

**DECISION ON THE MEETING OF AFRICAN STATES PARTIES TO THE ROME
STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC)
Doc. Assembly/AU/13(XIII)**

The Assembly,

1. **TAKES NOTE** of the recommendations of the Executive Council on the Meeting of the African States Parties to the Rome Statute of the International Criminal Court (ICC);
2. **EXPRESSES ITS DEEP CONCERN** at the indictment issued by the Pre-Trial Chamber of the ICC against President Omar Hassan Ahmed El Bashir of the Republic of The Sudan;
3. **NOTES WITH GRAVE CONCERN** the unfortunate consequences that the indictment has had on the delicate peace processes underway in The Sudan and the fact that it continues to undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur;
4. **REITERATES** the unflinching commitment of Member States to combating impunity and promoting democracy, rule of law and good governance throughout the continent, in conformity with the Constitutive Act of the African Union;
5. **REQUESTS** the Commission to ensure the early implementation of Decision Assembly/Dec.213(XII), adopted in February 2009 mandating the Commission, in consultation with the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights to examine the implications of the Court being empowered to try serious crimes of international concern such as genocide, crimes against humanity and war crimes, which would be complementary to national jurisdiction and processes for fighting impunity;
6. **ENCOURAGES** Member States to initiate programmes of cooperation and capacity building to enhance the capacity of legal personnel in their respective countries regarding the drafting and safety of model legislation dealing with serious crimes of international concern, training of members of the police and the judiciary, and the strengthening of cooperation amongst judicial and investigative agencies;
7. **FURTHER TAKES NOTE** that any party affected by the indictment has the right of legal recourse to the processes provided for in the Rome Statute regarding the appeal process and the issue of immunity;

8. **REQUESTS** the Commission to convene a preparatory meeting of African States Parties at expert and ministerial levels (Foreign Affairs and Justice) but open to other Member States at the end of 2009 to prepare fully for the Review Conference of States Parties scheduled for Kampala, Uganda in May 2010, to address among others, the following issues:

- i.) Article 13 of the Rome Statute granting power to the UN Security Council to refer cases to the ICC;
- ii.) Article 16 of the Rome Statute granting power to the UN Security Council to defer cases for one (1) year;
- iii.) Procedures of the ICC;
- iv.) Clarification on the Immunities of officials whose States are not party to the Statute;
- v.) Comparative analysis of the implications of the practical application of Articles 27 and 98 of the Rome Statute;
- vi.) The possibility of obtaining regional inputs in the process of assessing the evidence collected and in determining whether or not to proceed with prosecution; particularly against senior state officials; and
- vii.) Any other areas of concern to African States Parties.

9. **DEEPLY REGRETS** that the request by the African Union to the UN Security Council to defer the proceedings initiated against President Bashir of The Sudan in accordance with Article 16 of the Rome Statute of the ICC, has neither been heard nor acted upon, and in this regard, **REITERATES ITS REQUEST** to the UN Security Council;

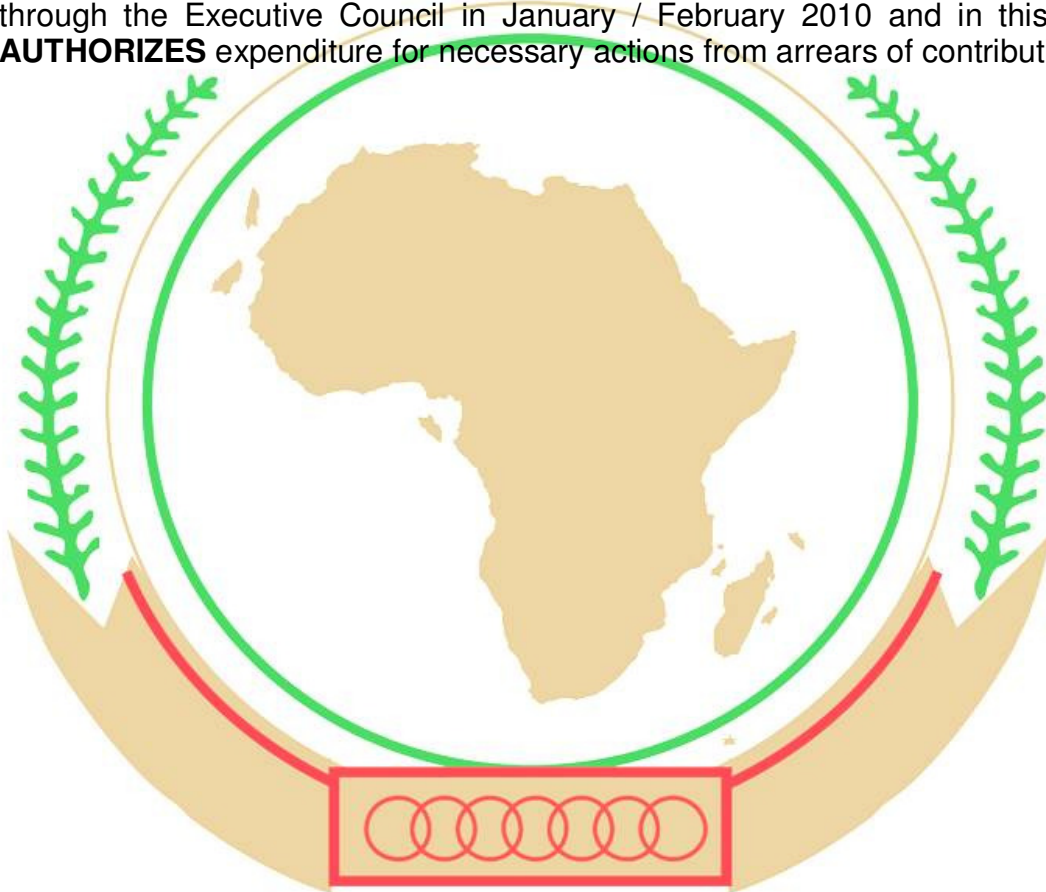
10. **DECIDES** that in view of the fact that the request by the African Union has never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Omar El Bashir of The Sudan ;*

11. **EXPRESSES CONCERN OVER** the conduct of the ICC Prosecutor and **FURTHER DECIDES** that the preparatory meeting of African States Parties to the Rome Statute of the ICC scheduled for late 2009 should prepare, *inter alia*,

* Reservation entered by Chad

guidelines and a code of conduct for exercise of discretionary powers by the ICC Prosecutor relating particularly to the powers of the prosecutor to initiate cases at his own discretion under Article 15 of the Rome Statute;

12. **UNDERScores** that the African Union and its Member States reserve the right to take any further decisions or measures that may be deemed necessary in order to preserve and safeguard the dignity, sovereignty and integrity of the continent;
13. **FINALLY REQUESTS** the Commission to follow-up on the implementation of this Decision and submit a report to the next Ordinary Session of the Assembly through the Executive Council in January / February 2010 and in this regard **AUTHORIZES** expenditure for necessary actions from arrears of contributions.



2009

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