



STATEMENT

BY

THE REPUBLIC OF KENYA

THE GENERAL DEBATE OF THE ASSEMBLY OF STATES PARTIES

21ST SESSION OF THE

ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE

5-10 DECEMBER 2022, THE HAGUE

[CHECK AGAINST DELIVERY]

Madam President, Excellencies, Ladies and Gentlemen,

The Republic of Kenya lauds the leadership of Ms. Silvia Fernández de Gurmendi, President of the Assembly, the Bureau, the Secretariat and all who have worked tirelessly to ensure that the Assembly continued to fulfil its role of providing management oversight regarding the administration of the Court.

Madam President, Excellencies,

The review of the functioning of the Court and the Rome Statute system in 2020 marked a significant milestone in the efforts of States Parties towards a more robust ICC system. The review sought to strengthen transparency and fairness by all the organs of the Court. The Report of the Independent Experts contains numerous recommendations, both short and long-term, with varying degrees of complexity, attendant risks and costs and urgency of implementation.

Kenya supports necessary reforms to the Court but this should be done with an informed and nuanced approach to decisively tackle some of the structural and operational challenges faced by the Court. For example, the proposed recommendations R. 367 and R. 370 take away from the independence and efficiency of both the Committee on Budget and Finance, and the Audit Committee and related personnel. If these recommendations are taken at face value, they will negatively impact the effectiveness of these organs of

the Court. The Report of the Committee on Budget and Finance, is an integral tool for the representatives of States Parties in understanding the financial position of the Court. The Report of the Committee on Budget and Finance has, in practice, formed the basis for political negotiations on the proposed budget of the Court.

The informed and nuanced approach to implementing the recommendations of the Independent Experts should also extend to the recommendations on efficiency and the protection of fair trial rights, particularly **R. 201** on the Regulations of the Court to govern a ‘no case to answer’ motion. Provisions regulating ‘no case to answer’ should be incorporated into one of the texts of the Court. Ideally, they should feature in the Rules, but until the Rules can be amended, it should be incorporated into the Regulations of the Court.

Madam Chair,

Kenya will be replacing its member of the Committee on Budget and Finance who has since been appointed Ambassador to the Kingdom of the Netherlands. Ambassador Margaret Shava has worked diligently for the last five years and is the immediate former Vice Chair of the Committee on Budget and Finance, and the immediate former Chair of the Audit Committee. To complete Ambassador Shava’s term that was due to end in December 2023, Kenya has conveyed as a replacement, Ms. Sanyu Diana Awori. Kenya

are certain that the remainder of the term will be just as impactful and urges States Parties to complete the endorsement process.

Madam President,

In carrying out its mandate, the Court must always be alive to the objectives set out in the Preamble of the Rome Statute. Criminal jurisdiction is first and foremost the duty of every State. The Court does not have the capacity to investigate and prosecute cases in the many territories where atrocious crimes are being perpetrated. It is therefore imperative that States Parties, the Court, and stakeholders collaborate in strengthening national and regional institutions to enable them to deal with international crimes to ensure that there is no impunity gap. Kenya has made several strides in building its capacity to investigate and prosecute international crimes and therefore enhance cooperation with other States and foreign entities through the enactment of legislation to facilitate the investigation and prosecution of international crimes, witness protection, mutual legal assistance, and the recovery of assets.

Kenya urges the Court to live up to the requirements of the principle of complementarity as enshrined in the Rome Statute. Rather than increase its docket with cases that could be dealt with more efficiently and effectively at the domestic level, the Court should

prioritize the creation of synergies with States for the domestic prosecution of some of these cases.

Madam President,

The Kenya Witness Protection Agency has ensured cooperation in carrying out measures aimed at facilitating special protection of threatened and/ or intimidated witnesses to strengthen the regional and international criminal justice system. The Witness Protection Act No. 16 of 2006 provides for special protection of witnesses at the national, regional and international level. The need for an effective and efficient cooperation framework on witness protection and Standard Operating Procedures at the regional and international level is therefore exigent.

The Kenya Witness Protection Agency developed draft Witness Protection (Reciprocal Protection Arrangements) Regulations, 2022 to provide for appropriate reciprocal witness protection arrangements with an international court, tribunal, commission, institution or organization. The Government of Kenya will continue to promote the rule of law and undertake the necessary cooperation consistent with Kenya's domestic, regional and international obligations as a State Party, in the protection of witnesses.

Madam President,

Accountability is key for the legitimacy and credibility of an institution. Kenya recognizes and respects the independence of the Judges of the Court, and of the Office of the Prosecutor. However, no person, organ or institution is above reproach.

It is with dismay that we note certain aspects of the Annual Report of the Head of the Independent Oversight Mechanism, in particular the cases received from across the Court during the reporting period 1st October 2021 to 30th September 2022. Some concern allegations of harassment, including sexual harassment and/ or abuse of authority, allegations of fraud, undisclosed conflicts of interest and one case of sexual exploitation and abuse. While there was no conclusion on the allegations of fraud that were investigated, there was at least one conclusion noting that the relevant staff member had been grossly negligent and was responsible for the loss of funds. The personnel of the Court, at all levels, must continue to be made aware that the commission of acts of fraud and misappropriation has consequences upon both on the institution and the culpable individuals. Kenya would support measures to abate such conduct.

The same Annual Report of the Head of the Independent Oversight Mechanism, covers the Evaluation of the Workplace Culture in the Judiciary. Here, Kenya expresses deep concern with the findings of the evaluation on the existence of a perceived atmosphere of impunity and, a general lack of accountability of staff as well as underperformance. The Annual report made for a startling read and it reinforces Kenya's desire to more fully

examine the management systems of the Court and particularly, where there is noncompliance, poor performance and lack of delivery or low implementation of work plans.

Kenya welcomes proposals to consider expanding the capacity and resources of the Independent Oversight Mechanism (IOM) to enable it to investigate the conduct of elected officials and staff, including former officials.

Madam President,

On the back burner of all our deliberations is the perennial incremental budgetary increases proposed by the Court. Diligently, Kenya has met its financial obligations since becoming a Member State of the Rome Statute, and has dedicated itself to the noble cause of international criminal justice. However, Kenya is deeply concerned about the current budgetary proposal of the Court which is a staggering 20 percent growth since the last Assembly of States Parties in December 2021.

The Horn of Africa is currently experiencing the greatest drought in 40 years, not to mention the brunt of the covid-19 pandemic and the severe economic and inflationary pressures following global geopolitical events. A proposal from the Court for a 20 percent increase in budget, at this time, puts States Parties between a rock and a hard place. The Committee on Budget and Finance played its role in giving us a well justified counter

proposal at 16 percent but the figure remains in double digits, which is still too high. The financial demands of the Court are unsustainable. Certainly, this is the time to tighten our belts, not loosen them. This is an opportune time for scrutiny of all activities with a view of prioritizing those activities that are critical and seminal in light of the prevailing circumstances. Cost rationalizing is therefore an existential need of seminal importance.

Kenya is urging the Court to reorganize its priorities and cut costs in its regular budget without underfunding its critically independent subsidiary organs such as the Independent Oversight Mechanism. The perceived increase in the workload and activities of the Court cannot and should not be the driving force for an unjustifiable increase in assessed contributions. The cost saving measures should also not compromise the Court's legal obligations to its staff and service providers.

Kenya would also caution the Court against an over reliance on voluntary contributions from States Parties for non-core activities, or an open-door policy for concentrated secondments from only one regional group at the expense of geographical representation in the Court. A balanced geographical representation within the Court is critical for the image and perception of its independence.

Madam President,

We cannot conclude without recognizing the sterling leadership exercised by the Court's outgoing Registrar, Mr. Peter Lewis.

Mr. Lewis successfully steered the operations of the Court in difficult times and remained available for consultation. We wish him continued success in the future.

In conclusion, the Republic of Kenya urges all delegations to engage with each other, share past experiences and in this way, build a Court that will serve humanity as envisaged by the States Parties.

THANK YOU