

DECISION ON THE INTERNATIONAL CRIMINAL COURT
Doc. EX.CL/952(XXVIII)

The Assembly,

1. **TAKES NOTE** of the recommendations of the Executive Council on the implementation of the 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) that requested 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 Statutes of the ICC are considered; and
 - iii) Paragraph 17(e) that requested the suspension of proceedings against President Omar Al Bashir of The Sudan and **URGES** the United Nations (UN) Security Council to withdraw the referral case in The Sudan.
 - iv) Its requests to the Peace and Security Council (PSC) to examine the Draft ICC Action Plan on Arrest Strategies that is currently under consideration by the ICC and make appropriate recommendations thereon to the next ordinary session of the Assembly, through the Executive Council, in July 2016 to enable adoption of a Common African Position on same.
3. **COMMENDS** the Republic of South Africa for complying with the Decisions of the Assembly on non-cooperation with the arrest and surrender of President Omar Al Bashir of The Sudan and **DECIDES** that by receiving President Bashir, the Republic of South Africa was implementing various AU Assembly Decisions on the warrants of arrest issued by the ICC against President Bashir and that South Africa was consistent with its obligations under international law;
4. **REITERATES** its decision on the need for all Member States to comply with the Assembly Decisions on the warrants 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;
5. **EXPRESSES ITS DEEP CONCERN** regarding the wisdom of the continued prosecution of the case of Deputy President William Ruto of the Republic of Kenya and **CALLS ON** the ICC to terminate the case without further delay as any continued prosecution is without foundation given the unambiguous absence of any incriminatory evidence capable of belief;
6. **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 and **REITERATES** 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;

7. **TAKES NOTE** of the conclusions of the 14th Assembly of the States Parties of the ICC (ASP) in which the ASP reaffirmed its understanding on the non-retroactive application of Rule 68 to situations commenced before November 2013 (with regard to the Kenyan agenda) and expressed its *"willingness to consider, within the framework of the appropriate subsidiary body of the Assembly, proposals to develop procedures for the implementation of Articles 97, 27 and 98"* with regard to the issues raised by South Africa in its statements during the 28th Ordinary Session of the Executive Council and the 26th Ordinary Session of the Assembly respectively in Addis Ababa, Ethiopia in January 2016 and **EXPRESSES ITS APPRECIATION** to the President of ASP, H.E. Sidiki Kaba from Senegal for ensuring that in spite of perceived resistance by some State Parties, the issues and concerns of the AU and its member states were allowed to be articulated at the 14th ASP;
8. **EXPRESSES** its deep grievance at the failure of the UNSC to respond to the requests of the AU for deferral of The Sudan and Kenyan cases for the past five (5) years;
9. **TAKES NOTE WITH CONCERN of:**
 - i) The obstinacy of the ICC by the so-called *"Principals of the Court"* comprising the Prosecutor, the Registrar and the President of the ICC, which continues to privilege the views of civil society over clearly held positions of African Member States parties to the Rome Statute;
 - ii) The disturbing public dismissive disregard of the decisions of the 14th ASP by the Prosecution in relation to the pending Rule 68 Appeal against Kenya's Deputy President;
10. **DECIDES** as follows:
 - i) The Bureau of the Open-Ended Ministerial Committee be expanded to ensure equitable regional representation **AND REQUESTS** the Overall Dean and the Regional Deans in Addis Ababa, Ethiopia to urgently undertake consultations with a view to submitting their respective representatives to serve on the Bureau;
 - ii) The Permanent Representatives' Committee (PRC) be mandated to approve and provide the adequate resources to the Commission, through the Office of the Legal Counsel, to support the work of the Open ended Ministerial Committee in pursuing all political, legal, and strategic avenues in addressing All's concerns before the United Nations, the ICC and the International Court of Justice (ICJ);
 - iii) The Open-ended Ministerial Committee will review the ICC's interpretation of its power pursuant to Article 93 of the Rome Statute that allows the latter to oblige

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;

- iv) The Open-ended Ministerial Committee's mandate will include the urgent development of a comprehensive strategy including collective withdrawal from the ICC to inform the next action of AU Member States that are also parties to the Rome Statute, and to submit such strategy to an extraordinary session of the Executive Council which is mandated to take such decision;
- v) The Commission will continue to engage with relevant stakeholders within the ICC on issues raised in the various Decisions of the AU Policy Organs on the ICC;
- vi) 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;

11. REITERATES:

- i) The imperative need for all African States Parties to the Rome Statute of the ICC to continue to ensure that they adhere and articulate common agreed positions in line with their obligations under the Constitutive Act of the African Union;
- ii) Its call on all 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;

12. 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 to the ordinary session of the Assembly through the Executive Council scheduled for January 2017.