

**STATEMENT**

**BY**

**THE REPUBLIC OF KENYA**

**STATEMENT DURING THE GENERAL DEBATE OF THE ASSEMBLY  
OF STATES PARTIES**

**17<sup>TH</sup> SESSION OF THE  
ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE  
THURSDAY DECEMBER 6<sup>TH</sup>, 2017, THE HAGUE**

**Mr. President,**

**Excellencies,**

**Ladies and Gentlemen,**

Allow me first Mr. President to commend you for your leadership and stewardship at the helm of the Assembly of States Parties (ASP) thus far. We look forward to your continued personal commitment and efforts to make this a better Assembly. The energy, vigour and commitment that you have exhibited is admirable and you can continue to count on Kenya support.

**Mr. President,**

The noble objective of the Statute is to bring an end to impunity and this resonates strongly with Kenya's constitutional and legal order. Kenya continues to demand however, that the implementation of the Statute by all organs of the Court be conducted in the most fair, equal and transparent fashion in order to foster trust, credibility and legitimacy in the system. A justice system steeped in bureaucratic morass, non-transparent processes and decisions that are not impartial will suffer the ignominy of rejection no matter its high sounding objectives. Indeed, a key lesson to draw from the decade long trial of Jean Pierre Bemba is the need for clear and determinate statement of Charge by the office of the Prosecutor and rigorous evaluation of evidence by the Trial Chamber to protect the liberties of an accused person and ensure that trials are not

unduly prolonged. Similar lessons are to be drawn from the cases in the situation in Kenya where, even the judges of the Court themselves were critical of the Prosecution's conduct, as manifest in the Prosecution's investigative techniques that ignored exculpatory evidence and the quality of evidence that it presented, some of which presented substantial and fundamental integrity and ethical questions.

**Mr. President,**

Cooperation with the Court is a central obligation of every state party to the Statute as required by the Statute itself. Kenya has discharged this obligation consistently during the pendency of situations touching on the country. It has, *inter alia*, granted unfettered access into Kenya to the former and current Prosecutor of the ICC, staff members of their Office, Registry Officials, Defense Counsel, Victims' Counsel and their respective investigators. In addition, the Government has 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. Service of process including witness summons has been executed without let or hindrance. At the same time, we must point out that Kenya's cooperation with the Court occurs within a constitutional and legal framework part of which includes the Rome Statute. Kenya's Judiciary, which is one of the most independent judiciaries in the world, has played and continues to play, a supervisory role over the actions of other organs of government, including the Executive. Whenever cooperation requests have been made, they have by law to be subjected to mandatory oversight of

domestic courts. Kenya has always operated under the rule of law, and acted in accordance with constitutional and judicial edicts. In this regard, Kenyan courts have made decisions affecting the arrest and surrender of certain individuals accused of offences under Article 70 of the Statute, which decisions the executive must abide by, regardless of whether it agrees with them or not.

In the same vein, Kenya urges the Court to live up to the requirements of the principle of complementarity that the Rome Statute imposes. Rather than increase its docket with cases that could be dealt with more efficiently and effectively at the domestic level, the Court should instead focus on creating synergies with States for domestic prosecution of some of these cases.

On the issue of the execution of arrest warrants from the Court touching on Heads of States, Kenya aligns itself with the African Union position that a Head of State enjoys immunity from prosecution based on customary international law. This, in Kenya's view is the clear intent of Article 98 of the Statute. This immunity, in Kenya's view, is not defeated merely by the provisions of Article 27(2) of the Statute.

Consequently, Kenya welcomes the decision of the Appeals Chamber to invite the African Union's observations in the matter touching on the alleged non-cooperation of the Royal Heshemite Kingdom of Jordan.

**Mr. President, Excellencies,**

I now wish to turn to an issue that is of grave concern to Kenya. Allegations have been raised against the conduct of the former

prosecutor and officers of the Office of the Prosecutor. Kenya welcomes the efforts of the current prosecutor in instituting investigations and taking action on those found culpable for professional misconduct. However, due to the serious nature of these allegations, Kenya expects more transparency and openness on the details and nature of investigations carried out.

The allegations against the former prosecutor should not be swept under the carpet. Kenya urges the Office of the Prosecutor to refer the allegations to an external impartial and neutral entity to conduct an open and transparent audit of these allegations. Finally, Kenya urges State Parties to consider and adopt the proposed amendments to article 70 that aim at deterring misconduct by court officials.

**Mr. President,**

As we carefully look at the funding framework of the International Criminal Court, we cannot help but renew and underscore our deep disappointment with the increase in the proposed Budget for 2019. Kenya objects to any increase in the budget from last year. We are yet to be persuaded by the Court that the increase sought is merited, and would be very reluctant to agree to such increase in the near future. We call for better use of resources including calling for an interrogation of all activities of the Court especially in the preliminary examinations and cases. Kenya is convinced that keeping cases alive despite the apparent flaws in the manner they were investigated and are being prosecuted not only amounts to a misappropriation of funds but also a travesty of the Rome Statute system.

**Mr. President,**

Kenya wishes to report that since the enactment of its Witness Protection Act in 2006, we have made great strides in according the necessary protection measures to witnesses who receive threats or are intimidated against testifying.

The Act has recently been amended to provide for reciprocal witness protection arrangements by competent foreign authorities.

Kenya today commits that the Agency will continue to promote the rule of law by playing its critical role in providing the necessary protection to witnesses both within and outside the country with the new amendments.

**Mr. President,**

Finally, Kenya appreciates the support accorded to its candidate for the position of member of Advisory Committee on Nomination of Judges, Ms. Lucy Kambuni. Kenya reaffirms its support to the ACN and to Ms. Kambuni.

We urge all delegations to scrupulously engage each other, learn from our past mistakes and build a Court that is a better fit for purpose and one that can take its place as the premier international criminal judicial system.

**THANK YOU, MR. PRESIDENT**