



REPUBLIC OF NAMIBIA

STATEMENT

BY

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JUSTICE**

GENERAL DEBATE:

**FIFTEETH MEETING OF THE ASSEMBLY OF STATES PARTIES OF
THE INTERNATIONAL CRIMINAL COURT**

THE HAGUE

16- 24 NOVEMBER 2016

Mr President,
Madam President of the Court,
Madam Prosecutor,
Distinguished representatives of the States present,
Ladies and Gentlemen.

We meet in this 15th Session of the Assembly of States Parties to debate issues of policy and practice in the life of the ICC at a time when there are critical views being expressed about the working of the Rome Statute System. Many of the criticisms relate to perceptions that the cases that come before the Court tend to be biased against certain regions.

These criticisms must be contextualized so that we can better evaluate the validity thereof and to make suggestions on how any valid criticisms can be addressed through appropriate reforms which this Assembly has to authorize, champion and implement.

Mr. President,

When the ICC was established as the first permanent international criminal court there was a lot of international and regional goodwill from States across the globe that at last, through the freely expressed will of those States that signed and subsequently ratified the Rome Statute, we have established an international legal framework that addresses impunity for the most heinous international crimes defined in the Statute.

The Rome Statute is a negotiated treaty which involved compromises on the text in terms of its substantive and procedural aspects as we all strived to set up a system which reflects the major legal traditions of the world and which would be a readily available avenue to prosecute individuals suspected of these crimes.

As a nation which had emerged from a period of over hundred years of repressive colonial rule. Namibia joined the Rome Statute because of the promise the court held out that at last victims of heinous atrocities would get justice.

Mr President,

There is an unfortunate tendency to overlook the primary role of the ICC in the suppression of international crimes that the Court is intended to be a court of last resort. National and to some extent, regional judicial institutions have the primary responsibility to suppress international crimes. The Rome Statute clearly contemplates that States Parties have to establish national mechanisms to try international crimes in their domestic jurisdictions.

The vesting of jurisdiction to prosecute crimes which fall within the ambit of the Rome Statute in national judicial and prosecutorial authorities or regional human rights tribunals is entirely consistent with the application of the principle that the ICC should only take over cases where there is no capacity or genuine commitment to hold proceedings elsewhere.

Article 17 clearly provides that a State party or any State whose situation has been referred to the Court by the Security Council may contest any assumption of jurisdiction by the ICC if that State can demonstrate, in the context of admissibility proceedings before the Court that it has the capacity to hold credible national proceedings.

Where national proceedings are underway in respect of a matter which the Prosecutor was investigating, the Prosecutor may support and facilitate such proceedings.

We are pleased to note the fact that the Office of the Prosecutor has over the last few years been reporting on the status of its work on preliminary examinations carried out in countries on different continents. It will greatly allay perceptions of bias in the choice of cases by the Prosecutor if these investigations could be finalized so that we start seeing cases from other jurisdictions also being handled by the ICC or that the Assembly is fully appraised of any decisions by the Prosecutor to support national prosecution efforts in respect of these cases.

Equally of concern is the role observer and non-States Parties might play in influencing decisions of the Assembly in matters for which they do not carry any legal obligations.

Mr President,

Another issue which has been raised regarding the choice of cases which come before the Court stem from the number of cases of non-States which have been referred by the UN Security Council pursuant to article 13(b) of the Rome Statute. The question has been raised whether it is correct to apply the Rome Statute system wholly in these type of referrals considering that non-States Parties have not subscribed to the principle enunciated in Article 27 of the Statute to the effect that immunities applying to heads of State in national law should not apply to exonerate suspects from liability for international crimes.

However, we have not addressed the impact of the power given to the Security Council in this regard. The reason for giving power of referral to the Security Council was to reduce impunity by enabling the Council to compel co-operation with the Court by invoking the binding enforcement provisions of Chapter VIII of the UN Charter.

The problem is that the application of these powers still remain subject to political considerations because of the prospect of veto-carrying States preventing referral of certain situations. Veto wielding members of the Council need to fully appreciate that they hold a huge responsibility that could determine whether their actions promote or combat impunity for international crimes. This Assembly might wish to consider amendments which will remove the exercise of the veto in cases of referrals to the ICC.

African States Parties have tried unsuccessfully to convince the Security Council to defer proceedings against any sitting head of state because of concerns about the impact of indictments on the stability of the state and on prospects for enhancing any peace process which may be underway.

We have also noted with concern that our appeals to bring charges against individuals in powerful states before the Court have also not been heeded. Is it perhaps that the Court would not be allowed to indict such individuals because of their powerful connections when the main duty of the Court is to fight impunity?

Mr President,

Finally, the Court depends on co-operation of all states Parties in executing its mandate. We urge the Assembly to fully consider all views regarding the issues which hamper better co-operation with the Court in order to improve the image of the Court among all its States Parties.

Namibia's path to ratify the Rome Statute was through the agreement of the National Assembly under Article 63

(2) (e) of the Namibian Constitution, read with Article 32(2)(e). Therefore, in the fullness of time, Government will engage the National Assembly on its preferred position, to withdraw or to stay. Whether we leave the ICC is therefore not a foregone conclusion and the discussion is ahead of us, not behind us.

I thank you.