



Permanent Mission of the Republic of Kenya to the United Nations
866 U.N. Plaza, Rm 304, New York, NY 10017

STATEMENT

BY

AMB. MACHARIA KAMAU

AMBASSADOR/PERMANENT REPRESENTATIVE

**PERMANENT MISSION OF THE REPUBLIC OF KENYA TO THE
UNITED NATIONS**

**STATEMENT DURING THE GENERAL DEBATE OF THE ASSEMBLY
OF STATES PARTIES OF THE INTERNATIONAL CRIMINAL COURT**

**THIRTEENTH SESSION OF THE
ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE**

DECEMBER 11TH 2014, NEW YORK

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Mr. President

We align our Statement with that of the Kingdom of Lesotho speaking on behalf of the African Group. I would like to begin my Statement today by once again expressing our fervent and warm welcome to you as our new President of the Assembly of State Parties. Your maiden statement on Monday, during the opening session of the Assembly, gave us great comfort and a secure reassurance that the choice that we have all collectively made to pick you as our President was indeed the right choice.

As Kenya and as an African country, I speak with confidence when I say that we expect no privileged relationship with you during your tenure merely because you originate from an African country, but rather expect a professional relationship built on the camaraderie of a common fraternity, a commitment to the promotion of international and local Justice, the securing of human rights, the entrenchment of the Rule of Law and the promotion of stronger and more representative democracies throughout the world. We wish you well Mr. President and we assure you of all of our support to your work and our commitment to the agenda that you have set for yourself and the Assembly

Mr. President

Your predecessor, Ambassador Tinna Intelmann, has completed a tour of duty that was exemplified by a heavy workload and significant progress made in the reform and refinement of key aspects of rules and regulations among others. It was during her tenure that for the first time, experience in the implementation of the Rome Statute in a situation country and the activities of the ICC began to feedback into the Assembly, in a manner that allowed healthy debate, reform and amendments to take place.

These reforms and amendments of 2013 helped fine tune and improve the instruments of our work and our institution and were most welcome by our delegation. We hope and trust that you too, will promote a reformist agenda that is sensitive and responsive to State Parties. We thank Ambassador Intelmann for her years of service and leadership and for her effort to meet the challenge that was put before her by States Parties. We wish her well in her future endeavors.

I would also like to take this opportunity to recognise Judge Sang-Hyun Song, President of the International Criminal Court. As we have observed before, Judge Song has, without doubt, presided over the ICC during a most difficult and challenging period. During his eleven year tenure, the ICC has grown both in stature and reach. As this will be his last attendance at the Assembly I would like to wish him, on behalf of the Republic of Kenya, all the very best in his future endeavors.

Mr. President, In your captivating opening statement, you set the stage for what we believe will be yet another milestone Assembly that will facilitate and allow the membership to engage in a rigorous and open debate and exchange of views around the issues related to the interpretation and implementation of the Rome Statute and the work of the International Criminal Court.

In our minds, the selection of the 4 issues for your term represents a precise and incisive analysis that touches on the most compelling challenges facing the Assembly as well as the International Criminal Court at this its 12th year of existence. As we have said numerous times, Kenya has over the years continued to encourage the ICC to expand its activities, to enhance its work, to improve its efficiencies and to continue to deliver for all of us as States Parties and, more importantly, for the victims of crimes within the ambit of its jurisdiction. We have always insisted that our court, the ICC, was created because we believed that the international community, by which we mean all countries both rich and poor, needed to have one platform for the exercise of international jurisprudence particularly as it relates to criminal justice and the fight against impunity.

Mr. President

We have stated on many an occasion that Kenya is a firm believer in democracy, justice and the promotion and protection of human rights. Like your great country Senegal, Mr. President, Kenya is proud to have a democracy that stretches back over 50 years to its independence. A democracy that has weathered the challenges of political and social transformation and that has held elections every five years since independence. When many countries in the world including some in Western Europe, Eastern Europe, Asia and Latin America and Africa were still languishing under dictatorships Kenya, like Senegal, was already enjoying the liberties and freedoms of modern democracy and the rule of law. The political and social history of our countries therefore speaks powerfully to the enterprise that is the Rome Statute and the institution that is the International Criminal Court.

Mr. President

Kenya is here at this Assembly for a number of reasons; because we believe in the Rome Statute, because we believe in the institution of the International Criminal Court including its independence, because we believe in the rule of law at home and abroad, because we believe in international and transnational Justice, because we believe in the national and international fight against impunity and in the promotion and protection of human rights and because we believe in the separation of the political from the judicial in the interests of international peace and security and the promotion of justice for all irrespective of nationality, race, gender, age or life choices.

So let me make it clear, Mr. President, any State Party, civil society organization, functionary or staff of any institution, including the ICC, or any individual that professes anything to the contrary about Kenya is perpetrating naked lies, is rumour mongering and is representing an agenda that is anathema to us as a State Party.

Let me unequivocally affirm that Kenya is here, at this Assembly, to be constructive, to be engaging and to debate and promote issues and matters that are seminal to the strengthening of the Rome Statute, the building of a stronger fraternity in this Assembly and the promotion of a responsive and exemplary International Criminal Court.

Mr. President

It is indeed true that Kenya has strong views on the manner in which the Rome Statute is being interpreted and implemented. It is also true that Kenya has strong views on the way in which the International Criminal Court has gone about undertaking its business around the world and particularly in relation to our country. But these views Mr. President, forthright as they are, are informed by the very special situation in which Kenya has found itself in over the past seven years. Kenya is the only State Party in this Assembly that can claim to have the depth and breadth of experience as a situation country that it has. It is therefore our duty and obligation as a responsible State Party to bring our experience to bear on our work and to inform deliberations in this Assembly. Already last year we all witnessed the positive fruits of such an effort. The Assembly and the Rome Statute are better and richer from the experience of 2013.

This year Mr. President, Kenya has requested that the Assembly take up a number of items for its consideration in the context of the agenda of the Assembly. These items include Cooperation with the ICC, prosecutorial conduct, Independence of the Office of the Prosecutor and the politicization of the judicial and the prosecutorial functions among others. Mr. President we recognize the sensitivity of some of these issues but we also realize their importance and insist that no person, or institution is above reproach. Only today in the New York Times Dr. Richard D Emery asked in regards to prosecutorial practices in the United States as to who is policing the Prosecutors? He went to say **“Prosecutors are human, and just like entrepreneurs and politicians, make human judgments. Like all of us, they need oversight and control. Judges serve that function for individual cases. But there is no oversight for how prosecutors choose targets”**. It should therefore be understood by all States Parties that what Kenya proposes as agenda items is not unprecedented neither is it meant to undermine the independence and work of the ICC. Like other countries therefore that have proposed different agenda items our expectation is that our request will be respected and that the issues and agenda items will be discussed.

If indeed we are to build a stronger Assembly, an Assembly that is representative of all the States and all the political and social hues in it, and if indeed cooperation with the ICC is to be enhanced, then it is imperative that all State Parties reach out to each other in a constructive and fraternal manner that facilitates a strong Assembly. Demonizing or unfairly characterizing any one State Party as intent on sabotage or disruption is neither constructive nor useful. Resisting debate and the rigorous sharing of ideas and experiences is counter to the intellectual tradition of multilateralism and represents an illiberal and conservative stance that can only undermine the Assembly and its institutions.

In closing, Mr. President, I would like to address myself to the Kenya situation before the Assembly and the Court. Without prejudice to the independence of the Court Mr. President, I would like to insist that anyone with the slightest inclination to learn about our Country, cannot help but come to the conclusion that Kenyans are determined to move on from the events of eight years ago. Kenyans want to build a stronger democracy and society and invest fully in the business of development. The people of Kenya have a deep desire to put the Post-Election Violence of 2007 behind them. It is therefore deeply regretted that the ICC continues to be a hindrance and a stumbling block to these aspirations.

It is imperative that the Court and this Assembly understands that there is no public confidence, in Kenya, that justice is being served by the perpetuation of the Kenya cases by the ICC. This is a simple and verifiable fact. Indeed the history of the world is replete with examples in America, Europe, Asia and elsewhere where the popular and public will to set aside injustices perpetrated in political conflict or civil war had been accommodated by non-prosecutorial means.

To take a leaf from history and from the experience of the United States of America, after a war pitting the States of these United States on the matter of secession and the defence of slavery, and that led to over a million deaths, and crimes that offended the conscience of the people of that time, the great Abraham Lincoln and Andrew Johnson, in the words of Mr. Anthony Romero of the American Civil Liberties Union, writing in the New York Times this past Tuesday, "**pardoned Confederate soldiers as a step toward unity and reconstruction.**" Such were the hard decisions on which this inspiring democracy was built. They dealt, as they should have, with the political realities as Lincoln and Johnson understood. They took the long view, reasoning that reconciliation, rather than retribution, would steer them away from the killing fields and towards the high point of the hill on which they rested the democracy of the United States. I could have spoken of the Nelson Mandela and Fredrick De Klerk and the post-Apartheid South Africa or taken examples from many parts of the world, but the point would be the same.

The point of these examples, Mr. President, is that just because something is legally possible and can be prosecuted does not mean that it should be, nor that it is fair or just to do so. Justice is served in many ways, and impunity is banished by many means. While we agree that prosecution ought to be the default for fighting impunity, it cannot and indeed must not continue to be the only tool and means available to the international community. This Assembly must embrace the simple fact that life is complex and that therefore our solutions and responses must also be sophisticated and up to the challenge.

I thank you.