

**DECISION ON THE INTERNATIONAL CRIMINAL COURT**  
**Doc. EX.CL/987(XXIX)**

- 1. TAKES NOTE** of the recommendations of the Executive Council on the implementation of decisions on the International Criminal Court (ICC);
- 2. REITERATES** the following:
  - i) The commitment of the African Union and its Member States to the fight against impunity in accordance with the Constitutive Act of the African Union;
  - ii) Its previous Decision Assembly/AU/Dec. 547(XXIV) on the progress Report of the Commission on the Implementation of Previous Decisions on the International Criminal Court (ICC) adopted by the Twenty-Fourth Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, in January 2015, and in particular paragraph 17 (d) which calls for the suspension of proceedings against President Omar Al Bashir of The Sudan and **URGES** the United Nations Security Council to withdraw the referral case in The Sudan;
  - iii) Its previous decision that the Open Ended Ministerial Committee should meet with the United Nations Security Council (UNSC) to engage on all issues that have been consistently raised by the African Union;
  - iv) All Member States should comply with the Assembly Decisions on the warrants of arrest issued by the ICC against President Al Bashir of The Sudan and subsequent ICC notifications to the UNSC of so-called non-complying states pursuant to Article 23 (2) of the Constitutive Act of the African Union and Article 98 of the Rome Statute of the ICC;
  - v) The request to AU Member States to sign and ratify, as soon as possible, the Protocol on Amendments to the Protocol of the African Court of Justice and Human and Peoples' Rights adopted in Malabo (Equatorial Guinea) on 27 June 2014.
- 3. WELCOMES** the decision of Trial Chamber of the ICC to terminate the proceedings against the Deputy President of the Republic of Kenya due to insufficient evidence adduced by the Prosecutor, which gives credence to its previous Decision Assembly/AU/Dec. 590 (XXVII) that the continued prosecution of the Deputy President is without foundation given the unambiguous absence of incriminatory evidence;
- 4. COMMENDS** the members of the Open ended Committee of Foreign Ministers ("*Open ended Ministerial Committee*") under the chairpersonship of H E Dr Tedros Adhanom Ghebreyesus, Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia for the work done so far;

5. **TAKES NOTE** of the upcoming session of the 15<sup>th</sup> Assembly of the States Parties of the ICC (ASP) scheduled to take place in November 2016 in The Hague and **DECIDES** that:

- i) At the upcoming 15<sup>th</sup> ASP in November 2016, African States Parties to the Rome Statute of the ICC should reject the provisional amendment to rule 165 of the Rules of Procedure and Evidence adopted by the judges of the International Criminal Court during their 34th plenary session as this will increase prejudice, may be used to circumvent substantive rights enshrined in the Rome Statute and remove the possibility of the checks and balances in the form of a dissenting opinion;
- ii) African States Parties to the Rome Statute of the ICC should reject during the consideration and adoption of the draft ICC Action Plan on Arrest Strategies any provision that includes language requiring the IINSC to mandate UN Peacekeeping missions to enforce ICC arrest warrants in Africa because the exercise of arrest is a sovereign power that cannot be delegated to any other authority;
- iii) The Open Ended Ministerial Committee should:
  - a) Engage the United Nations Security Council as mandated by the Assembly before the January 2017 Ordinary Session of the Assembly of Heads of State and Government and before the upcoming 15<sup>th</sup> Assembly of States Parties (ASP) in November 2016;
  - b) <sup>2</sup>Implement Decision Assembly/AU/Dec.590 (XXVI) adopted by the 2Qth Ordinary Session held in Addis Ababa, Ethiopia in January 2016 on the development of a comprehensive strategy including on a collective withdrawal from the ICC to inform the next action of AU Member States that are also parties to the Rome Statute;
  - c) Conclude its work on the review of the ICC's interpretation of its power pursuant to Article 93 of the Rome Statute that allows the latter to impose on the State Parties to forcibly compel unwilling witnesses to testify before the ICC, with a view to rejecting witness compulsion *in toto* and inform the ICC and the next ASP accordingly;
  - d) In its engagement with UNSC, the Assembly of State Parties to the Rome Statute and other stakeholders on AU concerns on the activities of the ICC in Africa, convey that the AU member states object to the inclusion of  
  
language requiring the IINSC to mandate UN Peacekeeping missions to enforce ICC arrest warrants in Africa;

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2 Reservations entered by Burkina Faso, Cabo Verde, Democratic Republic of Congo and Senegal.

- e) The Commission, through the AU Mission in Brussels, Belgium, will serve as the secretariat to the Open-ended Ministerial Committee and provide institutional support to the African Group in The Hague, Netherlands to ensure effective coordination of its activities.

**6. REQUESTS** the Commission in collaboration with all stakeholders to follow-up on this matter to ensure that the African proposals and concerns are addressed and to report regularly to the Assembly through the Executive Council.