdiction for any issues arising from the application of the decision of the EAC.
- iii Inviting Member States, Partners of the Union and any other governmental or non-governmental organizations to contribute to the Victims' Reparation Fund with a view to effectively compensating the victims.

Annex

STATUTE OF THE TRUST FUND FOR VICTIMS OF HISSÈNE HABRÉ'S CRIMES

PREAMBLE:

The Assembly,

Recalling Decision Assembly/AU/Dec.103 (VI) adopted by the Assembly of the Union in January 2006, in Khartoum, The Sudan, on the establishment of the Extraordinary African Chambers (EAC);

Recalling Decision Assembly/AU/Dec.401 (XVIII) adopted on 31 January 2012 by the Assembly of Heads of State and Government of the African Union requesting the African Union and the Government of Senegal to consider the practical modalities and the legal and financial implications of a trial for international crimes committed on Chadian territory during the period from 07 June 1982 to 1 December 1990;

Recalling Decision Assembly/AU/Dec.615 (XXVII) adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda, on the establishment of a Trust Fund on reparations for the rightful victims of crimes within the jurisdiction of the Extraordinary African Chambers;

Recalling the Statute of the Extraordinary African Chambers within Senegalese jurisdiction for proceedings for international crimes committed on the territory of the Republic of Chad during the period from 7 June 1982 to 1 December 1990;

Noting the objectives and principles of the African Union on the respect of democratic principles, human rights, the rule of law and good governance;

Bearing in mind Articles 27 and 28 of the Statute of the Extraordinary African Chambers which provides for reparations and the establishment of a Trust Fund for victims;

Taking note of the judgements rendered by the Extraordinary African Chambers on 29 July 2016 and 27 April 2017 awarding reparations to the victims of Hissène Habré;

Have agreed as follows:

Article 1 – Definitions

For the purpose of this Statute:

«**African Union**» or «**Union**» means the African Union established by the Constitutive Act adopted on 11 July 2000 and which entered into force on 26 May 2001;

«**Assembly**» means the Assembly of Heads of State and Government of the African Union;

«**Board**» means the Board of Directors of the Trust Fund;

«**Chairperson**» means the Chairperson of the Board of Directors of the Trust Fund;

«**Constitutive Act**» means the Constitutive Act of the African Union;

«**Executive Council**» means the Executive Council of Ministers of the Union;

«**Fund**» means the Trust Funds for victims of Hissène Habré's crimes;

«**Member States**» means Member States of the Union;

«**Secretariat**» means the Secretariat of the Trust Funds for victims of Hissène Habré's crimes;

«**Statute**» means the Statute of the Trust Fund for victims of Hissène Habré's crimes;

“**Victim**” means victim as defined in the ruling of the Extraordinary African Chambers of 27 April 2017.

Article 2 – Establishment

1. The Trust Fund for victims of the crimes of Hissène Habré shall be established pursuant to Articles 27 and 28 of the Statute of the Extraordinary African Chambers and Decision Assembly/AU/Dec.615 (XXVII), adopted by the Assembly of the Union in July 2016 in Kigali, Rwanda.

2. The Fund shall have legal personality.

Article 3 – Purpose

1. The purpose of this Statute is to establish an institutional framework for compensation and reparations for victims of Hissène Habré's crimes.

2. The Trust Fund shall be established to serve as the implementing body for the decision on reparations pronounced by the Extraordinary African Chambers, in order to mobilize the necessary funds and pay the said reparations to the victims of Hissène Habré's crimes.

Article 4 – Principles

The principles of confidentiality, transparency, non-discrimination, impartiality, efficiency, independence, and equity shall guide the management and control

structures for the disbursement of funds and the pursuit of activities within the scope of their respective mandates.

Article 5 – Structure of the Fund

The governance structures of the Fund shall be as follows:

- a the Board of Directors; and
- b the Secretariat.

Article 6 – Composition of the Board of Directors

1. The Board of Directors shall be composed of the following members:

- a One (1) representative of the African Union Commission (AUC);
- b One (1) representative of the Republic of Chad;
- c One (1) representative of victims from the three major victims' associations;
- d One (1) representative from a Civil Society Organization with proven expertise, and ideally, accredited to the African Union.

2. The participation of members of victims' associations shall be based on rotation according to alphabetical order, for a period of six (6) months, between the three victims' associations.

3. One (1) or several representatives of contributors may be included on the Board. If necessary, coordination shall be organized between the contributors.

4. The Board of Directors may admit other members as observers. The two other representatives of non-member victims' associations shall be admitted to participate in deliberations as observers.

5. The Legal Counsel of the African Union or his/her representative shall attend Board meetings to provide any legal advice that may be necessary.

6. The Secretary of the Fund shall act as the Secretariat of the Board.

7. Members of the Board must demonstrate high standards of integrity, impartiality and proven skills in the area of compensation and reparations for victims within the meaning of the Statute.

Article 7 – Functions of the Board

1. The functions of the Board shall be to:

- a Decide on the allocation by the Secretariat of the proceeds of confiscated property and all other assets of the convicted person to the Fund;
- b Direct the Secretariat on the necessary measures to be taken, particularly by the mechanism for judicial assistance, to locate and recover assets belonging

to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;

- c Determine the guidelines and actions to be carried out by the Secretariat with a view to implementing collective and moral reparations, in collaboration with the Governemnt of Chad, interested States and organizations, as well as the associations of civil parties;
- d Consider the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers for receipt by the Secretariat;
- e Consider requests for recognition of Victim Status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
- f Decide on the organisation by the Secretariat of donors' conferences with a view to collecting voluntary contributions to the Fund;
- g Supervise the activities of the Secretariat relating to the collection of voluntary contributions and ensure that the Secretariat makes sustained efforts to raise funds;
- h Approve the draft budget of the Fund for its functioning and activities related to its mandate;
- i Decide on the disbursement and actual payment of reparations and compensation to victims and their beneficiaries;
- j Carry out supervision and monitoring in order to ensure responsible and appropriate use of funds in conformity with the applicable regulations of the African Union;
- k Adopt the Handbook of Procedures proposed by the Secretariat;
- l Proivde strategic guidelines for the Secretariat in confromity with the relevant rules and procedures of the African Union;
- m Consider the reports and proposals of the Secretariat;
- n Report to the Executive Council of the African Union through the Commission;

2. The Fund may call on the assistance of independent experts within the framework of its mandate.

Article 8 – Chair of the Board

The Board shall be chaired by the Representative of the African Union Commission.

Article 9 – Meetings

1. The Board of Directors shall meet in ordinary sessions at least once every quarter during each year, at the Headquarters of the Secretariat.

2. The Board may meet in extraordinary sessions when circumstances so require, and the Chairperson shall determine the start date, duration and venue of each

extraordinary session. Extraordinary sessions may be held in person, by telephone, internet or video conference.

3. The Secretariat shall propose, in consultation with the Chairperson, the provisional agenda of ordinary and extraordinary sessions. The Secretariat may receive proposals for items to be included on the agenda from other Board members. Any proposed item shall be accompanied by an explanatory statement, and where possible, documents or a draft decision. All documents shall be circulated to Board members at least one month prior to the session. The provisional agenda shall be submitted for consideration by the Board of Directors at the beginning of the relevant session.

4. The Executive Secretary of the Fund shall attend sessions of the Board as a resource person.

5. The Board may invite other persons with relevant skills to attend some of its sessions, if need be, and make oral or written statements and advise on issues under consideration.

6. Meetings of the Board shall be held in closed sessions, unless it is decided otherwise. Decisions and minutes of the Board shall be made public, subject to confidentiality, and shall be communicated to interested parties. At the end of a meeting of the Board of Directors, the Chairperson may make a communication through his/her Secretariat.

7. The quorum for a Board meeting shall be a simple majority.

Article 10 – Working Languages

1. The working languages of the Board shall be English and French.

2. The Board may decide that one of the other working languages of the African Union be used when the language is understood and spoken by the majority of persons concerned, and its use will facilitate the conduct of the deliberations of the Board.

Article 11 – Decisions of the Board

1. Decisions of the Board shall be taken at ordinary or extraordinary sessions.

2. Every effort shall be made to reach decisions by consensus. If a consensus cannot be reached, all decisions shall be adopted by the simple majority of voting Board members.

3. The Board shall adopt its rules of procedure.

Article 12 – Remuneration of Board Members

1. Members of the Board shall not receive any remuneration to serve on the Board, apart from the reimbursement of eligible expenses relating to activities of the Board, in conformity with the Handbook of Procedures of the Fund.
2. Reimbursements shall be made from voluntary contributions to the General Fund.

Article 13 – Secretariat

1. The Chairperson of the Commission, on the recommendation of the Board, shall appoint the Chief Executive of the Secretariat;
2. The functions of the Secretariat shall be as follows:
 - a Provide the necessary assistance for the smooth functioning of the Board;
 - b Implement the reparations decided on by the Board, in conformity with the Handbook of Procedures;
 - c Allocate the proceeds of confiscated property or any other assets of the convicted person to the Fund in conformity with the decisions of the Board;
 - d Take all necessary measures, pursuant to decisions by the Board, particularly by the mechanism for legal assistance, to locate and recover assets belonging to the convicted person, whose direct link to the latter can be established in implementation of the ruling on his case;
 - e Seek, pursuant to the Board's decision, with the Government of Chad, interested States and organizations, as well as associations of civil parties, the realization and implementation of collective and moral reparations;
 - f Receive, pursuant to the Board's decision, the assets awarded as compensation under Articles 27 and 28 of the Statute of the Extraordinary African Chambers;
 - g Receive and submit to the Board for consideration, requests for recognition of Victim Status from persons who did not participate in the proceedings and those whose requests were rejected pursuant to the ruling of the Extraordinary African Chambers of 27 April 2017;
 - h Organize, pursuant to the Board's decision, donors' conferences to obtain voluntary contributions for the Fund;
 - i Seek and collect voluntary contributions;
 - j Submit the draft budget of the Fund to the Board for adoption;
 - k Ensure the disbursement and actual payment of reparations and compensation to victims and their beneficiaries, in accordance with the decisions of the Board;
 - l Propose a Handbook of Procedures for adoption by the Board;
 - m Prepare regular reports for consideration by the Board;
3. The Secretariat may call on the assistance of independent experts within the framework of its mandate.

4. The Headquarters of the Secretariat shall be based in

Article 14 – Submission of Reports

The Secretariat shall submit half-yearly reports to the Board on:

- a its activities;
- b the financial management of the Fund;
- c the implementation of decisions of the Board.

Article 15 – Financing of the Fund

1. The Fund shall be financed from the recovering of the assets of persons sentenced in accordance with the verdict of the Extraordinary Chambers of Africa, including through the Judicial mutual assistance mechanism and by the voluntary contributions of Member States, foreign governments, international institutions, non-governmental organisations and other entities willing to support the victims.,

2. The Board shall, within the framework of its annual report to the Executive Council of the African Union on the activities and projects of the Fund, appeal as many times as necessary, for voluntary contributions to the Fund.

3. All other voluntary contributions received by the Fund should emanate from sources that conform to the Financial Rules and Regulations of the AU.

4. The Fund shall accept only subsidies, donations or other benefits that conform to the objectives of the AU.

5. The Board shall develop mechanisms that would enhance the verification of the origin of money received by the Fund.

6. Voluntary contributions from Governments shall not be transferred. Voluntary contributions emanating from other sources may be transferred by the donor to a maximum of one-third of the contribution, to another activity of the Fund when requested by the donor:

- a For victims and, when individuals are concerned, to their families;
- b Will not lead to discrimination based on race, colour, gender, language, religion, political leaning or other, nationality, ethnic group or other, assets, birth or any other status, on condition that the contributions are intended to assist those who are enjoying a specific protection in accordance with international law are not considered as discriminatory.

7. When a contribution is transferred and where the corresponding objective cannot be attained, the Board shall transfer the contribution to its general account subject to the consent of the donor.

8. When a contribution is transferred and where the corresponding objective cannot be attained, the Board shall transfer the contribution to its general account subject to the consent of the donor.

9. The Board shall not accept voluntary contributions:

- a That are deemed incompatible with the objectives and activities of the Fund;
- b That are deemed to have been transferred in a manner that does not conform to the provisions of Paragraph 6. Before turning down such a contribution, the Board shall request from the donor the possibility of cancelling the transfer or to modify it in order to make it acceptable;
- c Which would compromise the independence of the Fund;
- d Whose distribution would lead to a clearly unequal distribution of the Fund and available assets to the various groups of victims;

Article 16 – Functioning of the Fund

1. The bank accounts of the Fund shall be opened in accordance with the Financial Rules and Regulations of the African Union and with the Procedural Handbook of the Fund.

2. The accounting system of the Fund shall enable the separation of funds in order to facilitate the introduction of transferred contributions.

3. The Fund shall be audited in accordance with the Financial Rules and Regulations of the AU.

4. The Secretariat shall receive the resources that the Extraordinary African Chambers may decide to transfer to the Fund. It shall take note of the sources and the amounts received as well as all other information relating to the use of the money.

Article 17 – Beneficiaries

The resources of the Fund shall serve to compensate:

- a The victims of the crimes of Hissène Habré that fall under the jurisdiction of the Extraordinary African Chambers, as set out in the verdict of the Extraordinary African Chambers.
- b People who did not participate in the procedure and those whose applications have been rejected, in accordance with the verdict of the Extraordinary African Chambers of 27 April 2017.

Article 18 – General Principles

1. The Board of Directors may decide to consult the victims and, in the case of individuals, their families as well as their legal representatives and may consult

any competent expert or any organisation of experts within the framework of the conduct of its activities and projects.

2. For the purposes of this Statute and in accordance with the Procedural Handbook and the verdict of the Extraordinary African Chambers, the Fund shall be considered as seized when the Board of Directors shall deem it necessary to offer a physical or psychological reparation or material support to victims and their families.

Article 19 – Sensitization

1. Once the Fund goes operational, the Chairman of the Board of Directors shall issue a statement through his/her Secretariat.

2. The statement may indicate the basis of its activities and its projects, and if need be, provide any additional information. An appeal for voluntary contributions may accompany the statement.

3. The Board of Directors shall launch a sensitization and information campaign which it shall deem appropriate with a view to increasing voluntary contributions. The Board may, in this regard, solicit assistance from the Secretariat.

Article 20 – Verification

1. The Secretariat shall ensure that all persons who submit applications to the Fund are part of the beneficiaries, in accordance with the principles set out in the verdict of the Extraordinary African Chambers.

2. Subject to the stipulations set out in the verdict of the Extraordinary African Chambers, the Board of Directors shall define the norms provided for the verification exercise, taking into account the current situation of the group of beneficiaries and available evidence.

Article 21 – Disbursement of Reparations

1. The Fund shall define the modalities for the disbursement of reparations to beneficiaries taking into account their current situation and their place of residence, in accordance with the principles set out in Article 4.

2. The Fund may decide to resort to the services of middlemen in order to facilitate the disbursement of reparations, if need be, provided it would facilitate access to groups of beneficiaries and avoid conflicts of interests. The middlemen may be national or international non-governmental organisations working in close proximity with groups of beneficiaries and representatives of beneficiaries.

3. The Secretariat should put in place procedures that would ensure that reparation allowances have been duly received by beneficiaries, in accordance with the implementation plan of a disbursement programme. The beneficiaries shall be bound to acknowledge receipt of the reparation in writing or by other means of identification and these registers should be preserved by the Secretariat. Additional random checks and the monitoring of the reparation register should be executed in order to avoid unexpected difficulties or the risk of fraud and corruption.

Article 22 – Information Requirements

1. The Board of Directors shall submit an annual written report on the activities of the Fund to the Executive Council through the Commission.
2. The annual report of the Board of Directors shall be made public, subject to confidentiality.

Article 23 – Privileges and Immunities

1. The Funds, its representatives and its staff shall enjoy, on the territory of each Member State, the privileges and immunities provided for in the 1965 General Convention on Privileges and Immunities of the Organisation of African Unity and other relevant international instruments.
2. The Headquarters Agreement concluded between the Fund and the host country of the Fund, shall govern the relations between the Fund and the host country.

Article 24 – Amendments

Amendments to this Statute may be proposed by the Board of Directors and shall enter into force upon adoption by the Assembly of the Union.

Article 25 – Entry into Force

This Statute shall enter into force upon its approval by the Assembly of the Union.

DRAFT DECISION ON THE REPORT OF THE COMMISSION ON THE HISSÈNE HABRE CASE

Doc. Ex.CL/1040(XXXI)

The Executive Council,

1. **TAKES NOTE** of the Report of the Commission on the implementation of the Assembly decision on the Hissène Habre trial;

2. **ALSO TAKES NOTE** of the Decision of the Appeal Chamber of the African Extraordinary Chambers in the Hissène Habre case;

3. **PURSUANT** to Articles 27 and 28 of the Statute of the African Extraordinary Chambers on the need to address reparation for victims and the establishment of a reparation fund for victims, **RECOMMENDS THE ASSEMBLY TO:**

- i Adopt the recommendations contained in the Report of the Commission on the Hissène Habre case;
- ii Endorse the Statute of the Trust Fund for victims of Hissène Habré crimes and to request the Commission to fully operationalize the Trust Fund for victims, through the appointment of the Members of the Board and the Secretary of the Trust Fund, in accordance with the Statutes of the Trust Fund;
- iii Request the Commission to make the necessary consultations with the Government of the Republic of Chad and the Government of the Republic of Senegal for the determination of the seat of the Secretariat of the Trust Fund, bearing in mind that, in accordance with the Decision of the African Extraordinary Chambers, the Senegalese Courts will have jurisdiction over all matters arising from the implementation of the African Extraordinary Chambers' decision;
- iv Invite Members States, partners and any other governmental or nongovernmental organisation to voluntarily contribute to the Trust Fund and fully support the African Union Commission, in order to ensure the prompt and effective reparation of the victims as per the Decision of the African Extraordinary Chambers.
- v Remain seized of the matter and requests the Commission to report on the progress made at subsequent sessions of the Assembly.

DRAFT DECISION ON THE REPORT OF THE COMMISSION ON THE HISSENE HABRE CASE

Doc. Assembly/AU/.....(XXIX)

The Assembly,

1. **TAKES NOTE** of the Report of the Commission on the implementation of the Assembly decision on the Hissene Habre trial;

2. **CONGRATULATES** the Republic of Chad, the Republic of Senegal, the Commission, AU Partners, Countries and Institutions that contributed to the establishment and funding of the African Extraordinary Chambers towards the successful conclusion of proceedings in the Hissene Habre case;

3. **WELCOMES** the Decision of the Appeal Chamber of the African Extraordinary Chambers in the Hissene Habre case;

4. **NOTES** the efforts made by the Commission and the Steering Committee on the Funding of the Hissene Habre Trial on the operationalization of the Trust Fund for the Victims;

5. **PURSUANT** to Articles 27 and 28 of the Statute of the African Extraordinary Chambers on the need to address reparation for victims and the establishment of a reparation fund for victims, **DECIDES**:

- i To endorse the recommendations contained in the Report of the Executive Council on the Report of the Hissene Habre case;
- ii Endorse the Statute of the Trust Fund for victims of Hissène Habré crimes and to request the Commission to fully operationalize the Trust Fund for victims, through the appointment of the Members of the Board and the Secretary of the Trust Fund, in accordance with the Statutes of the Trust Fund;
- iii To request the Commission to make the necessary consultations with the Government of the Republic of Chad and the Government of the Republic of Senegal for the determination of the seat of the Secretariat of the Trust Fund, bearing in mind that, in accordance with the Decision of the African Extraordinary Chambers, the Senegalese Courts will have jurisdiction over all matters arising from the implementation of the African Extraordinary Chambers' decision;
- iv To invite Members States, partners and any other governmental or non-governmental organisation to voluntarily contribute to the Trust Fund and fully support the African Union Commission, in order to ensure the prompt and effective reparation of the victims as per the Decision of the African Extraordinary Chambers.
- v To remain seized of the matter and requests the Commission to report on the progress made at subsequent sessions of the Assembly.