



DIVISION OF COMMUNICATION AND INFORMATION

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ON THE DECISION OF THE PRE-TRIAL CHAMBER OF THE ICC INFORMING THE UN SECURITY COUNCIL AND THE ASSEMBLY OF THE STATE PARTIES TO THE ROME STATUTE ABOUT THE PRESENCE OF PRESIDENT OMAR HASSAN AL-BASHIR OF THE SUDAN IN THE TERRITORIES OF THE REPUBLIC OF CHAD AND THE REPUBLIC OF KENYA

Addis Ababa, 29 August 2010. The African Union Commission has noted with grave concern statements attributed to some members of the UN Security Council as well as the decisions ICC-02/05-01/09 of 27 August 2010 of the ICC Pre Trial Chamber informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir's presence in the territories of the Republic of Chad and the Republic of Kenya.

The said statements and the decisions assert that the two African Union Member States have “*a clear obligation to cooperate with the Court in relation to the enforcement of such warrants of arrest, which stems both from the United Nations Security Council Resolution 1593, whereby the United Nations Security Council ‘urge[d] all States and concerned regional and other international organizations to cooperate fully’ with the Court, and from article 87 of the Statute of the Court*”, to which the two countries are state parties. The African Union Commission further notes that the decision by the Pre-Trial chamber was made strangely in respect of the “expected attendance of Omar Al Bashir at the celebration scheduled for Friday, 27 August 2010”.

The African Union Commission expresses its deep regret that both the statements and the decisions grossly ignore and make no reference whatsoever to the obligations of the two countries to the African union, arising from decisions Assembly/AU/Dec. 245(XIII) adopted by the 13th Ordinary Session of the Assembly of Heads of State and Government, wherein the Assembly “**Decide[d] that in view of the fact that the request by the African Union has never been acted upon (by UN Security Council), 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**”, which decision was reiterated (decision Assembly/AU/Dec. 296 (XV) by the 15th Ordinary session of the Assembly in July 2010 in Kampala, Uganda. Additionally, the statements and the decisions did not take cognisance whatsoever of the obligations of AU Member states arising from Article 23 (2) of the Constitutive

Act of the African Union, which obligates all AU Member States “**to comply with the decisions and policies of the Union**”. Thus, the decisions adopted by the AU policy organs are binding on Chad and Kenya and it will be wrong to coerce them to violate or disregard their obligations to the African Union.

It is to be recalled that the repeated appeals to the UN Security Council by the Assembly of Heads of State and Government of the African Union as well as the AU Peace and Security Council to defer the proceedings against President Omar Hassan Bashir of The Sudan for one year in application of the provisions of Article 16 of the Rome Statute have never been acted upon by the UN Security Council. The same UN Security Council, which has ignored this request by AU member states and which includes states that have no obligations to the International Criminal Court, has no moral authority to sit in judgement over Chad and Kenya. Indeed, by virtue of their membership of the African union, these two countries have committed themselves to “condemnation and rejection of impunity” and voluntarily negotiated the Rome Statute along with the Organisation of African Unity and joined the ICC with a view to enhancing the fight against impunity.

The African Union Commission recalls that both Chad and Kenya being neighbours of The Sudan have an abiding interest in ensuring peace and stability in The Sudan and in promoting peace, justice and reconciliation in that country, which can only be achieved through continuous engagement with the elected government of that country. Neighbouring countries do this as a matter of survival as they bear the brunt of instability or insecurity in neighbouring states. Kenya as a member of IGAD and a guarantor to the peace process in The Sudan, arising from the implementation of the Comprehensive Peace Agreement and the impending referendum in South Sudan, has a duty and obligation to continuously engage with President Omar Hassan Al Bashir and President Silva Kiir.

It is to be noted that engagement with the elected leaders of The Sudan is vitally and strategically essential and unavoidable for the countries of the region as well as the entire continent, which by their location are better able to understand and take into account the local realities and dynamics. The attempt to involve the UN Security Council in this matter is yet another effort to pressurise African countries to support the ICC irrespective of the complex dynamics on the ground which require a fine balance between peace and justice and, in this regard, the AU shall oppose any attempt to coerce African Countries to undermine the common African position.

The African Union will continue to fight against impunity as required by the relevant Assembly decisions as well as Article 4 of the Constitutive Act and shall oppose the pretensions and double standards that are evident from the statements being made about the two countries. The African Union believes and will continue to pursue in respect of the Sudan the interconnected, mutually interdependent and equally desirable objectives of peace, justice and reconciliation. It also requests all African Countries and Friends of Africa to reject any draft resolution that may be tabled before the UN Security Council on this matter.

Addis Ababa, 29 August 2010.