



Coalition for the International Criminal Court

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**Global Coalition Says Kenya and the African Union Should Uphold
Commitment to Justice**

Civil Society Disappointed by 16th AU Summit Decision

New York, USA – At the conclusion of the 16th Summit of the African Union (AU), the AU issued a decision on the International Criminal Court (ICC), which adopts a negative stance on justice, including endorsing a request by Kenya to the United Nations Security Council (UNSC) for a deferral of the Court's investigation and maintaining its call on African states not to cooperate with the ICC. Civil society expresses its disappointment and calls on Kenya and the African Union to uphold its commitment to justice, the Coalition for the International Criminal Court (CICC) said today.

At its 16th Summit held on 24-31 January 2011 in Addis-Ababa (Ethiopia), the African Union decided to support and endorse Kenya's request for a deferral of the ICC investigations and prosecutions in relation to the 2008 post-election violence.

Article 16 of the Rome Statute – ICC's founding treaty - provides for a deferral of the Court's investigation or prosecution by the UNSC when it acts under its Chapter VII powers (a threat to peace and security). The Court's investigation into Kenya was opened in March 2010 and the ICC Prosecutor recently requested the issuance of summonses to appear for six individuals.

The African Union also maintained its call for deferral of another ICC case against President Al-Bashir of Sudan and requested the African members of the UN Security Council to place the matter on the Council's agenda. The Summit decision follows a previous decision by the AU last year urging AU States not to cooperate with the ICC request for the arrest and surrender of Omar Al-Bashir. Al-Bashir is sought by the ICC for crimes against humanity, war crimes and genocide allegedly committed in Darfur in 2003 and 2004.

The Coalition calls on African states parties to the Rome Statute to continue to stand firm in their support for accountability and the rule of law, and reject steps which would undermine the Court. The Court, to do the work that the majority of the world's nations have agreed it should do, needs ongoing support of African governments, civil society, and the public in order to ensure its success.

"This decision of the AU is contrary to the supportive role adopted by individual African States parties, who have clearly stated their commitment to the ICC and to justice," said Stephen Lamony, the Coalition's Africa Outreach Liaison and Situations Adviser. "By passing decisions

which seek to contradict those obligations, the AU puts its members in an awkward and embarrassing situation,” he noted. “The AU should have a consistent position on justice akin to those of its Members: justice for all serious international crimes, whether by a national, regional or international court,” he added.

The ICC acts under the principle of complementarity which means that it recognizes that states have the primary responsibility to investigate and prosecute war crimes, crimes against humanity, and genocide. The Court investigates and prosecutes crimes only when the states where the crimes were committed have not done so. The Waki Commission on the Kenyan post-election violence recommended that Kenya engage in national trials and only after it failed to do so were the names of the suspects turned over to the Court. Other attempts at setting up national trials in Kenya have also failed. In that vacuum, the ICC stepped in. According to Article 17 of the Rome Statute, Kenya can still challenge admissibility of the ICC proceedings, but that challenge would be successful only if Kenya can show that it is investigating or prosecuting the same individuals for the same crimes.

“The government of Kenya squandered a great opportunity to show the world that it was committed to justice,” said Oby Nwankwo, Executive Director of the Civil Resource Development and Documentation Centre (CIRDDOC –Nigeria) and Steering Committee member of the Coalition. “It could have avoided the ICC’s intervention in the first place. The ICC has now rightly stepped in, in response to the call for justice by the victims of injustice in Kenya. An intangible promise from the Kenya government to prosecute at an undetermined point in the future is not sufficient to stop that train,” she explained. “The Security Council’s standard for invoking a deferral is untested and inappropriate in the circumstances. Kenya should face the fact that justice for those affected cannot wait,” she added.

Background: *The International Criminal Court’s investigation in Kenya was opened on 31 March 2010 when ICC Pre-Trial Chamber (PTC) II authorized the Prosecutor to open an investigation into alleged crimes committed during the 2007-2008 post-election violence. On 26 November 2009, ICC Prosecutor Luis Moreno-Ocampo had requested the authorization of the PTC to open an investigation. It was the first time that the Prosecutor requested to open an investigation on his own initiative i.e. proprio motu and not through referral by States Parties or the UNSC. On 15 December 2010, the Prosecutor asked ICC PTC II to issue summonses to appear for crimes against humanity against William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali for their alleged roles in the 2007-2008 Kenyan post-election violence. It is now up to PTC Judges to decide whether or not to issue summonses or arrest warrants.*

The Court’s investigation into the situation in Darfur, Sudan, was opened by the ICC prosecutor on 6 June 2005, after being referred to the Court by the UNSC through Resolution 1593 on 31 March 2005. Since the referral, arrest warrants have been issued against Ahmad Muhammad Harun, Ali Kushayb and Omar Hassan Ahmad Al-Bashir, as well as the summons to appear for Bahar Idriss Abu Garda, Abdallah Banda Abakaer Nourain and Saleh Mohamed Jerbo Jamus. None of the outstanding arrest warrants have been executed, and the Sudanese government has openly defied and consistently refused to cooperate with the ICC and the international community, a finding of which was made by ICC Judges and forwarded to the UNSC for its attention.

The ICC is the world’s first, permanent international court to prosecute war crimes, crimes against humanity, and genocide. There are currently 114 ICC States Parties. Central to the Court’s mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity, and war crimes. There are currently five active investigations before the Court: the Central African Republic; the Democratic Republic of the Congo; Darfur, the Sudan; Uganda, and Kenya. The ICC has publicly issued 12 arrest warrants and three summonses to appear. Three trials are ongoing. The Office of the Prosecutor has made public that it is examining at least ten situations on four continents, including Afghanistan, Chad, Colombia, Côte d’Ivoire, Georgia, Guinea, Honduras, South Korea, Nigeria, and Palestine.

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries advocating for a fair, effective and independent International Criminal Court and improved access to justice for victims of genocide, war crimes and crimes against humanity. For more information, visit: www.coalitionfortheicc.org

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