

AFRICAN UNION

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**Secretariat of the Assembly of States Parties
18th Session of the Assembly of States Parties
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STATEMENT OF THE AFRICAN UNION

BY

**AMB. DR. NAMIRA NEGM
LEGAL COUNSEL OF THE AFRICAN UNION**

**Excellencies,
Distinguished Representatives,
Ladies and Gentlemen**

1. On behalf of the African Union, I have the pleasure to address this 18th Session of the Assembly of States Parties.
2. This Session marks seventeen years since the entry into force of the Rome Statute in 2002 and States Parties gathering every year, to take important decisions on how to make the ICC better. While these meetings are crucial to addressing concerns raised by States Parties, unfortunately, it has neglected for too long the concerns of its African States Parties, its largest membership bloc.
3. And here I am in a Déjà Vu addressing you **yet again**, making **yet another call**, for the holistic reform of the ICC that has been long overdue.
4. Since the inception of the Court until now, African States have shown a strong commitment towards the cause of justice by taking a stance against impunity. Yet, we have major contentious issues with the Court that have over the years remain unresolved, starting from our hard work to ensure the independence of the Court from the political discourse of the UN Security Council, to our call for the ICC to implement its mandate with due consideration to the other international legal obligations of States. Yet, unfortunately, they have not been met until now.

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5. At the last ASP, I pointed out some of the technical issues that we think are highly important for the ASP to tackle in a more vigorous way. The first is our concern with how the concept of complementarity has evolved into positive complementarity and whether the positive complementarity really reflects the will of Member States that negotiated the Rome Statute or not.
6. Secondly, the identification of the level of satisfaction of international cooperation with the Court is highly subjective and politicised, which is another issue that requires further clarifications and work by the ASP.
7. Thirdly and most importantly, the ASP needs to urgently address the hijacking of Article 98 of the Rome Statute by Article 27, in the last interpretation adopted by the Court. What we have witnessed so far is an encroachment of Article 27 on Article 98, which shows absolute disregard to the text that was negotiated to establish the Court and should bind its decisions.

8. By now, you already know the stance of the African Union on this matter. Article 27 speaks of jurisdiction, while Article 98 addresses the obligations of States Parties to the Rome Statute towards third parties. We see these provisions complementing each other so as to ensure that States Parties can honour all their legal obligations – under the Rome Statute together with their other obligatory legal obligations that they signed up to. Moreover, this is not only going to ensure political stability, but also a legal one around the world.

9. Last is the fact that an overwhelming number of cases still on the Court's dock are African. This is still an issue that needs to be tackled. While we welcome the recent decision of the Court to investigate the alleged crimes committed in Bangladesh and Myanmar, we are more concerned by its earlier decision to discontinue investigations into the crimes committed in Afghanistan, which is based on political developments rather than solid legal basis.

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10. Highlighting these disparities in the Court's decisions is just to remind it of its core mandate of fighting impunity by holding those responsible accountable for their crimes and helping to prevent these crimes from happening again, rather than focus on political discourses to remain a key player in the world of international criminal law.

11. In fact, we welcome the decision of the Court to acquit Gbagbo and Ble Goude from all charges. Yet, this is a message to ensure that cases of such importance and political sensitivity should be solid before high-level officials are indicted. These unsubstantiated allegations prejudice the rights of the accused, who, as articulated under Article 5 of the African Union Model Law on Universal Jurisdiction, shall only be prosecuted when the authorities can provide a reasonable basis that a crime under the law has been committed.

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12. The African Union reiterates once again, that for the ICC to sustain its claim of being an independent and unbiased international judicial mechanism, it should depart from politics in order to achieve its goals, which is to provide justice to victims of the most horrendous crimes around the world and act as a deterrent to committing those crimes in the first place.

13. I hope that the ASP will focus on addressing these major issues that are staining the reputation of the ICC and I also hope that at the next sessions of the ASP, I can depart from this same rhetoric and move on to exploring the full potential of the ICC so that it can be the justice mechanism that it was always intended to be – one that is independent and rid of all political influence and one that will attain a more universal membership rather than losing more States.

I thank you.