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African Union Documents - Draft Decision on Africa's Relationship with the ICC

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AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Tel : 251-11-5517700 Fax : 251-11-5517844 / 5182523
website : www.au.int

**EXTRAORDINARY SESSION OF THE
ASSEMBLY OF THE AFRICAN UNION
12 OCTOBER 2013
ADDIS ABABA, ETHIOPIA**

**Ext/Assembly/AU/Draft/Dec.1-2(Oct.2013)Rev.1
Ext/Assembly/AU/Draft/Decl.1-4(Oct.2013)Rev.1**

DRAFT DECISIONS AND DECLARATIONS

DRAFT
DECISION ON AFRICA'S RELATIONSHIP WITH
THE INTERNATIONAL CRIMINAL COURT (ICC)

The Assembly,

1. **TAKES NOTE** of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.482(XXI) on the International Jurisdiction, International Justice and the International Criminal Court (ICC) and the Presentation made by the Republic of Kenya as well as the recommendations of the Executive Council thereon;
2. **REITERATES**, in accordance with the Constitutive Act of the African Union (AU), the AU 's unflinching commitment to fight impunity, promote human rights and democracy, and the rule of law and good governance in the continent;
3. **REAFFIRMS** its previous Decisions on the abuse of the principles of Universal Jurisdiction adopted in Sharm El Sheikh in July 2008 as well as 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, and May 2013 wherein 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;
4. **REITERATES** AU's concern on the politicization and misuse of indictments against African leaders by ICC as well as at the unprecedented indictments of and proceedings against the sitting President and Deputy President of Kenya in light of the recent developments in that country;
5. **UNDERScores** that this is the first time that a sitting Head of State and his deputy are being tried in an international court and **STRESSES** the gravity of this situation which could undermine the sovereignty, stability, and peace in that country and in other Member States as well as reconciliation and reconstruction and the normal functioning of constitutional institutions;
6. **RECOGNIZES** that Kenya is a frontline state in the fight against terrorism at regional, continental and international levels and, in this regard, **STRESSES** the threat that this menace poses to the region in particular and the continent in general, and the proceedings initiated against the President and the Deputy President of the Republic of Kenya will distract and prevent them from fulfilling their constitutional responsibilities, including national and regional security affairs;
7. **RECALLS** that following the 2007 Post Election Violence (PEV), the mediation process in Kenya was initiated by AU which led to the enactment of the National Accord and Reconciliation Act and the Agreement establishing the coalition government, and **EXPRESSES** concern that the ongoing process before the ICC may pose a threat to the full implementation of the National Accord of 2008 and

prevent the process of addressing the challenges leading to the post-election violence;

8. **EXPRESSES** its deep appreciation for the full cooperation that the President and Deputy President of Kenya have demonstrated to the ICC process and **CALLS UPON** the ICC to show the same level of cooperation in the process;
9. **DECIDES** as follows:
 - i) **REAFFIRMS** the principles deriving from national laws and international customary law by which sitting Heads of State and other senior state officials are granted immunities during their tenure of office;
 - ii) No charges shall be commenced or continued before any international court or tribunal against any serving Head of State or Government or anybody acting or entitled to act in such capacity during his/her term of office;
 - iii) Accordingly, the trials of President Uhuru Kenyatta and Deputy President William Samoei Ruto, who are the current serving leaders of the Republic of Kenya, should be suspended until they complete their terms of office;
 - iv) To safeguard the constitutional order, stability and integrity of Member States, no serving AU Head of State or Government or anybody acting or entitled to act in such capacity, shall be required to appear before any international court or tribunal during their term of office;
 - v) **APPROVES** the setting up of a Contact Group of the Executive Council to be led by the Chairperson of the Council, composed of five (5) Members (one (1) per region) to undertake consultations with the Members of the United Nations Security Council (UNSC), in particular, its five (5) Permanent Members with a view to engaging with the UNSC on all concerns of the AU on its relationship with the ICC, including the deferral of the Kenyan and the Sudan cases in order to obtain their feedback before the beginning of the trial on 12 November 2013;
 - vi) **STRESSES** that the ICC is a Court of last resort and **NOTES** that the AU is in the process of expanding the mandate of the African Court on Human and Peoples' Rights (ACHPR) to try international crimes, such as genocide, crimes against humanity and war crimes;
 - vii) **REQUESTS** the Commission to expedite the process of expansion of ACHPR to deal with international crimes in accordance with the relevant decision of the Policy Organs and **INVITES** Member States to support this process;

- viii) **PROPOSES** that African States Parties to the Rome Statute introduce amendments to the Rome Statute to recognize African regional Judicial Mechanisms dealing with international crimes in accordance with the principles of complementarity;
 - ix) **ALSO REQUESTS** African States Parties to the Rome Statute of the ICC, in particular the Members of the Bureau of the Assembly of States Parties to inscribe on the agenda of the forthcoming sessions of the ASP the issue of indictment of African sitting Heads of State and Government by the ICC and its consequences on peace, stability and reconciliation in African Union Member States;
 - x) **AGREES** that any AU Member State that wishes to refer a case to the ICC may inform and seek the advice of the African Union;
 - xi) **FURTHER AGREES** that Kenya should send a letter to the United Nations Security Council requesting for deferral, in conformity with Article 16 of the Rome Statute, of the proceedings against the President and Deputy President of Kenya that would be endorsed by all African States Parties;
 - xii) **FINALLY AGREES** to convene, in an Extraordinary Session, towards the end of November 2013, to review the progress made in the implementation of this Decision;
 - xiii) **INVITES** African States Parties to propose relevant amendments to the Rome Statute, in accordance with Article 121 of the Statute;
- 10. REQUESTS** the ICC to postpone the trial of President Uhuru Kenyatta, scheduled for 12 November 2013 and suspend the proceedings against Deputy President William Samoei Ruto until such time as the UN Security Council considers the request by Kenya, supported by the AU, for deferral;
- 11. DECIDES** that President Uhuru Kenyatta will not appear before the ICC until such time as the concerns raised by the AU and its Member States have been adequately addressed by the UN Security Council and the ICC;
- 12. FURTHER REQUESTS** the Commission to report on the implementation of this Decision to the next Ordinary Session of the Assembly in January 2014.

DRAFT
DECISION ON THE APPOINTMENT OF THE NEW COMMISSIONER
FOR PEACE AND SECURITY
Doc. Ext/EX.CL/3(XV)

The Assembly,

1. **TAKES NOTE** of the election by the Executive Council of the new Commissioner for Peace and Security;
2. **APPOINTS Mr. Smail Chergui (Algeria)** as Commissioner for Peace and Security of the African Union for the remaining term of Amb. Ramtane Lamamra and **CONGRATULATES** him on his appointment;
3. **DECIDES** that Mr. Chergui takes the Oath of Office during the current Extraordinary Session of the Assembly.

**DRAFT DECLARATION ON THE LAMPEDUSA (ITALY)
TRAGIC BOAT INCIDENT**

We, the Heads of State and Government of the African Union, meeting at our Extraordinary Session, held in Addis Ababa, Ethiopia, on 12 October 2013:

Recognizing the magnitude and impact of migration on development and over the growing number of migrants in Africa and beyond, and the brain drain syndrome that is increasingly becoming a global scourge affecting all countries around the world, especially in Africa;

Gravely concerned with the serious economic and social impact of the recurrence of the phenomenon of illegal or irregular migration currently taking alarming proportions that threaten peace, security and stability which should be adequately addressed through a comprehensive approach to effective border management and within the context of strict observance of human rights and human dignity;

Recalling the Assembly Decision Assembly/AU/Dec.125 (VII) adopted at the Banjul Summit in July 2006 on the African Common Position on Migration and Development;

Underscoring that African inter-state collaboration and discourse can strengthen the capacity of States in migration management, including the development of common approaches towards harmonization of policies, laws and strategies on migration;

1. **DEEPLY REGRET** the loss of life of over 300 migrants that occurred on 3rd October 2013 in a boat accident in Lampedusa Island and **EXPRESS** our sincere condolences and deep sympathy to the families of the victims of this incident;
2. **COMMIT** itself to addressing the root causes of this phenomena of irregular migration from Africa to Europe;
3. **REQUEST** the Commission to investigate the root causes of migration of young people from Africa so as to recommend appropriate action to be taken by Member States with a view to finding a lasting solution to this persistent problem;
4. **URGE** Member States, the Regional Economic Communities (RECs) and other stakeholders to take active part in the implementation of Common Position on Migration and Development and promote appropriate policies towards lasting peace, stability, democratic governance, sustainable growth, youth employment opportunities and greater regional integration;
5. **APPEAL** to the International Community to continue to collaborate and increase their involvement in addressing migration and development issues for the attainment of the objectives contained in the African Common Position on Migration and Development;

6. **UNDERLINE** the need for a comprehensive review of the issue of migration between Africa and Europe and **REQUEST** that this item be inscribed on the agenda of the 3rd Africa-EU Summit scheduled to be held in Brussels, Belgium, on 2nd and 3rd April 2014;
7. **DECLARE** the 3 November 2013 as a day of mourning to be observed by all Member States of the African Union, in memory of the victims of the Lampedusa tragedy.

DRAFT

**DECLARATION ON AFRICA'S SOLIDARITY WITH AND SUPPORT TO LIBYA BY
THE EXTRAORDINARY SESSION OF THE ASSEMBLY OF THE UNION**

We, the Heads of State and Government of the African Union, meeting at our Extraordinary Session, held in Addis Ababa, Ethiopia, on 12 October 2013:

1. **EXPRESS** our concern on the situation in Libya particularly following the kidnapping of Prime Minister Ali Zeidan, by armed men in Tripoli, on 10 October 2013;
2. **STRONGLY CONDEMN** this criminal and unacceptable act and express relief at the release of the Prime Minister, few hours after his kidnapping;
3. **EXPRESS** our solidarity with the Libyan leaders and our support to the legitimate Libyan institutions in their efforts to stabilize the situation in the country, address the other challenges at hand and bring to a successful end the ongoing transition process;
4. **STRESS** the need for all Libyan stakeholders to seek solutions to their differences within the framework of the existing institutions and a comprehensive process of national dialogue and **CALL ON** the Libyan people to extend their support to their legitimate institutions;
5. Mindful of the need for sustained support and solidarity with Libya in this challenging time, **REQUEST** the Commission, building on the initiatives already taken, to take all necessary steps to facilitate a coordinated and enhanced continental support to Libya; in this regard, we **CALL ON** Africa's partners to extend similar support;
6. **[ALSO STRESS** the right of Libya to prosecute its own citizens charged with committing crimes in its territory.] **formulation of this paragraph to be confirmed by Libyan Embassy**

DRAFT
DECLARATION OF SOLIDARITY WITH THE REPUBLIC OF KENYA FOLLOWING
THE TERRORIST AL-SHABAB/AL-QUAEDA ATTACK ON THE
WESTGATE SHOPPING MALL IN NAIROBI, KENYA

We, the Heads of State and Government of the African Union, meeting in our Extraordinary Session, held in Addis Ababa, Ethiopia, on 12 October 2013:

Deeply concerned about the terrorist Al-Shabab/Al-Qaeda attack on the Westgate Shopping Mall in Nairobi on 21 September 2013;

Hereby,

1. **CONDEMN** with utmost firmness this cowardly and vicious act of aggression against a Member State of the African Union;
2. **COMMEND** the prompt and firm response by the Kenyan authorities, which frustrated the criminal designs of the terrorist Al-Shabab/Al-Qaeda gangs and thereby saved hundreds of human lives and prevented incalculable material damage;
3. **EXPRESS** our full solidarity with the Government and people of Kenya;
4. **EXPRESS** our sincere condolences and deep sympathy to the Government and people of Kenya and the families of the victims of this despicable terrorist act;
5. **NOTE** that the terrorist aggression against Kenya is not only an act against Kenya but also against the security and stability of Africa as a whole. It testifies to the terrorist threats which target Member States in various parts of Africa. The response demonstrates the determination and unwavering approach of the African Union in combatting the scourge of terrorism and other related phenomena such as organized international crime;
6. **SEIZE** this opportunity to reaffirm the full commitment of the African Union to spare no effort to permanently avert these threats to the security, stability and development of the African continent and to combine its efforts with the East African region and the rest of the international community in the fight against the terrorist Al-Shabab/Al-Qaeda group in Somalia and in the region.

DRAFT
DECLARATION OF SOLIDARITY WITH THE FEDERAL REPUBLIC OF SOMALIA
FOLLOWING THE TERRORIST AL-SHABAB/AL QAEDA ATTACK,
ON A MARKET IN MOGADISHU

We, the Heads of State and Government of the African Union, meeting in our Extraordinary Session, held in Addis Ababa, Ethiopia, on 12 October 2013:

Deeply concerned about the persistent terrorist Al-Shabab/Al Qaeda attacks on innocent people in Somalia, in particular the heinous bombardment of a market in Mogadishu on 21st September 2013,

Hereby,

1. **CONDEMN** with utmost firmness these cowardly and vicious acts of aggression against a Member State of the African Union;
2. **COMMEND** the efforts of the Somali security forces to counteract the continuous aggression of the terrorist Al-Shabab/Al Qaeda gangs;
3. **EXPRESS** our full solidarity with the Government and people of Somalia in their efforts to consolidate the gradual return to stability in their country and **REAFFIRM** their commitment to increase their support through the AMISOM;
4. **EXPRESS** our sincere condolences and deep sympathy to the Government and people of Somalia and the families of the victims of these continuous terrorist acts;
5. **SEIZE** this opportunity to reaffirm the full commitment of the African Union to spare no effort to permanently avert these threats to the security, stability and development of the African continent and to combine its efforts with the East African region and the rest of the international community in the fight against the terrorist Al-Shabab/Al Qaeda group in Somalia and in the region.