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MINISTRY OF FOREIGN AFFAIRS

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6th March, 2009

To All Missions Abroad

To All Heads of Division

**KENYA'S POSITION ON THE INDICTMENT OF PRESIDENT OMAR EL BASHIR
OF SUDAN**

Attached herewith, please find a statement on Kenya's position on the indictment of President Omar El Bashir of Sudan for your information and necessary action.

A handwritten signature in black ink, appearing to be 'B.H.O. Ogutu'.

Amb/B.H.O. Ogutu
**DIRECTOR FOR POLITICAL AFFAIRS
FOR: PERMANENT SECRETARY**

Attached.

KENYA'S POSITION ON THE INDICTMENT OF PRESIDENT OMAR EL BASHIR OF SUDAN

1. Kenya expresses deep concern at the issuance of an arrest warrant by the ICC against President Omar El Bashir on 4th March, 2009. The indictment of a sitting Head of State by the ICC could create a very unstable environment and adversely affect international relations at this difficult time of the global economic and financial crisis.
2. The issuance of the arrest warrant could also impact very negatively on the delicate peace process in the Sudan as well as other political reconciliation processes in the sub region. The ICC action is likely to not only undermine the ongoing efforts aimed at facilitating early resolution of the Darfur conflict but could also affect the process of the CPA in Southern Sudan. Only mid last month, the Government of Sudan and the Justice and Equality Movement signed a Declaration of Goodwill and a Confidence Building Agreement in Doha, Qatar, a development that calls for the support of all those who desire peace in Darfur.
3. Despite the strict implementation timetable, deadlines and benchmarks of the CPA, the process still relies on the goodwill and commitment of the two signatories – the NCP and SPLM. Given that the current political arrangement in the Sudan is an NCP/SPLM Coalition, indictment of the NCP leader at this critical time when the country is supposed to be preparing for the elections does not auger well for the future of the CPA. The arrest warrant risks weakening the Government of National Unity in Sudan and the Collegiate Presidency.
4. The Assembly of AU Heads of State and Government at their last Summit in Addis Ababa in February, 2009 had cautioned against the indictment of President Bashir and urged the UN Security Council to defer the process initiated by the ICC in accordance with the provisions of Article 16 of the Rome

Statute. It is therefore disappointing that the collective voice of the African continent was simply ignored.

5. Kenya is fully committed to combating impunity and promoting democracy, the rule of law and good governance throughout the entire continent. It is in this regard that we joined the AU Assembly in February, 2009 in condemning the gross violations of human rights in Darfur and urged that the perpetrators be apprehended and brought to justice. We also joined other AU Member States in supporting the establishment of a High-Level Panel of Eminent Personalities under the Chairmanship of the former President of South Africa H.E. Thabo Mbeki to examine the Darfur situation in depth, and to submit recommendations on how best the issues of accountability and combating impunity, on the one hand, and healing and reconciliation, on the other, could be effectively and comprehensively addressed
6. We shall continue to support AU efforts in resolving this matter amicably.

March, 2009

**MINISTRY OF FOREIGN AFFAIRS
NAIROBI.**