



EMBASSY OF THE REPUBLIC OF KENYA
THE HAGUE

STATEMENT TO THE SEVENTH SESSION OF THE ASSEMBLY OF STATE
PARTIES TO THE INTERNATIONAL CRIMINAL COURT

BY
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EMBASSY OF THE REPUBLIC OF KENYA
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**The President of the Assembly of States Parties,
Your Excellencies,
Distinguished Guests,
Ladies and Gentlemen.**

On behalf of the Government of Kenya, I take this opportunity to express my pleasure in participating at this important occasion of the Seventh Session of the Assembly of States Parties of the International Criminal Court. My delegation recognizes the dedication and commitment that the outgoing President of the Assembly, Mr. Bruno Stagno Ugarte, has shown in his work. My delegation congratulates the newly elected President and members of the Bureau and extends our cooperation. My delegation also commends the President Phillipe Kirsch, the Prosecutor and the Registrar.

Mr. President

This session provides a forum for member states to exchange ideas that will make solid contributions towards the strengthening and improving the work, and operations of the International Criminal Court. The Kenyan delegation supports the statement of the African Union as read by the distinguished delegate of the United Republic of Tanzania.

Mr. President

The Government of Kenya takes its international obligations seriously and being a State Party to the Rome Statute, has prior to and since ratification, cooperated and actively participated in the activities of the Court. To demonstrate its support for an effective International Criminal Court, the government of Kenya resisted, at great cost, attempts to enter into agreement under Article 98.

I am happy to mention that Kenya has already collaborated with the Court by signing witness relocation agreements and positive responses continue to be given to several requests from ICC in respect of witnesses and their families.

Mr. President

The Government of Kenya has published the International Crimes Bill which seeks to domesticate the Rome Statute establishing the International Criminal Court. The Bill has passed through the Second Reading in Parliament. Subject to parliamentary calendar, it is hoped that the Bill will pass through the Committee Stage and Third Reading and be enacted before the end of the year or early part of next year.

Mr. President

I am glad to report that through the enactment of Witness Protection Act 2006, Kenya has demonstrated her commitment to the implementation of the Rome Statute. The Witness Protection Act 2006 provides for the protection of a person (s) who pursuant to the treaty or agreement to which Kenya is a party is required to give evidence in a prosecution or inquiry held before a Court or Tribunal outside Kenya.

Mr. President

As we celebrate the 10th anniversary since the signing of the Rome Statute, let us recognize the tremendous progress that has so far been achieved in establishing the court as an important institution in promoting the rule of law, respect for human rights and ending impunity in the global village. It is also time to take steps and evaluate the progress made towards making the International Criminal Court a truly international court serving the interest of the entire international community and not perceived to be serving the interest of any region of the world. At this juncture I wish to congratulate Madagascar, Cooke Island and Suriname who become State Parties to the Rome Statute since the Sixth Session. I take this opportunity to appeal to

those States that have not ratified the Rome Statutes to do so, so that the Court enjoys the support of the entire international community.

Mr. President

One area that Kenya considers that the International Criminal Court could be strengthened is the area of Customary International Law where national courts have universal jurisdiction to try foreign state officials or individuals who are perceived to have committed grave offences such as war crimes and crimes against humanity.

Whereas this principle served well to remove impunity at the historical stage, its exercise by national courts at the current time when we have the International Criminal Court is highly questionable. We have seen in recent times a growing exercise by national magistrates or judges from the developed world exercising such jurisdiction against state officials or persons from the developing world. If this matter is left to national court jurisdictions, the principles of equality and the rule of law will be perceived to be under attack by what is seen to be double standards and political considerations in what is essentially a criminal justice matter.

To put it succinctly, the national courts should not have universal jurisdiction in matters where International Criminal Court has

competence. Where such matters come before the national courts, they should be automatically referred to the International Criminal Court, which will through its investigative and chamber procedures determine whether there is sufficient evidence for a warrant of arrest to be issued.

Mr. President

It is important to emphasize here the relationship between justice and peace. Peace and justice pursued in tandem and not contradictory. In our efforts to deal with situations of conflict both justice and peace must play a significant role. Justice and peace are indivisible, interlinked and interdependent. Sustainable and everlasting peace and not ephemeral or temporary peace depend on justice playing its role and impunity not being tolerated. Justice must not be mob justice or should not depend on persons being charged on the basis that they are perceived to have committed offence or on other extraneous consideration.

Only those against whom there is sufficient and prima facie evidence, provable in a court of law, following internationally accepted practices and procedures should be charged. It is therefore critical that the capacity of those charged with responsibilities at the national level of criminal investigations, prosecutions and adjudication be strengthened

to enable the nation states that according to the Rome Statute establishing the International Criminal Court have the primary responsibility to investigate and prosecute to discharge that primary responsibility.

Mr. President

Kenya welcomes the efforts of the Bureau's Working Group on Universality and full Implementation of the Rome Statute and the Secretariat of the Assembly which has sought to promote the full implementation of the Plan of Action that was adopted in its 5th Session. The goals of the Plan of Action could be meaningfully achieved by State Parties being actively engaged in the implementation of the commitments they have made to the Plan of Action. To this effect, Kenya encourages all State Parties to take concrete steps towards successful implementation of the Plan of Action.

Mr. President

As you may be aware the 1st Review Conference is slated to take place in the early part of the Year 2010. Kenya attaches special value to this initiative as the conference will give states an opportunity to make amendments to the Statute and evaluate the work of the international

justice system established by the Rome Statute. Kenya supports the Republic of Uganda in hosting this very important conference.

Mr. President

Kenya urges the Special Working Group on the Crime of Aggression to conclude its work before the convening of the Review Conference in order to enable the definition to be adopted and considered at the Conference. May I emphasize the need for a definition of the Crime of Aggression that is in harmony with the authority, independence and operations of the ICC, the UN Charter and the principles of natural justice.

Mr. President

Kenya notes with gratitude the progress so far made by the Outreach team of the Court. Outreach initiatives continue to enable communities to follow and understand the International Criminal Justice process. However, there remains need to enhance this initiatives through the use of mass media such as radio and audio visual communication, sensitization of law enforcement and prosecutorial agencies and above all, the political class particularly as represented in National Parliaments.

Mr. President

Kenya encourages the ongoing work of the Bureau on geographical representation and gender balance in the recruitment of staff of the International Criminal Court. We do underscore the need for gender-balanced representation at all levels. Kenya calls for deliberate efforts towards the retention of more female employees of the Court.

Mr. President

As you may be aware, early next year, there shall be the ICC Judicial and the Committee on Budget and Financial elections. There is the very need to reiterate the value of high professional qualification and competence void of personal interest.

Mr. President

In conclusion, it is my pleasure once again to compliment the Court on the progress it is making in articulating its mandate. In this regard, I reaffirm Kenya's commitment to the Rome Statutes and reforms within the ICC.

Thank you.