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African Union Documents - Progress Report on International Jurisdiction, Justice and ICC

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AFRICAN UNION

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EXECUTIVE COUNCIL
Fifteenth Extraordinary Session
11 October 2013
Addis Ababa, ETHIOPIA

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**PROGRESS REPORT OF THE COMMISSION ON THE
IMPLEMENTATION OF THE DECISION Assembly/AU/Dec.482 (XXI) ON
INTERNATIONAL JURISDICTION, JUSTICE AND THE
INTERNATIONAL CRIMINAL COURT (ICC)**

I. INTRODUCTION

1. The 21st Ordinary Session of the Assembly of the African Union, held in Addis Ababa, Ethiopia from 26 to 27 May 2013 considered the Report on International Jurisdiction, justice and the International Criminal Court (ICC).

2. Following due consideration of the Report and the recommendations of the Executive Council, the Assembly adopted Decision Assembly/AU/Dec.482 (XXI) as follows:

“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 on-going 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;

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 on-going 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."

3. The present report has been prepared pursuant to the above Assembly Decision with a view to updating the AU Policy Organs on the developments occurred since the adoption of the Decision.

II. BRIEF ON THE CASES

4. On 31 March 2010, the Pre-trial Chamber II of ICC, by majority, issued its decision authorizing the Prosecutor to commence an investigation into the situation in the Republic of Kenya in relation to crimes against humanity within the jurisdiction of ICC committed between 1 June 2005 and 26 November 2009 in the aftermath of the elections. On 15 December 2010, the Prosecutor, after conducting his investigations, submitted to the Pre-Trial Chamber II two (2) applications under Article 58 of the Rome Statute requesting for the issuance of summonses to appear for William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang (case one) and Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali (case two) for their alleged responsibility in the commission of crimes against humanity.

5. The six (6) suspects appeared voluntarily before the Pre-trial Chamber II at the confirmation of charges hearing from 1 to 8 September 2011 and from 21 September to 5 October 2011, respectively.

6. The Pre-trial Chamber confirmed the charges against three (3) suspects. The details of the indictment of the President and Deputy President of Kenya are the following:

Case 1: The Prosecutor v. William Samoei Ruto

Decision on the confirmation of charges: 23 January 2012

Opening of the trial: 10 September 2013. The hearing has been adjourned for one week following the terrorist attack in Nairobi (Kenya).

Charges

Mr. Ruto is accused of being criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the **crimes against humanity** of:

- murder (article 7(l)(a));
- deportation or forcible transfer of population (article 7(l)(d)); and
- persecution (article 7(l)(h)).

Case 2: The Prosecutor v. Uhuru Muigai Kenyatta

Decision on the confirmation of charges: 23 January 2012

Opening of the trial: scheduled on 12 November 2013

Charges

Mr. Kenyatta is allegedly criminally responsible as an indirect co-perpetrator pursuant to article 25(3)(a) of the Rome Statute for the **crimes against humanity** of:

- murder (article 7(l)(a));
- deportation or forcible transfer (article 7(l)(d));
- rape (article 7(l)(g));
- persecution (articles 7(l)(h)); and
- other inhumane acts (article 7(l)(k)).

7. It would be recalled that, pursuant to the provisions of Article 19 of the Rome Statute of the ICC on complementarity, Kenya as a State Party to the Rome Statute of ICC, which has primary jurisdiction over the investigations and prosecutions of alleged

crimes against humanity in relation to the 2007-2008 post-election violence had challenged the jurisdiction of the ICC.

8. However, on 30 May 2011, the Pre-Trial Chamber II of the ICC rejected the Kenyan Government's challenges to the admissibility of the two cases brought before the Court in the context of the situation in Kenya. In this regard, the Pre-Trial Chamber II considered that the applications did not provide concrete evidence of on-going proceedings before national judges against the same persons suspected of committing crimes falling under the ICC's jurisdiction. The Pre-Trial Chamber II also considered that the Government of Kenya had failed to provide the Chamber with any information as to the conduct, crimes or the incidents for which the suspects were being investigated or questioned for at the domestic level.

9. The Government of Kenya appealed against the decision of the Pre-trial Chamber II. However, on 30 August 2011, the Appeal Chambers of the ICC confirmed the Pre-trial Chamber II's decisions of 30 May 2011 on the admissibility of the cases and dismissed the appeals filed by the Government of Kenya. It should be noted that the Judgments were adopted by majority with one Judge dissenting.

10. In this regard, it is to be recalled that the admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or concerned State. The challenge shall take place prior to or *at the commencement of the trial*.

11. Since the Government of Kenya has already challenged the admissibility of the case prior to the commencement of the trial, it may again challenge it only on the basis of Article 17 paragraph 1 (c) of the Rome Statute. To do so, the Government of Kenya shall prove that the persons concerned have already been tried for conduct which is the subject of the ICC proceedings, and a trial by the Court is not permitted under Article 20, paragraph 3 of the Rome Statute (*Ne bis in idem*).

12. To have enough time to challenge the admissibility of the case on the basis of Article 17 (1) (c), the option is to request for a deferral of the ICC investigations and prosecutions in relation to the 2007-2008 post-election violence under Article 16 of the Rome Statute. As in 2011, the Government of the Republic of Kenya may, through the African Members and some Permanent Members of UN Security Council (UNSC), submit the request for a deferral to the UNSC. If the deferral is granted by the UNSC, this may allow the Government of Kenya to set up a national mechanism to investigate and prosecute the cases under a reformed Judiciary provided for in the new constitutional dispensation.

III. INVESTIGATIONS AND PROSECUTIONS BY THE ICC IN AFRICA

13. Since its establishment, the ICC has opened investigations in relation to eight (8) situations. All of these situations arise from African States. The eight (8) situations relate to crimes committed or allegedly committed in the Democratic Republic of Congo;

Uganda; the Central African Republic (CAR); Sudan (Darfur); Kenya; Libya; Cote d'Ivoire and Mali. It is important to note that in the case of CAR, DRC, Uganda, Cote d'Ivoire and Mali, the ICC has exercised jurisdiction on the basis of a referral by the State Party on whose territory the crimes have been committed. The situations in Darfur and in Libya were referred to the ICC Prosecutor by the United Nations Security Council by virtue of Security Council Resolution 1593 (2005) and Resolution 1970 (2011) respectively.

IV. IMPLEMENTATION OF DECISION ASSEMBLY/AU/DEC.482 (XXI): ACTIONS TAKEN IN RESPECT OF THE ICC

14. In implementation of the above mentioned decision, Dr. Tedros Adhanom Ghebreyesus, Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia and Chairperson of the Executive Council led, on behalf of the Chairperson of the AU, Hailemariam Desalegn and the Chairperson of the Commission, Dr. Nkosazana Dlamini Zuma an AU delegation composed of Ambassador Kongit Sinegiorgis, Permanent Representative of Ethiopia to the AU, Dr. Kassu Yilala, Ambassador of Ethiopia to Benelux and Ms. Djeneba Diarra, AU Acting Legal Counsel to the Headquarters of the ICC, The Hague, Netherlands on 29 July 2013. During his visit, the AU Delegation had meetings with the President and the Prosecutor of ICC respectively.

a) Meeting with Judge Song, the President of ICC

15. The purpose of the meeting was to deliver and explain the content of a letter of 8 July 2013 co-signed by the Chairperson of the Union and that of the Commission in relation to the decision of the AU Assembly on the ICC investigations and prosecutions regarding the 2007-2008 post-election violence in Kenya and in particular the cases of the now sitting President Uhuru Muigai Kenyatta and Vice-president William Samoei Ruto.

16. During the said meeting, the Chairperson of the Council stated that the fight against impunity is enshrined in the Constitutive Act, expressing Africa's firm commitment to fight impunity in all its forms. He explained that the request of Kenya supported by the AU for a referral of the ICC investigations and prosecutions to allow for a National Mechanism to investigate and prosecute the cases is based on the following:

- i) The adoption by Kenya of a new constitution which provides for a reformed Judiciary;
- ii) The conclusion of successful elections in Kenya as approved by the Supreme Court;
- iii) the need to consolidate the on-going peace building and national reconciliation processes, in order to prevent the resumption of conflict and violence in Kenya;

- iv) The need to ensure stability in Kenya, in the region and Africa as a whole;
- v) The need for Kenya to own the legal process the same way it did the political to ensure that the former brings not only justice but also truth and reconciliation as well as healing to the people of Kenya;
- vi) the fact that the Rome Statute gives primacy to national jurisdictions and the jurisdiction of ICC is based on the principle of complementarity;
- vii) The lack of reaction on the part of the United Nations Security Council (UNSC) to the voice of 53/54 African countries since July 2007;
- viii) The need to ensure that the legal process is not isolated and is part of the overall process of consolidating peace in Kenya.

17. In responding, Judge Song indicated the following:

- i) The importance for continued dialogue between ICC and AU;
- ii) The need to find ways to improving communication between ICC and AU;
- iii) The need for the two institutions to promote their shared values including the fight against impunity;
- iv) The need for the two institutions to work together and enhance their cooperation including through visits of the President and the Prosecutor to the AU Headquarters, joint seminars, information sharing and the possibility of the opening of an ICC office to the AU;
- v) The judicial nature of ICC does not allow it to take into account matters of a political nature. Thus, only UNSC can defer cases on the basis of Article 16 of the Rome Statute;
- vi) On the legal front, it is for Kenya that can apply to the Court to decide to challenge the admissibility of the cases on the basis of Articles 17 and 19 of the Rome Statute;

18. In the same vein, the Commission received on 5 August 2013 a reply by President Song which stated, as he had articulated with the AU Delegation.

19. It is to be noted that, the AU reiterated its request for a referral through a letter of 10 September 2013 co-signed by the Chairperson of the Union and that of the Commission. By letter dated 13 September 2013 in reply to the above mentioned letter, the Presidency of ICC indicated, *inter alia*, as follows:

“... the Decision of the Assembly of the African Union as such does not constitute a request to the Court in accordance with the Court’s legal framework....The Court is only able to consider requests properly raised in front of the relevant chamber in accordance with the applicable legal procedures...”

b) Meeting with Mrs. Fatou Bensouda, Prosecutor of ICC

20. At her request, the AU Delegation had a meeting with Mrs. Fatou Bensouda, the Prosecutor of ICC.

21. During this meeting, the Chairperson of the Council stated, as he had articulated with the ICC President, the purpose of the mission of the AU Delegation and indicated that it was important for Kenya to own the legal process as it had the political process.

22. The Prosecutor in response indicated the following:

- i) The Kenyan cases are challenging and difficult for all the parties concerned;
- ii) Kenya has the primary responsibility to investigate and prosecute, however, Article 143 of the Constitution of Kenya provides that “*criminal proceedings shall not be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office*”;
- iii) ICC seems to be the only institution on the side of the victims;
- iv) ICC is alleged to be targeting only Africa while most of the cases relating to the latter have been submitted by African countries the last example being Mali and the Union of Comoros;
- v) Continued dialogue between AU and ICC could enable all concerned arrive at a satisfactory outcome;
- vi) The options for Kenya based on the Rome Statute are to i) challenge the admissibility before the ICC in accordance with Articles 17 and 19 and ii) request UNSC to defer the matter in accordance with Article 16.

V. PREVIOUS REQUEST FOR A DEFERRAL OF THE ICC INVESTIGATIONS AND PROSECUTIONS IN RELATION TO THE 2007-2008 POST-ELECTION VIOLENCE IN KENYA

23. The Assembly through its Decision Assembly/AU/Dec. 334(XVI) supported and endorsed Kenya’s request for a deferral of the ICC investigations and prosecutions in relation to the 2008 post-election violence under Article 16 of the Rome Statute, to allow

for a National Mechanism to investigate and prosecute the cases under a reformed Judiciary provided for in the new constitutional dispensation in line with the principle of complementarity. By the same Decision, the Assembly requested the UN Security Council to accede to this request in support of the on-going peace building and national reconciliation processes, in order to prevent the resumption of conflict and violence; and requested the African members of the UN Security Council to place the matter on the agenda of the Council.

24. The request for a deferral was duly submitted to the UN Security Council by the Permanent Representative of the Republic of Kenya to the United Nations. Following this request, UNSC under the Chairmanship of China, for the month of March and Colombia, as Chairperson for the month of April 2011, organized a UN Security Council informal dialogue on 18 March 2011 and informal consultations on 8th April 2011 respectively, in order to consider the issue. The Commission was represented at the informal dialogue held on 18 March 2011 by the Commissioner for Social Affairs, Advocate Bience Gawanas who made a statement on behalf of the AU.

25. At the end of the said consultations, the President of UNSC by a letter dated 12 April 2011 informed the AU Permanent Observer Mission to the UN that after full consideration, the members of the UNSC did not agree on the matter.

VI. PREVIOUS RESORT TO ARTICLE 16 BY THE UN SECURITY COUNCIL

26. Article 16 provides that no investigation or prosecution may be commenced or proceeded with for a period of twelve (12) months after the UN Security Council has by resolution adopted under Chapter VII of the Charter of the United Nations requested the Court to that effect. It also provides that the request may be renewed by the Council under the same conditions.

27. This Article has been used by the UN Security Council in only two (2) cases under circumstances that are considered highly controversial and which portray a tendency towards double standards. By UNSC resolution 1422 of 12 July 2002, adopted under Chapter VII, a few weeks after the entry into force of the Rome Statute of the ICC and before the Court had been operationalised in The Hague, the UN Security Council granted a blanket immunity to troop contributing states that are not parties to the Rome Statute in respect of UN forces in Bosnia Herzegovina. The resolution was pushed for by the United States of America and was renewed for a further twelve (12) months on 12 June 2003, at the 4772nd meeting of the UNSC, vide resolution 1487. These two (2) resolutions have been criticized by many countries, scholars and groups of countries as discriminating between peacekeeping forces from sending states that are parties to the Rome Statute and those that are not and being in violation of the Rome Statute which had envisaged deferrals – only on a case by case basis; – only for a limited period of time; – and only when a threat to or breach of peace and security has been established by the UN Security Council under Chapter VII of UN Charter.

VII. ACTIONS UNDERTAKEN AND TASKS TO BE PERFORMED BY THE COMMISSION AND THE TIME FRAME

28. To implement the above mentioned Decision of the Assembly, the Commission has done or is undertaking the following:

- i) Prepare a supplementary budget request for the implementation of the Assembly Decision on ICC of May 2013 (***Done in July 2013***). The request was considered and approved by the PRC Advisory Subcommittee on Administrative, Budgetary and Financial Matters on **2 September 2013**.
- ii) Develop a Concept Note on the broad areas of International Criminal Justice System, Peace, Justice and Reconciliation as well as the impact/actions of the ICC in Africa and the ways of strengthening African mechanisms to deal with African challenges and problems (***Ongoing***);
- iii) Organize the Validation workshop of the Draft Concept Note of the brainstorming session on the broad areas of International Criminal Justice System, Peace, Justice and Reconciliation as well as the impact/actions of the ICC in Africa and the ways of strengthening African mechanisms to deal with African challenges and problems” (***tentative date 28-29 October 2013***);
- iv) Organize the brainstorming session of AU Member States and Organs on the broad areas of International Criminal Justice System, Peace, Justice and Reconciliation as well as the impact/actions of the ICC in Africa and the ways of strengthening African mechanisms to deal with African challenges and problems (***tentative date 14-15 November 2013***);
- v) Attend the 12th Session of the ASP-ICC to be held in the Hague (Netherlands) from **20-28 November 2013**, in order to work with the African Group of ASP to ensure that the concerns raised by the African Union and its Member States are properly addressed as well as to facilitate reporting to the next Ordinary Session of the Assembly of the Union;
- vi) Submit the recommendations of the Brainstorming session of AU Member States and Organs to the AU Policy Organs through the PRC (***January 2013***).

VIII. DECISIONS OF THE APPEALS CHAMBER OF ICC ON THE REQUESTS FOR LEAVE TO SUBMIT OBSERVATIONS UNDER RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE

29. Following the appeal of the Prosecutor against the decision of Trial Chamber V (a) on Mr. Ruto's Request for Excusal from Continuous presence at trial dated 18 June

2013, some AU Member States filed application for leave to submit observations under rule 103 of the Rules of Procedure and Evidence.

30. The first requests for leave to submit observations were filed by the United Republic of Tanzania, the Republic of Rwanda, the Republic of Burundi, the State of Eritrea and the Republic of Uganda. On 13 September 2013, the Appeals Chamber granted by majority, Judge Usaka dissenting, the requests to submit observations filed by the said Member States. Therefore, their Joint observations were filed on 18 September 2013. The joint observations addressed the importance of according article 63 of the Rome Statute a broad and flexible interpretation, which “encourages State cooperation in the widest possible set out circumstances and without jeopardizing the constitutional responsibilities of leaders”, as well as the “balance to be struck between those subject to the Court’s jurisdiction but who also occupy high office”.

31. In the same vein, on 19 September 2013, the Federal Democratic Republic of Ethiopia and the Federal Republic of Nigeria filed requests to submit observations pursuant to 103 of the Rules of Procedure and Evidence. The applicants submit that, if authorization is granted, they will address the importance of according article 63 a broad and flexible interpretation, which encourages State cooperation in the widest possible set out circumstances and without jeopardizing the constitutional responsibilities of leaders. The requests for leave to submit observations under rule 103 of the Rules of Procedure and Evidence from Ethiopia and Nigeria were rejected by the Appeals Chamber on 25 September 2013. In this regard, the Appeals Chamber noted that the Joint Observations received on 18 September 2013 were made on precisely the same issues. In these circumstances and to avoid any unnecessary delay given the advanced stage of the appeals proceedings, the Appeals Chamber did not consider it desirable for the proper determination of the case within the meaning of rule 103 of the Rules of Procedure and Evidence to grant the applicants leave to submit observations as set out in the Requests.

IX OBSERVATIONS:

32. The available options open to AU and its Member States encompass both political and legal avenues.

A. Political Avenues:

i. At the level of the African Union

- a) *As done in the past through various Decisions adopted by the Assembly of Heads of State and Government of the African Union, AU and its Members States should continue to provide strong political support to the Government of Kenya for the deferral of the proceedings initiated against the President and the Deputy President of Kenya by the UNSC in accordance with Article 16 of the Rome Statute of ICC. This strong political support shall continue at*

the level of the UN Security Council and the Assembly of States Parties to the Rome Statute.

ii. At the level of the United Nations:

- a) *The AU Member States should reiterate their request for the deferral of ICC investigations and prosecutions in relation to the 2007-2008 post-election violence under article 16 of the Rome Statute to allow for a National Mechanism to investigate and prosecute the cases. **To support the request for a deferral made by the Assembly, it is important that the Government of Kenya prepares an Aide-Memoire on the actions that would be undertaken by the Government during the period of one (1) year, if deferral is granted.***
- b) *In this regard, the African Group in New York including the African Members of the UN Security Council (UNSC) should ensure that the request for deferral for one (1) year of the proceedings against the President and the Deputy President of Kenya by the UNSC in accordance with Article 16 of Rome Statute as recommended by the Assembly is properly addressed by the UNSC. Indeed, the matter should be inscribed again on the agenda of the UNSC by the African Members of the UNSC as soon as possible.*
- c) *In the same vein, consideration should be given by the African Group to holding bilateral meetings with other Members of the UNSC including the five (5) Permanent Members of UNSC with a view to sensitizing them on the need for their countries to support the position of the African Union.*
- d) *The Chairperson of the Executive accompanied by the Members of the Bureau of the Assembly may consider to hold bilateral meetings respectively with the Ministers of Foreign Affairs of the Members of UN Security Council with a view to sensitizing them on the need for their countries to support the AU request for deferral.*
- e) *The Chairperson of the Executive Council accompanied by the Members of the Bureau of the Assembly should address the African Groups in New York and The Hague on the matters to ensure that AU Member States speak one voice.*

iii. At the level of the Assembly of the States Parties to the Rome Statute

- a) *The Assembly of States Parties (ASP) to the Rome Statute of the ICC is established by Article 112 of the Rome Statute which defines its composition and functions. To date, the ASP is composed of hundred twenty two (122) States, including thirty four (34) AU Member States. Africa is the largest regional group of ASP. However, the African Group of ASP*

has shown in the past a limited influence in the decision making process of ASP. Indeed, various proposals of African States Parties submitted to ASP in 2009 and 2010 were supported by few African States Parties.

- b) Despite this situation, the Group of African States Parties may raise the issue of the indictment by ICC of the President and Deputy President of Kenya respectively, and the threat that it may pose to the on-going 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. In this regard, the African States Parties should speak with one voice to ensure that African concerns are properly addressed by the forthcoming session of ASP to be held in The Hague (Netherlands) in November 2013.*

B. Legal Options

- a) The Government of Kenya and other African States should consider participating in the appeals proceedings concerning the decision requesting the Deputy President of Kenya to attend all the Court sessions. The purpose of this participation would be to raise the issue of the constitutional responsibilities of the President and Deputy President of Kenya. While Kenya has cooperated and reiterated its commitment to continue cooperating with the Court, it must do so in the context of its own constitutional requirements. This argument should be put to the Appeals Chamber.*
- b) If deferral is granted, Kenya may take necessary measures for investigating the cases in order to challenge the admissibility of the cases by providing the Court with evidence with a sufficient degree of specificity and probative value that demonstrates that it is indeed investigating the cases.*
- c) Other AU Member States or the African Union itself may seek authorization of the competent trial Chambers of ICC to make submissions as amicus curiae in the proceedings instituted by the ICC against the President and Deputy President of Kenya. Under Rule 103 of the Rules of Evidence and Procedure, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, Organization or persons to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.*

Encl.: Letters sent and received from ICC