

Decision on Africa's Relationship with the International Criminal Court (ICC)

The Assembly,

1. TAKES NOTE of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.482(XXI) on the International Jurisdiction, International Justice and the International Criminal Court (ICC) and the Presentation made by the Republic of Kenya as well as the recommendations of the Executive Council thereon;

2. REITERATES, in accordance with the Constitutive Act of the African Union (AU), the AU's unflinching commitment to fight impunity, promote human rights and democracy, and the rule of law and good governance in the continent;

3. REAFFIRMS its previous Decisions on the abuse of the principles of Universal Jurisdiction adopted in Sharm El Sheikh in July 2008 as well as the activities of the ICC in Africa, adopted in January and July 2009, January and July 2010, January and July 2011, January and July 2012, and May 2013 wherein it expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace;

4. REITERATES AU's concern on the politicization and misuse of indictments against African leaders by ICC as well as at the unprecedented indictments of and proceedings against the sitting President and Deputy President of Kenya in light of the recent developments in that country;

5. UNDERSCORES that this is the first time that a sitting Head of State and his deputy are being tried in an international court and STRESSES the gravity of this situation which could undermine the sovereignty, stability, and peace in that country and in other Member States as well as reconciliation and reconstruction and the normal functioning of constitutional institutions;

6. RECOGNIZES that Kenya is a frontline state in the fight against terrorism at regional, continental and international levels and, in this regard, STRESSES the threat that this menace poses to the region in particular and the continent in general, and the proceedings initiated against the President and the Deputy President of the Republic of Kenya will distract and prevent them from fulfilling their constitutional responsibilities, including national and regional security affairs;

7. RECALLS that following the 2007 Post Election Violence (PEV), the mediation process in Kenya was initiated by AU which led to the enactment of the National Accord and Reconciliation Act and the Agreement establishing the coalition government, and EXPRESSES concern that the ongoing process before the ICC may pose a threat to the full implementation of the National Accord of 2008 and pre-

vent the process of addressing the challenges leading to the post-election violence;

8. EXPRESSES its deep appreciation for the full cooperation that the President and Deputy President of Kenya have demonstrated to the ICC process and CALLS UPON the ICC to show the same level of cooperation in the process;

9. REAFFIRMS the principles deriving from national laws and international customary law by which sitting Heads of State and other senior state officials are granted immunities during their tenure of office;

10. NOW DECIDES:

- i That to safeguard the constitutional order, stability and, integrity of Member States, no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office;
- ii That the trials of President Uhuru Kenyatta and Deputy President William Samoei Ruto, who are the current serving leaders of the Republic of Kenya, should be suspended until they complete their terms of office;
- iii To set up a Contact Group of the Executive Council to be led by the Chairperson of the Council, composed of five (5) Members (one (1) per region) to undertake consultations with the Members of the United Nations Security Council (UNSC), in particular, its five (5) Permanent Members with a view to engaging with the UNSC on all concerns of the AU on its relationship with the ICC, including the deferral of the Kenyan and the Sudan cases in order to obtain their feedback before the beginning of the trial on 12 November, 2013;
- iv To fast track the process of expanding the mandate of the African Court on Human and Peoples' Rights (AfCHPR) to try international crimes, such as genocide, crimes against humanity and war crimes;
- v That the Commission expedites the process of expansion of AfCHPR to deal with international crimes in accordance with the relevant decision of the Policy Organs and INVITES Member States to support this process;
- vi That African States Parties propose relevant amendments to the Rome Statute, in accordance with Article 121 of the Statute;
- vii To request African States Parties to the Rome Statute of the ICC, in particular the Members of the Bureau of the Assembly of States Parties to inscribe on the agenda of the forthcoming sessions of the ASP the issue of indictment of African sitting Heads of State and Government by the ICC and its consequences on peace, stability and reconciliation in African Union Member States;
- viii That any AU Member State that wishes to refer a case to the ICC may inform and seek the advice of the African Union;
- ix That Kenya should send a letter to the United Nations Security Council requesting for deferral, in conformity with Article 16 of the Rome Statute,

of the proceedings against the President and Deputy President of Kenya that would be endorsed by all African States Parties;

- x Pursuant to this Decision, to request the ICC to postpone the trial of President Uhuru Kenyatta, scheduled for 12 November 2013 and suspend the proceedings against Deputy President William Samoei Ruto until such time as the UN Security Council considers the request by Kenya, supported by the AU, for deferral;
- xi That President Uhuru Kenyatta will not appear before the ICC until such time as the concerns raised by the AU and its Member States have been adequately addressed by the UN Security Council and the ICC;
- xii To convene, an Extraordinary Session, towards the end of November 2013, to review the progress made in the implementation of this Decision of the AU Assembly (Ext/Assembly/AU/Dec.1(Oct.2013)).

11. FINALLY REQUESTS the Commission to report on the implementation of this Decision to the next Ordinary Session of the Assembly in January 2014.