

DRAFT
DECISION ON INTERNATIONAL JURISDICTION, JUSTICE AND
THE INTERNATIONAL CRIMINAL COURT (ICC)¹

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The Assembly,

1. **TAKES NOTE** of the presentation made by the Republic of Uganda, on behalf of the Eastern African Region, on International Jurisdiction, International Justice and the International Criminal Court, as well as the recommendations made by the Executive Council;
2. **REITERATES** the African Union's unflinching commitment to combating impunity and promoting democracy, the rule of law and good governance throughout the entire continent, in conformity with its Constitutive Act;
3. **DEEPLY REGRETS** that the request by the African Union (AU) to the United Nations (UN) Security Council to defer the proceedings initiated against President Omar Al Bashir of The Sudan and Senior State Official of Kenya, in accordance with Article 16 of the Rome Statute of the International Criminal Court (ICC) on deferral of cases by the UN Security Council, has not been acted upon; **REAFFIRMS** that Member States such as the Republic of Chad that had welcomed President Omar Al Bashir of The Sudan did so in conformity with the decisions of the Assembly and therefore, should not be penalized;
4. **FURTHER REAFFIRMS** its previous Decisions on the activities of the ICC in Africa, adopted in January and July 2009, January and July 2010, January and July 2011, January and July 2012 respectively, in which it expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace and reiterated AU's concern with the misuse of indictments against African leaders;
5. **STRESSES** the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard, in conformity with the principles of international law, and **EXPRESSES CONCERN** at the threat that the indictment of H.E Uhuru Muigai Kenyatta and H.E William Samoei Ruto, the President and Deputy-President of the Republic of Kenya respectively, may pose to the ongoing efforts in the promotion of peace, national healing and reconciliation, as well as the rule of law and stability, not only in Kenya, but also in the Region;

¹ The Reservation of the Republic of Botswana on the entire decision was entered.

6. **RECALLS** that, pursuant to the principle of complementarity enshrined in the Rome Statute of the ICC, Kenya has primary jurisdiction over the investigations and prosecutions of crimes in relation to the 2007 post-election violence, in this regard, **DEEPLY REGRETS** the Decisions of the Pre-trial Chamber II and the appeals Chamber of the ICC on the admissibility of the cases dated 30 May and 30 August 2011 respectively, which denied the right of Kenya to prosecute and try alleged perpetrators of crimes committed on its territory in relation to the 2007 post-election violence;
7. **SUPPORTS AND ENDORSES** the Eastern Africa Region's request for a referral of the ICC investigations and prosecutions in relation to the 2007 post-election violence in Kenya, in line with the principle of complementarity, to allow for a National Mechanism to investigate and prosecute the cases under a reformed Judiciary provided for in the new constitutional dispensation, in support of the ongoing peace building and national reconciliation processes, in order to prevent the resumption of conflict and violence in Kenya;
8. **REQUESTS** the African Union Commission, in collaboration with the African Union Commission on International Law (AUCIL), to organize, with the participation of Member States, all the relevant Organs of the African Union and other relevant Stakeholders, a brainstorming session, as part of the 50th Anniversary discussion on the broad areas of International Criminal Justice System, Peace, Justice and Reconciliation as well as the impact/actions of the ICC in Africa, in order not only to inform the ICC process, but also to seek ways of strengthening African mechanisms to deal with African challenges and problems;
9. **ALSO REQUESTS** the African Union Commission to follow-up on this matter and to report regularly on the implementation of the various Assembly decisions on the ICC.