

**FOR IMMEDIATE RELEASE**

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**AU Pits Presidential Immunity against Human Security**

**The Hague/New York**—A decision adopted by a poorly attended “extraordinary summit” of the African Union (AU) calling upon the UN Security Council and the International Criminal Court (ICC) to postpone the trial of Kenyan President Uhuru Kenyatta is a step backwards in the continent’s fight against impunity, the Coalition for the ICC said today.

“The summit was extraordinary mostly in its failure and disappointments,” stated William R. Pace, convenor of the Coalition for the ICC. “For the last five years, anti-ICC African summit declarations have focused on trying to protect sitting presidents from being prosecuted for crimes against humanity committed in armed conflicts on their territories, while ignoring the AU Charter and the millions of victims, mostly women and children.”

Pre-summit proposals for a “mass withdrawal” from the ICC treaty and for total non-cooperation by African states were rejected. Reportedly, less than a third of the 54 AU heads of state or governments attended or were represented by ministers at the summit this past weekend. Many of the 130 African and international NGOs that wrote to African ICC states parties calling on them to reaffirm their support for the Court believe that governments expressed their objections to the purpose of the meeting by not attending.

The draft resolution distributed by the AU on October 14 calls explicitly for immunity from prosecution for sitting heads of state and senior government officials, and calls for Kenyatta not to appear before the ICC until AU concerns have been addressed by the UN Security Council and the ICC:

*“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.” Para 9 ii*

*“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 (UNSC) and the ICC.” Para 11*

The draft resolution [though officials indicted there are three different versions in circulation] also seeks a deferral from the Security Council of the ICC cases against Sudanese President Omar al-Bashir and Kenyan Deputy President William Samoei Ruto by 12 November 2013. The draft resolution calls upon the ICC governing body, the Assembly of State Parties of the Rome Statute of the International Criminal Court (ASP), to hold formal discussion 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”. It also calls for the ASP to amend the Rome

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Statute to recognize “African regional Judicial Mechanisms” as acceptable courts to exercise the principle of complementarity in the ICC treaty. The principle of complementarity holds that national legal systems are primarily responsible for investigating and prosecuting crimes and that the ICC has jurisdiction only when national systems are unable or unwilling to do so.

In addition to the excellent statements last week by Desmond Tutu and Kofi Annan, African and international members of the Coalition have been universal in criticizing the AU summit and draft resolution.

“The AU and African states must remain cognizant of the fact that there are millions of African people who are victims of international crimes and mass atrocity,” said the International Refugee Rights Initiative, Kituo Cha Katiba and the Pan-African Lawyers Union in a prepared statement. “Their need for justice must be the primary concern for African states in all conversations about international justice.”

“The move taken by a few African heads of state to demanding a pull-out from the ICC and the Rome Statute is a regrettable and inward-looking move to protect individuals who want to own and rule their citizens,” added Daniel Okello, executive director of Lira NGO Forum in Uganda. “The African Court of Justice and Human Rights has its own distinct mandate that cannot replace the ICC. At the very minimum, Uhuru Kenyatta, William Ruto and Omar Al-Bashir must be held to account to the peoples of Kenya and Sudan through the ICC, an impartial court of justice, where they can be fairly judged.”

AU leaders concluded that instead of addressing any of the urgent human rights disasters that threaten Africans, displacing millions and forcing tens of thousands to flee abroad, the most urgent issue was to unite their voices to obstruct the work of the International Criminal Court (ICC), which has become the last, best hope for many of those Africans who have been victims of atrocities implicating some of these very same leaders,” indicated Daniel Bekele, executive director of the African division at Human Rights Watch

These are only a few Coalition member responses. The Coalition’s 2,500 member organizations are dedicated to defending the Rome Statute and the ICC. One of the paramount achievements of the ICC treaty was that the governments decided there should be *no immunity* for anyone who commits the worst crimes under international law. African states and civil society have been among the strongest supporters of the ICC.

The Coalition will monitor closely the follow-up on the AU resolution.

ICC judges are still considering requests to allow video participation of the president and deputy president of Kenya during their trials.

The UN Security Council will likely discuss the AU request for deferral, for many governments have expressed concern about the consequences of the terrorist



attacks in Kenya.

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**BACKGROUND:** The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity, and genocide. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unwilling or unable to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes.

There are currently eight investigations before the Court in the following states: the Central African Republic; Côte d'Ivoire; the Democratic Republic of the Congo; Darfur, the Sudan; Uganda; Kenya; Libya; and Mali. Four of these came from governments requesting the ICC to take jurisdiction (DRC, Uganda, CAR, Mali); two from UN Security Council referrals (Sudan, Libya); and two on the prosecutor's initiative (Kenya and Côte d'Ivoire – the latter following a state acceptance of jurisdiction). The ICC has publicly issued 22 arrest warrants and nine summonses to appear. The Court issued a judgment in its first trial on 14 March 2012. Two trials are currently ongoing. The ICC Office of the Prosecutor has also made public that it is conducting eight preliminary examinations: Afghanistan, Colombia, the Comoros referral, Georgia, Guinea, Honduras, Republic of Korea and Nigeria.

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit: [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org)

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