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Open Joint Letter to all Honourable Members of the African Commission on Human and Peoples' Rights

RE: CONCERNS REGARDING THE PREMATURE TERMINATION OF THE COMMISSION OF INQUIRY ON THE SITUATION IN THE TIGRAY REGION OF THE FEDERAL REPUBLIC OF ETHIOPIA

We, the undersigned civil society, and human rights organizations are alarmed by your recent decision¹ to prematurely terminate the mandate of the Commission of Inquiry into the situation in the Tigray Region of the Federal Republic of Ethiopia (Col).

The undersigned organizations concerned by grave human rights violations and abuses committed in the conflict in northern Ethiopia, welcomed the May 2021 initiative² of the African Commission on Human and Peoples' Rights (African Commission) to establish the Commission of Inquiry to, among others, determine the underlying causes of the conflict, investigate violations of international human rights law and international humanitarian law, and identify perpetrators for purposes of pursuing justice and accountability. Several of the undersigned civil society and human rights organizations submitted briefings and information to the Commission of Inquiry on the nature and scale of human rights violations and abuses committed by the parties to the conflict. It was encouraging to witness an African organization take the lead in establishing an independent body to investigate these violations and abuses.

We are, therefore, shocked and perplexed by the decision to terminate the mandate of the Commission of Inquiry without publishing a report of its findings and recommendations. This decision contradicts the rationale behind the establishment of the Commission of Inquiry and the core values underpinning the work of the African Commission as set out in the African Charter on Human and Peoples' Rights and the 2020 Rules of Procedure. It sets a detrimental precedent for future investigative mandates into human rights violations across the continent.

The reasons given by the African Commission in support of its decision are not convincing.

First, the African Commission's decision is informed by the fact that the Ethiopian government is in the process of adopting "an inclusive and comprehensive national transitional Justice policy, centered on accountability, truth seeking, redress for victims, and reconciliation and healing, in line with the Constitution of the Federal Democratic Republic of Ethiopia, and the African Union's (AU) 2019 Transitional Justice Policy (AUTJP)".

It is disappointing that the African Commission, in its decision to terminate the mandate of the Commission of Inquiry, relied on a transitional justice policy proposal that is yet to be adopted. This reasoning also fails to recognize that continued investigations and evidence preservation efforts by independent bodies are central to

¹ Africa Commission on Human and Peoples' Rights, *Resolution on the termination of the mandate of the Commission of Inquiry on the Situation in the Tigray Region of the Federal Democratic Republic of Ethiopia - ACHPR/Res.556 (LXXV) 2023*, 13 June 2023, <https://achpr.au.int/en/adopted-resolutions/556-resolution-termination-mandate-commission-inquiry>

² African Commission on Human and Peoples' Rights, *Press Statement on the official launch of the Commission of Inquiry on the Tigray Region in the Federal Democratic Republic of Ethiopia*, 16 June 2021, <https://au.int/en/pressreleases/20210616/press-statement-official-launch-commission-inquiry-tigray-region-federal>

any eventual justice and accountability for victims and survivors, and constituent of holistic transitional justice mechanisms.

Second, the African Commission's decision is based on the fact the Ethiopian government has initiated a national process to "address the situation in the country and ensure accountability and redress for reported cases of human rights violations in the Tigray region" and that this process "offer[s] prospects for a national, inclusive and sustainable approach to addressing the situation in the country and taking adaptive measures". The reasoning fails to recognize the crucial issues of independence and impartiality³ of the judiciary in Ethiopia, as the executive continues to interfere with judicial functions, including the frequent non-compliance of police to execute court orders.⁴ While we understand that legal reform has been initiated by the Ministry of Justice, Ethiopian criminal law does not currently recognize crimes against humanity, which have been widely reported in the conflict in northern Ethiopia, including the Tigray region. The role of independent investigative mechanisms in ensuring justice, accountability, and redress is indispensable due to the complexities of investigation, prosecution, and adjudication of the temporal scope, elements of these serious crimes, and the alleged perpetrators, including a foreign army.

Third, the African Commission's decision is based on "positive developments" in the Tigray region, including restoration of peace and security, reconciliation, disarmament, demobilization, and rehabilitation. This fails to recognize ongoing gross human rights violations and abuses in the Tigray region, including a continued ethnic cleansing⁵ campaign in the western Tigray zone by Amhara security forces and interim authorities, as documented by Human Rights Watch. In a joint monitoring report published on 9 July 2023, civil society organizations also compiled various incidents where civilians were targeted after the Cessation of Hostilities Agreement (COHA), in areas controlled by Eritrean troops. Human rights organizations have diligently documented violations, including war crimes⁶, ethnic cleansing⁷, sexual violence⁸, and crimes against humanity⁹ in northern Ethiopia for more than two years, and recent reports indicate that these violations persist. Since early August, a new conflict dynamic has emerged in the Amhara region, and international media outlets have reported civilian casualties.¹⁰ The commission's decision overlooked the complexity and broader context of the conflict in Ethiopia, which has an impact beyond the Tigray region, affecting the country as a whole.

We believe that the African Commission's decision mistakenly buys into the rhetoric¹¹ provided by the Ethiopian government- a party to the conflict and accused of war crimes and crimes against humanity - to eschew justice and accountability. We are apprehensive that in taking this unfortunate decision, the African Commission may have succumbed to undue political pressure from the Ethiopian government. The decision came barely four months after the Deputy Prime Minister of Ethiopia, in an address to the African Union Executive Council in February 2023, argued that the Commission of Inquiry "undermine[d] the AU-led Peace Process, the Peace Agreement, and its full implementation" and demanded that the African Commission "stop

³ "Ethiopia: Freedom in the world 2022", *Freedom House*, <https://freedomhouse.org/country/ethiopia/freedom-world/2022>

⁴ "Detained Ethiopian journalists still behind bars as police refuse to release them on bail despite court order – Lawyer", *Africa News Watch*, 8 June 2022, <https://africanewswatch.com/2022/06/detained-ethiopian-journalists-still-behind-bars-as-police-refuse-to-release-them-on-bail-despite-court-order-lawyer/>

⁵ Human Rights Watch, *Ethiopia: Ethnic Cleansing Persists Under Tigray Truce*, 1 June 2023, www.hrw.org/news/2023/06/01/ethiopia-ethnic-cleansing-persists-under-tigray-truce

⁶ Human Rights Watch, *Ethiopia: Tigray Forces Summarily Execute Civilians*, 9 December 2021, www.hrw.org/news/2021/12/10/ethiopia-tigray-forces-summarily-execute-civilians

⁷ Human Rights Watch, *Crimes against Humanity and Ethnic Cleansing in Ethiopia's Western Tigray Zone*, 6 April 2022, www.hrw.org/news/2022/04/06/crimes-against-humanity-and-ethnic-cleansing-ethiopia-western-tigray-zone

⁸ Amnesty International, *Ethiopia: Troops and militia rape, abduct women and girls in Tigray conflict – new report* (10 August, 2021), www.amnesty.org/en/latest/news/2021/08/ethiopia-troops-and-militia-rape-abduct-women-and-girls-in-tigray-conflict-new-report/

⁹ Amnesty International, *Ethiopia: Summary killings, rape and looting by Tigrayan forces in Amhara* (Index: AFR 25/5218/2022)

¹⁰ BBC Amharic, *Multiple civilian casualties in Gondar city, 9 August 2023* www.bbc.com/amharic/articles/c5120zq55jqo

¹¹ Amnesty International, *Ethiopia: Government's effort to end mandate of UN human rights commission must be rejected*. (Press release, 3 March 2023), www.amnesty.org/en/latest/press-release/2023/03/ethiopia-governments-effort-to-end-mandate-of-un-human-rights-commission-must-be-rejected/

its consideration to undertake a unilateral investigation irrespective of ongoing national efforts¹². These remarks were a culmination of close to two years of unwarranted political attacks and a spirited smear campaign against the Commission of Inquiry by the Ethiopian government. In the same speech, the Deputy Prime Minister announced that the Ethiopian government was planning to present a resolution at the March 2023 session of the United Nations Human Rights Commission to terminate the mandate of the International Commission of Human Rights Experts on Ethiopia.¹³

We acknowledge that the Ethiopian government declined to grant the Commission of Inquiry access into the country to conduct investigations. However, we note that in its combined 50th and 51st activity report, the African Commission reported that the Commission of Inquiry had “held oral hearings to receive the testimonies of witnesses and victims” and that it had also “received reports on the human rights situation in the Tigray region”. Through this activity report¹⁴, the African Commission informed the African Union Executive Council and the public at large that “[a] report on the findings and recommendations will be presented in this regard”. In its 52nd and 53rd activity report, presented to the African Union Executive Council in February 2023, the African Commission indicated that the mandate of the Commission of Inquiry had been renewed multiple times to allow it to “finalize its work and draft its investigation report for submission to the AU policy organs”.

Therefore, it remains unconscionable that the Commission of Inquiry failed to produce a report during its two-year-long existence and that instead of allowing it to finalize its work as promised in February 2023, the African Commission prematurely terminated its mandate. The termination of the mandate is also an abdication of the Commission’s duty towards victims and witnesses who appeared before the Commission of Inquiry to share their pains and sufferings hoping that they will one day see justice and accountability.

Considering the above concerns, we call upon **the African Commission to promptly reconsider its decision to terminate the mandate of the Commission of Inquiry and ensure that its mandate concludes, at least, with a report of its findings and recommendations.**

1. Advocacy Hub Africa
2. African Centre for Justice and Peace Studies (ACJPS)
3. Alliance of Civil Society Organizations in Tigray (ACSOT)
4. Amnesty International
5. Atrocities Watch Africa
6. Center for Advancement of Rights and Democracy (CARD)
7. Center for Reproductive Rights
8. Centre for Human Rights, University of Pretoria
9. Centre for Rights Education and Awareness (CREAW)
10. Centre for the Study of Violence and Reconciliation (CSVR)
11. CIVICUS
12. Global Centre for the Responsibility to Protect
13. Health Professionals Network for Tigray
14. Human Rights Watch
15. Independent Medico-Legal Unit (IMLU)
16. Initiative for Strategic Litigation in Africa (ISLA)
17. Institute for Human Rights and Development in Africa (IHRDA)
18. International Federation for Human Rights (FIDH)
19. Irob Anina
20. Kenya Human Rights Commission (KHRC)

¹² Human Rights Watch, *Threats to Terminate the Mandate of the International Commission of Human Rights Experts on Ethiopia*, 28 February 2023, www.hrw.org/news/2023/02/28/threats-terminate-mandate-international-commission-human-rights-experts-ethiopia

¹³ Ashenafi Endale, “Ethiopia demands termination of mandate for UN rights experts” *The Reporter*, 17 December 2022, <https://www.thereporterethiopia.com/28639/>

¹⁴ Previously cited, 1, 2

21. Kenyan Section of the International Commission of Jurists (ICJ Kenya)
22. Legal Action Worldwide (LAW)
23. OMNA Tigray
24. Pan African Lawyers Union (PALU)
25. Physicians for Human Rights (PHR)
26. REDRESS
27. South Sudan Law Society (SSLS)
28. Swedish Foundation for Human Rights
29. Tadamon Multicultural Council for Refugees, Egypt
30. Tigray Human Rights Network.
31. Women's Association for Victims' Empowerment (WAVE-Gambia)
32. World Organization Against Torture (OMCT)
33. Zimbabwe Lawyers for Human Rights (ZLHR).