Statement on the proposed review of the International Criminal Court made during the 18th session of the Assembly of States Parties to the Rome Statute

I come from Kenya. The cases from my country are a large part of the reason why there is currently a discussion about the reform of the International Criminal Court. The challenging journey that those cases travelled before the court provides a microcosm of the issues the court faces and which now need to be addressed.

Problems started when Kenya's political leadership embarked on a campaign of vilification against the court. Initially domestic, that campaign would spread into the region in Africa before it went global. The campaign succeeded in questioning the legitimacy of the ICC, first in Kenya, and around Africa. With the legitimacy of the Court now in doubt, it became increasingly difficult for ordinary officials in the country to play their role in providing cooperation with the court. The vilification also turned public opinion against the court and had a chilling effect on communities, victims and other actors outside the state whose interaction with the court was now stigmatised.

With time, these attacks established a hostile national narrative against the court. The narrative explained and justified the tampering with, and attacks on witnesses. Since witnesses were now portrayed as traitors, what would be wrong if these were killed, as ended up happening?

While it was within the power of the States Parties to take a stand against the political backlash, they were mostly passive while actively participated in attacking the court. Eventually, beginning with a session in this very hall, this Assembly was invited into long debates to change the text and practices under the Rome Statute as an act of appeasement. Those debates communicated weakness and sent a message that the States Parties were not in a position to provide the Court with the political protection needed for its work. If they encountered political difficulties in their work, judges were on their own.

In many domestic jurisdictions, actions that lower public confidence in the courts are regarded as contempt and are punished by the courts. While the Statute contains similar procedures, responses to the mobilisation of whole nations and regions against the court are surely outside the judicial function and lie in the political realms of the Rome Statute.

A lesson to be taken forward in any review of the court is recognition that political attacks on the ICC are not without serious consequences for communities, victims, and witnesses. Going forward, it must be the business of this Assembly, as the political authority under the Rome Statute, to shield the court from political backlash. This is a role that the Assembly needs to undertake proactively.

In closing, the Kenyan cases embodied the contribution of civil society in the arena of international justice. With the ICC confronted with the challenge of physical and cultural distance with the situation

on the ground, civil society played a major role in connecting the court with the communities it needed to serve. Civil society also led in countering the political vilification of the Court, in validating the decision of communities to cooperate with the court, and in mobilising interaction with the court/

The practices of the ICC have evolved into two tracks: the first track is one of reflection and planning which takes place here at The Hague and in New York. The second is the track of implementation, which takes place in the field, mostly in Africa, which forms majority of the situations before the court. There is often no deliberate effort to link the two tracks and that is one of the weaknesses of the ICC. The fear now is that even the proposed review will fall into and replicate the very weaknesses that necessitate the review in the first place.

As civil society actors in the field, we represent some of the lived realities of the ICC. However challenging it may be do so, voices from the field must be incorporated in the review.

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The Hague, 4th December 2019