

DECISION ON THE INTERNATIONAL CRIMINAL COURT
Doc. EX.CL/1068(XXXII)

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 (*The Open-ended Ministerial Committee*);

2. REITERATES:

- i) the unflinching commitment of the African Union and its Member States to combat impunity and promote 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;

3. EXPRESSES:

- i) deep concern with the decision of the Pre-Trial Chamber II of the ICC on the legal obligation of the Republic of South Africa to arrest and surrender President Al Bashir of The Sudan, which is at variance with customary international law and **CALLS ON** Member States of the African Union, particularly those that are also State Parties to the ICC, to oppose this line of interpretation of their legal obligations under the Rome Statute;
- ii) the need for Member States to strengthen national and continental judicial and legislative mechanisms to deal with impunity in order to ensure that justice is served in a fair manner;
- iii) concern at the slow pace of ratification of 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 and **ENDORSES** the Action Plan for the Ratification of the Malabo Protocol and in this regard, **URGES** all Member States to *30th Ort^* 28- 29 January 2018, Addis Ababa, Ethiopia

Amendments to the Protocol of the African Court of Justice and Human and Peoples' Rights (Malabo Protocol);

4. **TAKES NOTE** of the sovereign decision made by the Republic of Burundi to withdraw from the ICC effective October 27th, 2017, and **CONDEMNS** the decision by the ICC to open an investigation in the situation prevailing in the Republic of Burundi as it is prejudicial to the peace process under the auspices of the East African Community, and constitutes both a violation of the sovereignty of Burundi and is a move aimed at destabilising that country;
5. **REQUESTS:**
 - i) the African States Parties to the Rome Statute to request the ICC Assembly of States Parties to convene a working group of experts from its member states to propose a declaratory/interpretative clarification of the relationship between Article 27 (irrelevance of official capacity) and Article 98 (Cooperation with respect to waiver of immunity and consent to Surrender) and other contested issues relating to the conflicting obligations of States Parties to cooperate with the ICC;
 - ii) the African Group in New York to immediately place on the agenda of the United Nations General Assembly a request to seek an advisory opinion from the International Court of Justice on the question of immunities of a Head of State and Government and other Senior Officials as it relates to the relationship between Articles 27 and 98 and the obligations of States Parties under International Law;
 - iii) the Commission to review its standard agreements on hosting of AU Summits and other high-level meetings, to ensure that any ambiguity concerning the provision of privileges and immunities of representatives of Member States are addressed;
 - iv) the African Group in New York and The Hague to request the next Assembly of States Parties of the ICC to withdraw from its agenda the consideration of the Draft Action Plan on Arrest Strategies;
 - v) the African Group and the Commission to ensure that decisions of the AU Policy Organs are conveyed during the discussions on Universal Jurisdiction in the Sixth Committee of the United Nations General Assembly and to make recommendations to the Summit on how to move this discussion forward, in view of the apparent impasse in the Sixth Committee.