



STATEMENT

BY

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TRADE**

OF THE REPUBLIC OF KENYA

DURING

THE GENERAL DEBATE OF THE 14TH SESSION

**OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

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THE HAGUE – THE NETHERLANDS

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Mr. President,

Excellencies,

Ladies and Gentlemen,

I wish to associate my delegation fully with the statement just made by The Honorable Minister of Ethiopia speaking on behalf of our Union, the African Union.

I commend President **H.E. Sidiki Kaba**, for his leadership and accomplishments. In the time he has been in office, he has embarked on serious efforts towards the restoration of confidence between Member States and the Court. In meetings with the representatives of the African Union (AU) in Addis Ababa, and with many individual countries including Guinea, South Africa, and Kenya among others the President has demonstrated a willingness to engage the African constituency for enhanced relations. We welcome the convening of this Assembly and look forward to fruitful deliberations.

Mr. President,

Kenya believes that the world rests on the four (4) pillars of Truth, Justice and Peace and Development. From the preamble of the Rome Statute, We recall why the ICC was created, and are committed to the fight against impunity. Kenya believed then as it does today in the noble objectives of the Statute, that there should be an end to impunity. This is the reason why Kenya played a key role in championing the establishment of the Court and stands as an ally in the fight against impunity. As Kenya has stated previously particularly during the 12th and 13th Sessions of the Assembly, Kenya is interested in making the institution stronger and seeks to continuously Improve and perfect it, for it remains our aspiration that the highest standards of justice, human rights and more importantly, the rule of law, are achieved as envisioned by us, the drafters of the Rome Statute.

Mr. President,

The Rome Statute, that we co-authored, anticipated that the ICC would help “put an end to impunity for the perpetrators of international crimes.” Nothing more is more important in the Statute. From our recent experience it has become increasingly clear that these high expectations have been dampened by the manner in which the Court and its organs have chosen to interpret the Statute. Kenya’s concerns revolve around the Court’s emerging inconsistent and unfounded jurisprudence on evidentiary thresholds, complementarity, confidentiality and re-characterization of charges. If this Court purports to be an independent and impartial dispenser of global justice, its current disposition will and must be challenged.

Kenya, being a fully paid up member of the Assembly, adheres to its obligations under the Rome Statute and would be pleased to honour the Court’s decisions and pronouncements.

I think that we can all agree that the fight against impunity requires impartiality and solidarity among like-minded States, and anything short of this is a farce. Our firm belief is that universality should be strengthened. This is only possible if general principles of law are applied equally and fairly. To do otherwise, as we have seen, poses serious challenges to international peace and security. The Office of the Prosecutor’s pursuit of evidence ought not to be conducted in a manner that undermines the universality of the Rome Statute, and the implied equality of States under the rule of law.

Justice is a global ambition but its pursuit demands context and a comprehensive approach. Indeed, African legal philosophy can stand on its own merits as a notion that accommodates various concepts of justice, and has been applied severally in the contemporary context, especially in the demanding task of post-conflict reconstruction. African countries represent a third of the members present at the ASP; hence, the notion that we lack

the political will to fight against international crimes is a fallacy. The myth that Africans are complacent in the face of impunity is unacceptable, unwarranted and detrimental. Kenya calls for a shift to respect for African jurisprudence and in support of home-grown solutions.

Distinguished Ladies and Gentlemen, The African Court on Human and Peoples' Rights, is one such solution and is the continent's contribution to international jurisprudence and in recognition of the ICC as a Court of last resort. Unless something has shifted it is our understanding that Complementarity is and remains the cornerstone of the Rome Statute.

Mr. President,

Kenya is placing before this Assembly a request that the legislative intent of Rule 68 be discussed and that decision be taken to reaffirm the non-retroactive application of the rule to situations commenced before the 27th November, 2013.

Kenya comes to this Assembly with the specific request because of the regrettable decision by the court's trial chamber to apply Rule 68 as amended to the Kenyan situation. In making this request, Kenya is aware that the matter is under consideration by the Court. We are however of the considered opinion that the matters raised are separate and distinct from those before the Court and do not interfere with the judicial and or prosecutorial independence. Kenya affirms that the legislative and managerial oversight powers of the ASP must be given precedence and respect in order to afford the Assembly an opportunity to execute purposefully its mandate as provided for in the Rome Statute.

In this regard, Kenya asserts that the Assembly is the rightful forum to raise these matters as it affords its members as opportunity to reaffirm the decisions taken at the 12th Session of the Assembly, in a direct, unfettered and decisive manner.

Mr. President,

We recall that during the protracted deliberations to create the Independent Oversight Mechanism (IOM), the Office of the Prosecutor and some Non-Governmental Organizations relentlessly lobbied against such a creation in 2009. It is interesting that no-one accused them of interference on matters sub legislation (matters before the Assembly)! We take note that the Head of the IOM was recently appointed and look forward to a fully functioning office. Kenya is convinced the reluctance to operationalize this mechanism has led to the inability to hold the organs of the statute accountable to the Assembly.

Prior to this recent appointment there was no independent body to deal with the concerns of Kenya other than in the context of the Assembly and therefore requests for the appointment of an ad hoc mechanism to audit the conduct of the organs of the Court in relation to the issues raised by Kenya. We reiterate that oversight by the Assembly is neither political interference and nor an affront on the independence of the organs of the Court. It is actually a healthy democratic practice that many in this August assembly routinely practice It is actually a healthy democratic practice that many in this room routinely exercise in their own jurisdictions.

Mr. President,

The financial situation of the Court and particularly the budget proposal for a total of €153.32 million is of concern to many of us. The figures reflect an increase of €22.66 million, or 17.3 per cent, over the 2015 approved budget of €130.66 million. Kenya supports the efficient use of financial resources contributed by member States, and therefore will be hesitant to support any activities or projects that unnecessarily inflate the budget. We urge extreme

caution and accountability by all the Organs of the Court in matters pertaining to finances.

Mr. President,

Kenya is keenly aware of the importance of State Parties providing the necessary co-operation and assistance to the Court in line with the obligations of Part IX of the Statute. It is in this spirit that the Kenyan Government has shown unprecedented co-operation with the ICC and the evidence is there for all people of goodwill to see, we have granted unfettered access into Kenya and free movement within our territory to the former and current Prosecutor of the ICC, to staff members of their Office, Registry Officials, Defense Counsel, Victims' Counsel and their respective investigators.

In addition, the Government allowed the establishment of an ICC field Office to enhance cooperation and assistance regarding the Kenyan situation. The office has been operating without any interference, although regrettably it does so without adhering to agreed protocol with the host Government.

Mr. President,

On the very sensitive and important matter of victims, the Kenyan Government in recognition of the importance of reparations for victims has put up comprehensive legislative and administrative measures for the compensation of victims. The President of the Republic of Kenya directed that USD 100 Million be set aside as restorative justice funds for the purposes of reparations. A multi sector committee was also established to spearhead this initiative and the reparations and compensation is being paid out accordingly.

Mr. President,

The Assembly's discussion includes amendments proposed to the Rules of Procedure and Evidence. Kenya's position on the amendments is that any changes to be adopted now or in future, should not undermine the rights of victims and the rights of accused persons. Recognizing the importance of amendments to the substantive articles of the Statute, we urge that our future deliberations prioritize the negotiation process to ensure that the proposed amendments are tabled in time for the 15th Session of the Assembly.

Mr. President,

Finally, at the 13th Session of the Assembly we stated 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". Allow me to reaffirm this position and unequivocally restate that, during this 14th Session we have similar aspirations. My delegation expects that we shall have a productive engagement and work collectively with all delegations and other stakeholders for a fruitful outcome. We hope that all the issues raised by delegations will be addressed comprehensively and objectively.

Our continued acceptance of the status quo will undermine the legitimacy of the Court and its core mandates. We therefore urge all delegations to insist on the supremacy of the Assembly over its institutional organs, to demand institutional subjugation and accountability of these organs to the Assembly and not to shy away from taking part in debates of a complex nature. This is the only way we will be able to understand the challenges, that we could not have fore seen or expected, address them with the experience of practice and ensure that the Court takes its place of pride among

the universe of global institutions charged with the responsibility of fighting impunity and maintaining peace and stability.

I THANK YOU.