



**EAST AFRICAN COMMUNITY  
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**MOTION FOR A RESOLUTION URGING THE INTERNATIONAL CRIMINAL COURT (ICC) TO DEFER THE CRIMINAL CASES AGAINST THE PRESIDENT AND DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

By: Hon. Christophe Bazivamo

**RECALLING** that this Assembly by Resolution made unanimously carried a Motion urging the International Criminal Court (ICC) to refer the Kenyan cases related to the post 2007/08 election violence to East African Court of Justice for hearing and final determination;

**NOTING** that the President and the Deputy President of the Republic of Kenya both now stand charged at the International Court for alleged crimes against humanity related to the 2007/2008 post election violence in Kenya; the case against the Deputy President is on-going while the case against the President is scheduled to commence in 12<sup>th</sup> November, 2013 thereby necessitating the attendance of the two leaders at the Hague based Court in the Netherlands;

**NOTING FURTHER THAT** the Kenyan President and the Deputy President respectively and the government of the Republic of Kenya even as they continue to observe their commitment to cooperate with the International Criminal Court have previously applied to the Court without success for deferment of the cases or the exemption from physical non-attendance to enable the two leaders to execute their constitutional obligations bestowed upon their respective offices by the people of Kenya;

**AWARE** that by virtue of their respective offices the President and Deputy President are by authority derived from the people of Kenya required to execute their Constitutional mandate for the well-being and benefit of the people of Kenya and hence their absence while attending trial will not be compatible with the principle of service to the people of Kenya;

**FURTHER AWARE** that the African Union has previously urged the ICC to refer the cases to Kenya and more recently the AU summit has resolved to support the Kenyan

application for a deferral and further taken the position that no President or leader of Government should be prosecuted while in office;

**NOTING FURTHER** that the Kenya Constitution like all East Africa Partner States Constitutions makes a provision for the protection of the President or person performing the functions of the office of the President from Criminal Proceedings during their tenure of office;

**CONCERNED** that the continued prosecution and requirement to attend the trial of the two Kenyan leaders by the ICC has subjected not only the President and Deputy President to humiliation but also to the people of Kenya who elected them to office;

**FURTHER NOTING** the rallying call of the EAC Summit of Heads of State and the two Resolutions of the Kenyan Parliament in respect of the Kenyan ICC cases, as well as the unequivocal support from most African leaders;

**NOW THEREFORE, THIS ASSEMBLY DO RESOLVE:**

1. To support the position adopted by the African Union at its extra-ordinary meeting of the summit held in Addis Ababa Ethiopia on 12<sup>th</sup> October, 2013 and the Parliament of Kenya respectively, relating to the Kenyan cases pending at the International Criminal Court;
2. To urge the International Criminal Court to defer the Kenyan cases against the President and Deputy President respectively for the period that they will be in office;
3. Do reiterate and urge the Heads of State Summit to establish a court with Criminal Jurisdiction to which the Kenyan cases should be referred which will have jurisdiction in all future criminal cases of a similar nature;
4. To direct the Secretary General to transmit this resolution to:
  1. The President of the International Criminal Court
  2. The UN Security Council
  3. The EAC Summit, and National Assemblies of the EAC Partner States , for appropriate

**Seconded by: Hon. Mike K. Sebalu**