

**DECISION ON THE PROGRESS REPORT OF THE COMMISSION
ON THE IMPLEMENTATION OF PREVIOUS DECISIONS ON
THE INTERNATIONAL CRIMINAL COURT (ICC)
Doc. EX.CL/894(XXVI)**

The Executive Council,

1. **TAKES NOTE** of the Report of the Commission on the progress made in the implementation of Decisions on the International Criminal Court (ICC);
2. **RECOMMENDS** to the Assembly to:
 - i) **REITERATE**, the commitment of the African Union and its Member States to fight impunity in accordance with the Constitutive Act;
 - ii) **EXPRESS**
 - a) its deep concern following the summoning of President Uhuru Kenyatta through a decision of the Trial Chamber V (b) of the ICC which did not take cognizance whatsoever of the amendments of the Rules of Procedure and Evidence of the ICC adopted by the 12th Ordinary Session of the Assembly of States Parties to the Rome Statute held in the Hague, the Netherlands in November 2013;
 - b) its deep concern regarding the conduct of the Office of the Prosecutor and the Court and the wisdom of the continued prosecution against African Leaders.
 - iii) **COMMEND** President Uhuru Kenyatta for the leadership demonstrated and the unprecedented act of appointing the Acting President so as to respect the Court Summons and protect the Sovereignty of Kenya;
 - iv) **REITERATE** the imperative need for all African States Parties (ASP) to ensure that they adhere and articulate commonly agreed positions at the African Union in line with their obligations under the constitutive Act of the Union;
 - v) **REAFFIRM** the principles deriving from national and International Customary Law by which sitting Heads of State and other senior officials are granted immunities during their tenure in office;
 - vi) **WELCOME** the decision made by the Prosecutor of the International Criminal Court on 5 December, 2014 to withdraw the charges against President Uhuru Kenyatta while regretting the period it took the Office of the Prosecutor to arrive at the decision and the continued prosecution through disclosure of alleged evidence available to the ICC against him;
 - vii) **NOTE WITH CONCERN** that the case against the Deputy President William Samoei Ruto is still proceeding before the International Criminal Court and **REITERATE** to the ICC the imperative need to terminate its prosecution against the Deputy President as per

the previous decisions;

- viii) **RECALL** its decision Ext/Assembly/AU/Dec.1 particularly 12(i) that African States Parties should comply with African Union decision on ICC and continue to speak with one voice to ensure that African proposals to the amendments to articles 16 and 27 of the Rome Statute of the ICC are considered by the ASP Working Group on amendments as well as by the forthcoming sessions of the Assembly of States Parties to the Rome Statute;
- ix) **EXPRESS** its concern on the failure by the ASP to consider the concerns and proposals for amendments by African Union of the Rome Statute of the ICC during the 13th Session of the ASP held in New York from 8 to 17 December, 2014;
- x) **THANK** Member States, African Group in New York and at the Hague ,the Contact Group and other like-minded States Parties to the Rome Statute for their work and continued support in fast-tracking the consideration of African concerns and amendment proposals to the Rome Statute;
- xi) **REGRET** that the AU's endorsement of one person as a sole candidate for the post of judge of the ICC was not respected by some African States Parties;
- xii) **RECALL** its decision Assembly/AU/Dec.529(XXIII) during the 23rd Ordinary Session of the Assembly held in Malabo, Equatorial Guinea in June, 2014 adopting the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights to try international crimes;
- xiii) **UNDERScore** the need to expeditiously operationalize the exercise of the jurisdiction of the African Court of Justice and Human Rights to try international crimes through signing and ratification of both the Protocol on the Statute of the African Court of Justice and Human Rights and the Protocol on the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights by Member States of the African Union and **UNDERLINE** the need to ensure predictable and sustainable funding;
- xiv) **DECIDE** as follows:
 - a) to request all concerned to fast track consideration by the ASP Working Group on amendments and by Assembly of States Parties of the African proposals for amendments of the Rome Statute of the ICC;
 - b) to operationalize the exercise of jurisdiction of the African Court of Justice and Human Rights to try international crimes by signing and ratifying the requisite protocols; and in this respect, to establish a Special Fund and convene a resource mobilization conference to raise funds to initiate and sustain the activities of the African Court on Human and Peoples Rights' proposed Chambers of the International Criminal Law Section as envisaged in Article 19 *bis* of the Protocol on the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;

- c) in accordance with its decisions particularly the African States Parties to the Rome Statute reserves the right to take any measures in order to preserve and safeguard peace, security and stability, as well as the dignity, sovereignty and integrity of the continent;
 - d) pursuant to this decision and its previous decisions, to request the ICC to terminate or suspend the proceedings against Deputy President William Samoei Ruto of Kenya until the African concerns and proposals for amendments of the Rome Statute of the ICC are considered;
 - e) in the same vein to request the suspension of proceedings against President Omar Al Bashir and to urge the UN Security Council to withdraw the referral case of the Sudan.
- xv) **COMMEND** the Democratic Republic of Congo for complying with AU Decision for non-cooperation for the arrest and surrender of President Omar Al Bashir of the Republic of Sudan;
- xvi) **REQUEST** the Commission to present a progress report on the implementation of this decision at its 26th Ordinary Session in January 2016.