



**CHILDREN EDUCATION SOCIETY (CHESO)  
CHAMA CHA ELIMU KWA WATOTO.**

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14 November 2009

**TANZANIA COALITION FOR THE INTERNATIONAL CRIMINAL COURT  
(TCICC)**

**PRESS STATEMENT**

**URGENT APEAL TO THE GOVERNMENT OF TANZANIA TO FULFILL ITS  
OBLIGATION TO SUPPORT AND COOPERATE WITH THE  
INTERNATIONAL CRIMINAL COURT (ICC).**

Members of the Tanzania Coalition for the International Criminal Court (TCICC) commemorated the United Nations Day on 23<sup>rd</sup> October 2009 at the Tanganyika Library in Dar es salaam by making reflection on current support to the work of the International Criminal Court (ICC) by the United Nations Security Council, the African Union (AU) and the Government of the United Republic of Tanzania. They decided to issue a Press Statement on their reflections and concluding appeal to the Government of Tanzania and the AU.

**MEMBERS OF THE TCICC** recalled the African Union (AU) official statements released during the final five-weeks of negotiations for establishing the ICC stating that, “*the continent of Africa had a special interest in the establishment of the ICC because its people had for centuries endured human rights atrocities such as slavery, colonial wars and other horrific acts of war and violence which continue today despite the continent’s post-colonial phase*”<sup>1</sup>.

**RECALLED** that fresh memories of the Rwandan genocide in 1994 strengthened efforts of Governments and Civil Society in Africa to support the idea of establishing an independent International Criminal Court to punish and deter, perpetrators of such heinous crimes in the future. Africans became more encouraged and went on playing pioneering and constructive roles in the Rome negotiations which ultimately led to creation and operationalisation of the ICC<sup>2</sup>.

**REMEMBERED** *Kofi Annan*, the former UN Secretary-General statement that the Court’s establishment was “a gift of hope to future generations, and a giant step forward in the match towards universal human rights and the rule of law<sup>3</sup>.” The

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<sup>1</sup> Professor *T. Maluwa*, Legal Adviser, OAU Secretariat, Statement at 6<sup>th</sup> Plenary, 17 June 1998. See *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*, UN doc. A/CONF.183/13 (Vol. II) 104, 115-118 at para. 116.

<sup>2</sup> *H. Jallow and F. Bensouda*, ‘International criminal law in an African Context’, in *M. du Plessis* (ed.), *African Guide to International Criminal Justice* (Pretoria: Institute for Security Studies, 2008) pp. 15-54, at 41. See also *P. Mochochoko*, ‘Africa and the International Criminal Court’, in *E. Ankumah and E. Kwakwa* (eds.), *African Perspectives on International Criminal Justice* (Accra: Africa Legal Aid, 2005) and *S. Maqungo*, ‘The Establishment of the International Criminal Court: SADC’s Participation in the Negotiations’ 9 *African Security Review* (2000).

<sup>3</sup> Statement of the UN Secretary-General *Kofi Annan* at the ceremony held at Campidoglio celebrating the Adoption of the Statute of the International Criminal Court, 18 May 1998.

members of the TCICC strongly resupported Annan's position that the ICC is the "missing link in the international justice system"<sup>4</sup>."

**RECALLED** that the United Nations Commission of inquiry headed by the former President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) Italian Antonio Cassese, made investigation and found that international crimes were being committed in Darfur. According to the UN Commission, Khartoum and the government of Sudan sponsored Arab militias known as the Janjaweed to engage in "widespread and systematic" abuse constituting to crimes against humanity. The Commission further found that Sudan "is unable or unwilling" to prosecute those crimes and thus recommended the UN Security Council to refer Sudan to the ICC for investigation and prosecution<sup>5</sup>.

As the United Nations Security Council has power under Article 13(b) of the Rome Statute on International Criminal Court in line with its power under Chapter VII of the *Charter of the United Nations*, to refer non-state parties to the ICC for investigation and possible prosecution, It referred Sudan to the ICC in accordance with Resolution 1593 (2005) because Sudan is not party to the ICC Statute. It signed the Rome Statute on 8 September 2000 but has not yet ratified it. The UN Security Council's resolution to refer Sudan to the ICC was supported without reservation by Benin and Tanzania, who were elected members of the UN Security Council at that time. The Sudan case became the current fourth case at the ICC. The other three cases were referred to the ICC by African Government themselves. The Governments of the Democratic Republic of Congo, Uganda and Central African Republic referred cases on their own territory to the ICC Office of the Prosecutor.

**NOTED** that in April 2007, the ICC issued arrest warrants for the Sudanese state Minister for Humanitarian Affairs Ahmad Harun and former Janjaweed leader Ali Kushayb, both suspected of having committed war crimes and crimes against humanity in Darfur<sup>6</sup>. In March 2009, the Court issued an arrest warrant for President Al Bashir of Sudan for crimes against humanity and war crimes<sup>7</sup>. The Sudanese government reportedly refused to cooperate with the Court and refrained to arrest and hand over the two suspects and the Sudanese President Omar Al Bashir of Sudan to the ICC.

**MEMBERS OF THE TCICC WHILE COMEMORATING THE 2009 UN DAY, CONSIDERED WITH GRAVE CONCERNS** that in February 2009, the AU summit held in Addis Ababa, Ethiopia during its 12th Ordinary Session expressed serious concern about the ICC prosecutor's request for an arrest warrant for Sudanese President Omar Al-Bashir, and the AU decided to convene a meeting of African ICC

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<sup>4</sup> Press Statement by UN Secretary-General *Kofi Annan*, 11 April 2002.

<sup>5</sup> *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to Security Council Resolution 1564 of 18 September 2004* (Geneva: UN, January 25, 2005), at paras. 569-589, 647-649.

<sup>6</sup> Nigeria Coalition for the International Criminal Court, Press Statement appealing against the AU invitation to President Omar Al Bashir to attend a session of the Peace and Security Council (PSC) meeting of the African Union scheduled to be held in Abuja from the 29th of October, 2009.

<sup>7</sup> ICC Office of the Prosecutor, Press Release, 'ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan', 4 March 2009; *Situation in Darfur, Sudan* (ICC-02/05-157) 'Public Redacted Version of Prosecutor's Application under Article 58 fi led on 28 July 2008', Pre-Trial Chamber, 12 September 2008; *Prosecutor v. Omar Al Bashir* (ICC-02/05-157), 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir', Pre-Trial Chamber I, 4 March 2009 and 'Warrant of Arrest for Omar Hassan Ahmad Al Bashir', Pre-Trial Chamber I, 4 March 2009.

states parties to “exchange views on the work of the ICC in relation to Africa<sup>8</sup>.” In July 2009, the AU summit in Sirte, Libya adopted a decision at its 13th Ordinary Session calling for AU member states not to cooperate in the arrest and surrender of Sudanese president Omar al-Bashir to the ICC by giving various reasons including that the UN Security Council had failed to act on the AU’s request for a deferral of the ICC’s case against President Bashir<sup>9</sup>. The Government of the United Republic of Tanzania declared in Parliament on July 16, 2009 that Tanzania will not arrest Sudanese President Omar Hassan al-Bashir if he were to visit the country because the African Union (AU) member states have decided NOT to cooperate with the ICC in arresting the Sudanese president Omar Al Bashir<sup>10</sup>.

**THE TCICC MEMBERS REMAINED CONCERNED IN NOTING** that the AU, instead of continuing communicating with the UN Security Council on its request to defer the ICC’s case against President al-Bashir, started placing negative perception directly towards the ICC with arguments from some AU member states connecting the ICC to be a “harassment” to African leaders and that it has started chasing Africa<sup>11</sup> and is a “fraudulent institution” reminiscent of “colonialism” and “imperialism” that is seeking to undermine and to control Africa<sup>12</sup>.

**WELCOMED** the fact that the ICC is currently analyzing cases outside Africa, for instance in Colombia, Afghanistan, Georgia and the Prosecutor is examining whether the ICC has jurisdiction over the Palestinian territories over crimes that may have occurred there since July 2002.

Members of the Tanzania Coalition for the International Criminal Court (TCICC) strongly support an availability of independent, fair and effective ICC and calls the Government of Tanzania and other states and governments in Africa to facilitate rather than curtailing the work of the ICC. Otherwise, victims will be denied redress, and a culture of impunity will be strengthened in Africa and beyond. This would be wholly inconsistent with the rejection of impunity in article 4 of the AU’s Constitutive Act.

**WELCOME** the Government of Botswana, Brazil, South Africa, other members of the African Union, current and former high level officials of the United Nations, other agencies and civil society positions and Statements from around the world some of which are herewith attached rejecting the AU Decision not to cooperate with the ICC on the arrest of the Sudanese President Omar Al Bashir and on any other person.

**MEMBERS OF THE TANZANIA COALITION FOR THE INTERNATIONAL CRIMINAL COURT IN PARTICULAR, URGE** the Government of the United Republic of Tanzania to:

1. Reaffirm its commitments for the ICC and cooperate fully with the Court in arresting any one suspected to have committed a crime punishable under the Rome Statute on International Criminal Court regardless of his or her position including the Sudanese President Omar Al Bashir. The Government of

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<sup>8</sup> Assembly/AU/Dec.221(XII)

<sup>9</sup> Assembly/AU/Dec. 245(XIII) Rev.1)

<sup>10</sup> The Tanzania Deputy Minister for Foreign Affairs and International Cooperation, Ambassador Seif Iddi, Statement in Tanzania Parliament on July 16, 2009 responding to a query raised by Ms Halima Mdee (Special Seats CHADEMA) quoted in Local news paper, THISDAY of July 17, 2009 viewed at [://www.thisday.co.tz/News/6054.html](http://www.thisday.co.tz/News/6054.html)

<sup>11</sup> Reuters, ‘Benin leader warns ICC against “harassing” Africans’, 27 September 2008, online at: <http://www.sudan.net/news/posted/16262.html> > (visited 15 May 2009).

<sup>12</sup> See *AFP*, ‘Rwanda’s Kagame says ICC Targeting Poor, African Countries,’ 31 July 2008.

Tanzania has a legal obligation to do so under the Rome Statute on International Criminal Court which it ratified on 2<sup>nd</sup> August 2002 and especially under Article 86, requiring states parties to “cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.”

2. Use its good international relations to urge other members of the AU to direct to the UN Security Council any concern on deferrals, instead of withholding cooperation from the Court. While awaiting decision from the UN Security Council, all members of the AU need to maintain and increase their cooperation with the ICC. Challenges on the work of the new ICC should be dealt with and directed to any person, authority or country acting as a source of the challenge and refrain from undermining directly the ICC.
3. Refrain from considering the current prosecutions of cases by the ICC as a failure of this new and young ICC. Tanzania and all other members of the AU should consider establishing partnership programmes with the ICC to prevent further commission of international crimes which is a core rationale of establishing the ICC as stated in the preamble of the ICC Statute.
4. Use her good international relations to urge other states of Africa, not to use ICC related international forums to make or support politically motivated criticisms against the ICC. Tanzania and members of the AU should use international forums on ICC to support and promote the work of the Court, in particular, during the Assembly of State Parties to the ICC Statute that will take place in The Hague from 15-28 November, 2009 and during the first Review Conference on the ICC to be held in Kampala, Uganda in May 2010 organized by the International Criminal Court. The first May 2010 Review Conference on the ICC will take stoke of past years performance, review the treaty and address general concerns.

Sincerely Yours,



Richard Shilamba

**Executive Director**

Children Education Society (CHESO)

On behalf of members of the Tanzania Coalition for the International Criminal Court (TCICC).

The Children Education Society (CHESO) is a member of the Coalition for the International Criminal Court (CICC), a Global Network of over 2,500 Network Civil Society Organizations supporting a fair, effective and independent International Criminal Court.

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