



STATEMENT BY

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TRADE**

**DURING THE GENERAL DEBATE OF THE 12TH SESSION OF THE
ASSEMBLY OF STATE PARTIES**

20TH -28TH NOVEMBER 2013, HAGUE, NETHERLANDS

Madam President,

It is truly an honour for me to address this distinguished gathering on behalf of the Republic of Kenya. Let me begin by appreciating your stewardship of the Assembly of States Parties during your tenure as President. I also commend the organisers and all those who have worked tirelessly behind the scenes to make this Session possible.

Let me recognize the presence of the distinguished Prosecutor of the Court, Madame Fatou Bensouda, and the President of the Court, Judge Song.

It is heart-warming that I was preceded by eminent African personalities, which of course underlines our interest and commitment to the Court. Madam President, we are not shy and we say it clearly, we support the Court and therefore want to see it set the highest standards. It is no secret that the standard of the Court is not there yet, but we pledge our continued focus to ensure that it continuously improves.

Ladies and Gentlemen,

The Republic of Kenya appreciates the oversight role of the Assembly of States Parties the Organs of the International Criminal Court. This year's theme of addressing the persistent challenges facing the Rome Statute System comes at a timely moment especially with regard to circumstances surrounding the cases currently before the Court. The Court is facing a test of its veracity and effectiveness. This meeting must come up with practical solutions to the challenges facing the Court and the entire Rome Statute system.

As you are all aware, the Republic of Kenya is currently a situation country and our observations are therefore informed by our own experiences with the ICC process. Kenya is deeply concerned with the impact the implementation of the Rome Statute poses to its efforts in

the promotion of peace, national healing and reconciliation, as well as the rule of law and stability in Kenya and the region. The Court cannot ignore the social and political realities of the community of nations.

Kenya notes that the ICC is one of the components of the international justice mechanism. The Court is designed to be of last resort, and must of necessity give states the opportunity to exercise their primary role in redressing crimes that threaten peace, security and the well-being of the world. There should be no exception, after all, the most sustainable solution is to have a properly functioning international justice system for all countries.

It is for that reason that we believe that it is important for the Court to recognize the critical role played by the intervening layer of national and regional criminal justice mechanisms. It is in this regard that the African Union has proposed amendments to the Statute to enhance complementarity, as this will increase the wider state of justice, and development of jurisprudence. We truly hope that this meeting will embrace this noble proposal.

The use of intermediaries is not provided for in the Statute, yet in Kenya's experience they have been overly relied upon. This use of intermediaries and other third parties has been subject to abuse. Specifically, there have been instances of bribery, perjury, concealment of evidence including exculpatory evidence and interference. The Court recognized this problem in the Lubanga case, which is an issue that needs to be urgently reviewed with a view of ensuring that rule of law is upheld by all. To this end, there is need to come up with a system that does not water down the age-old protections that must underpin a criminal trial or compromise on the fair administration of justice.

Kenya played an active role in the negotiations, and thereafter signed, ratified and domesticated the Rome Statute in short order. Kenya is clearly well aware of its obligations under the Statute. While reiterating its firm commitment to the ideals of the Rome Statute,

Kenya wishes to highlight her cooperation with the Court from the year 2010, even when it has been challenging to do so.

Kenya wishes to inform that the cooperation envisaged in the Statute is two way, and intended to be symbiotic. Unfortunately, thus far, our experience has been to the contrary. We wish to inform this Assembly that on several occasions Kenya has not been accorded the cooperation expected from the Court. Every time, we have been treated with suspicion and contempt and our genuine concerns and reasonable requests utterly disregarded. The space for our continued cooperation is continually constrained and we urge for goodwill of all concerned and demand the recognition that Kenya as a state party is entitled to, to continue cooperating with the Court.

Ladies Gentlemen,

Kenya has made tremendous efforts in addressing the structural causes of the post-election violence of 2007/8. The adoption of a new Constitution in 2010 ushered in radical reforms in all governance institutions of the state. For instance, the Government has implemented a national cohesion and integration policy that resulted in the holding of free and peaceful elections in March 2013.

The Republic of Kenya is committed to ensuring justice for victims of post election violence. To this end, the Government of Kenya through a comprehensive reparation plan has undertaken the re-settlement of Internally Displaced Persons (IDPs). This programme fully underwritten by the Government of Kenya at a cost of Ksh. 4 billion (fifty million American dollars) also includes the purchase of land, construction of houses for the IDPs, psychosocial support for victims of gender based violence, cash payments, access to free medical attention for those victims in need; and periodic food distribution. This testifies the depth of care extended to all victims by the Government of Kenya. How else can a Government demonstrate commitment to the social economic revival of its nationals in distress?

Ladies and Gentlemen,

As part of its complementarity process, the Republic of Kenya is in the final phase of setting up the International Crimes Division of the High Court intended to give effect to **Section 8 (2)** of the International Crimes Act, No. 16 of 2008, to enable the trial of suspects of the 2007/2008 Post Election Violence effectively. We urge states Parties, the Court and other actors to support the Republic of Kenya on this important initiative.

Ladies and Gentlemen,

The Republic of Kenya, through the Witness Protection Agency recognizes that Witness Protection and Victim Support plays a critical role in the criminal justice system by ensuring that Witnesses and Victims of Crime access justice without fear and intimidation. Consequently, through the Witness Protection Programme, the Kenyan Government has continued to cooperate with the Court in requests for Witness Protection and Victim Support and reiterate our unreserved pledge to continue the Cooperation and Collaboration to ensure the court discharges its mandate effectively. All parties are free to refer their witnesses to the Agency for consideration for inclusion into the Kenyan Witness Protection Programme.

Ladies and Gentlemen,

The Republic of Kenya urges all the state parties that as we do contribute to the debate on the Rome statute, we need to look at the Rome Statute pragmatically and seek amendments that will bring to fusion the reasons why we all entered into the Rome Statue, achieving justice for all.

In conclusion, Kenya urges the Assembly of States Parties to consider the proposed amendments aimed at providing more credibility and practical solutions to the provisions of the Statute and Rules that are

causing tensions within the member states. Kenya cannot emphasize more, the fundamental importance of weighing the imperatives of justice against the demands of peace, security and stability of states.

THANK YOU