

DECISION ON THE INTERNATIONAL CRIMINAL COURT
Doc. EX.CL/1218(XXXVI)

The Executive Council,

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”), namely Assembly/AU/Dec.245(XIII) (July 2009); Assembly/AU/Dec.270(XIV) (February 2010); Assembly/AU/Dec.296(XV) (July 2010); Assembly/AU/Dec.334(XVI) (January 2011); Assembly/AU/Dec.366(XVII) (July 2011); Assembly/AU/Dec.397(XVIII) (January 2012); Assembly/AU/Dec.419(XIX) (July 2012); Assembly/AU/Dec.482(XXI) (May 2013); Ext/Assembly/AU/Dec.1 (October 2013); Assembly/AU/Dec.493(XXII) (January 2014); Assembly/AU/Dec.547(XXIV) (January 2015); Assembly/AU/Dec.586(XXV) (June 2015); Assembly/AU/Dec.590(XXVI) (January 2016); Assembly/AU/Dec.616 (XXVII) (July 2016); Assembly/AU/Dec.622(XXVIII) (January 2017); Assembly/AU/Dec.672(XXX) (January 2018); and Assembly/AU/Dec.738(XXXII) (February 2019), 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 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. The need for all Member States, in particular, those that are also State Parties to the Rome Statute, to continue to comply with Assembly Decisions Assembly/AU/Dec.245(XIII) (July 2009); Assembly/AU/Dec.270(XIV) (February 2010); Assembly/AU/Dec.296(XV) (July 2010); Assembly/AU/Dec.334(XVI) (January 2011); Assembly/AU/Dec.366(XVII) (July 2011); Assembly/AU/Dec.397(XVIII) (January 2012); Assembly/AU/Dec.419(XIX) (July 2012); Assembly/AU/Dec.482(XXI) (May 2013); Ext/Assembly/AU/Dec.1 (October 2013); Assembly/AU/Dec.493(XXII) (January 2014); Assembly/AU/Dec.547(XXIV) (January 2015); Assembly/AU/Dec.586(XXV) (June 2015); Assembly/AU/Dec.590(XXVI) (January 2016); Assembly/AU/Dec.616 (XXVII) (July 2016); Assembly/AU/Dec.622(XXVIII) (January 2017); Assembly/AU/Dec.672(XXX) (January 2018); and Assembly/AU/Dec.738(XXXII) (February 2019), on the ICC;
 - iii. The call for 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; 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. EXPRESSES WITH CONCERN:

- i. the double standards applied by the ICC in its selection of cases as evidenced in the decision of the Pre-Trial Chamber II to reject the Prosecutor's request to proceed with investigations into the alleged crimes committed in Afghanistan; and
 - ii. the absence of Ministers at meetings of the Open-ended Ministerial Committee on the ICC.
- 4. TAKES NOTE** of the outcome of the Experts' Workshop to discuss the impasse in the Sixth Committee as it relates to the scope and application of universal jurisdiction.
- 5. COMMENDS** the efforts of the Commission in finalizing the Draft Questions on the "Request for an advisory opinion of the International Court of Justice on the consequences of legal obligations of States under different sources of international law with respect to immunities of Heads of State and Government and other senior officials".
- 6. FURTHER COMMENDS** the Republic of Zambia and the Commission for their efforts in remobilizing the African Group of States Parties to the Rome Statute in The Hague.
- 7. CALLS UPON** all Member States to oppose the Decision of the Appeals Chamber in the Hashemite Kingdom of Jordan's Appeal Against the 'Decision under Article 87(7) of the Rome Statute on the Non-Compliance by Jordan with the Request by the Court for the Arrest and Surrender of Omar Al- Bashir', which is at variance with the Rome Statute of the International Criminal Court, customary international law and the AU Common Position.
- 8. URGES** States Parties to the Rome Statute, in particular, African States, to stand against the increasing politicisation of the Court.
- 9. REQUESTS** Member States to prioritise the implementation of Assembly Decisions on the ICC and submit recommendations on the way forward with key issues raised by this Decision.
- 10. FURTHER REQUESTS** the Commission, in consultation with the African Groups in The Hague and New York, to develop a matrix of issues of concern to African States, including issues relating to the rights of the accused and the immunities of Heads of State and Government and other senior officials, and to propose the necessary amendments to the Rome Statute within the ambit of ongoing discussions on reform of the ICC by the Assembly of States Parties (ASP).
- 11. DECIDES** to maintain the African Position to keep the discussions on universal

jurisdiction in the Sixth Committee.

- ¹²- **REQUESTS** the African Group in New York, in collaboration with the Commission, to remove the “Request for an advisory opinion of the International Court of Justice on the consequences of legal obligations of States under different sources of international law with respect to immunities of Heads of State and Government and other senior officials” from the Agenda of the United Nations General Assembly until further notice.
- 13. DIRECTS** the Commission to provide technical support to the African Group in New York and The Hague in order to develop and promote the All Common Position on the ICC and universal jurisdiction **AND FURTHER DIRECTS** the Executive Council and the PRC to make available the necessary financial resources for the implementation of this Decision by February 2021.