

## Decision on the International Criminal Court – Doc. EX.CL/1138(XXXIV)

The Assembly,

1. TAKES NOTE of the Progress Report of the Commission on the Implementation of the Decisions of the Assembly on the International Criminal Court (“ICC”) and the recommendations of the Open-ended Committee of Ministers of Foreign Affairs on the International Criminal Court (Open-ended Ministerial Committee);

2. REITERATES:

- i the unflinching commitment of the African Union and its Member States to combating impunity and promoting democracy, the rule of law and good governance throughout the entire continent, in conformity with the Constitutive Act of the African Union;
- ii its previous decisions on the deferral or termination of proceedings against President Omar Al Bashir of the Republic of The Sudan in accordance with Article 16 of the Rome Statute;
- iii the need for all Member States, in particular those that are also State Parties to the Rome Statute, to continue to comply with the Assembly Decisions on the warrant of arrest issued by the ICC against President Al Bashir of The Sudan pursuant to Article 23(2) of the Constitutive Act of the African Union and Article 98 of the Rome Statute of the ICC; and
- iv the call for Member States to ratify the Protocol on Amendments to the Protocol of the African Court of Justice and Human and Peoples’ Rights (Malabo Protocol).

3. COMMENDS the efforts of the Commission and the African Group in New York in successfully placing on the Agenda of the United Nations General Assembly (UNGA), the request for an Advisory Opinion of the International Court of Justice (ICJ) on the Question of Immunities of Heads of State and Government and other Senior Officials as it relates to the obligations of States Parties under the Rome Statute and international law, and REQUESTS the Commission to finalise the question based on the recommendations of the Open-ended Ministerial Committee;

4. REQUESTS the Commission to submit the final draft of the question to the Open-ended Ministerial Committee to allow all Member States of the Union the opportunity to make inputs to the draft. prior to submission to the UNGA, through the African Group in New York;

5. CALLS UPON all African Member States in New York, during consideration of the Agenda item by the UNGA, to support the transfer of the request for advisory

opinion to the ICJ in order for all States, in particular those that are States Parties to the ICC Rome Statute, to obtain clarity on this issue of immunities;

6. ALSO CALLS UPON the ICC to respect the duty of all States Parties to the Rome Statute to honour their other international obligations as stipulated in Article 98, which includes the right to host international meetings and to ensure the participation of all invited delegations and high officials;

7. EXPRESSES SATISFACTION with the manner in which the Commission presented the position of the Union before the Appeals Chamber of the ICC, in the hearing on the Hashemite Kingdom of Jordan's appeal against the decision of the Pre-Trial Chamber II of the ICC on Jordan's legal obligation to arrest and surrender President Al Bashir of The Sudan while he was on the Jordanian territory attending the League of Arab States' Summit on 29 March 2017, and CALLS ON all Member States to oppose any decision of the Appeals Chamber that is at variance with the AU Common position and customary international law;

8. COMMENDS the Commission for echoing the position of the Union at the 17th Session of the Assembly of States Parties to the ICC (ASP), on the issue of immunities and clarifying the complimentary relationship between Articles 27 and 98 of the Rome Statute, which allows States Parties to honour their legal obligations under the Rome Statute and other sources of international law, and REQUESTS the African Group in New York and The Hague to request ASP to convene the working group of experts from amongst its Member States to propose a declaratory or interpretative clarification of the relationship between Articles 27 and 98, and other contested issues relating to the conflicting obligations of States Parties under international law;

9. REQUESTS:

- i the Commission and the African Group in New York to ensure that decisions of the AU Policy Organs are conveyed during the discussions on Universal Jurisdiction in the Sixth Committee of the UNGA and to make recommendations to the Summit on how to move this discussion forward, in view of the apparent impasse in the Sixth Committee; and
- ii the Commission to follow-up on implementation of this Decision and report to the next meeting of the Open-ended Ministerial Committee.