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Le Président
The President

Judge Chile Eboe-Osuji
President
International Criminal Court

Remarks at the ASP Plenary Session
on Review of the Rome Statute System

CHECK AGAINST DELIVERY
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The Hague, The Netherlands

Excellencies,
Ladies and Gentlemen,

I thank you for inviting me to address you on what must be the overarching topic of this year's Assembly: the Review of the ICC and the Rome Statute system.

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The time allocated does not permit me to say much on this occasion. But it does allow me to recall that I have repeatedly communicated to ASP Presidency, the enthusiasm with which the Court did promptly embrace the idea of review. In our view, the review is timely and long overdue. In some international organisations, review is done periodically every five years. In the 17 years of its operation, the ICC has not been reviewed even once. The exercise is then long overdue. And we hope that this Assembly will finally clear the way for that review to get under way – in the right way.

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When I say 'in the right way', I must recall that in my communications on behalf of the Court's principals to the Presidency of the ASP, we have called for an expert-led, independent, and inclusive review, which would leave no stone unturned. I am encouraged by the dialogue so far had between the Court and the ASP Presidency. It has been candid and productive.

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Still, I must stress the need also to subject ASP's own role to external review.

Allow me to elaborate. If the aim of the review is to improve the Court's efficiency and effectiveness, the exercise will lack enduring fitness for purpose if it does not engage the entire Rome Statute system.

That is to say, all the aspects of the Rome Statute system that are connected to one another in an arrangement capable of improving or hindering efficiency or effectiveness must be reviewed.

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We must accept that there are questions of efficiency and effectiveness of the Court from the perspective of State cooperation. The complaint that '*in its 17 year-*

run, the ICC has only a limited number of cases on the docket'[1] is a matter for the ASP – as it engages the matter of execution of arrest warrants. There are also difficulties concerning cooperation from States as regards relocation of witnesses in need of protection; and, also temporary relocation of defendants under conditional release, etc. Often, the Netherlands is left to hold the bag alone in this regard, by mere default of being the Court's Host State. But, the failure of other States to step up and assist the Court has a real potential to limit the Court's ability to discharge its mandate of humanity, in more ways than meet the eye.

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There is also the matter of appropriate funding to enable the Court its mandate. Often one hears complaints that the cost of funding the Court is high. And, we must put the figures (complained about) in proper perspective. For instance, research suggests that the Mueller Investigation cost about US$32 million; the Unabomber investigation has been put at US$50 million; the investigation into the Oklahoma City Bombing was estimated at US$82 million; and the Saville Inquiry cost £751 million.

I leave it to you to compare these figures to how much money is appropriated to the Office of the Prosecutor to investigate twelve distinct situations under her mandate, and to prosecute all the cases arising from those situations.

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One constant concern that one hears in the context of this review has been the need to improve the calibre of those who are selected to serve as Judges, Prosecutor and Deputy Prosecutor.

But, we must ask ourselves the following questions: who is it that selects these high officials of the Court? Is it possible that the practice of horse-trading is something that compromises the selection process? And what specifically is the ASP doing - or going to do - to eradicate that practice from its selection processes?

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[1] See Stef Blok (Minister of Foreign Affairs of the Netherlands), 'The International Criminal Court must do better. Reforms are urgently needed', *Washington Post*, 2 December 2019.

But, there is even the initial question whether the ASP has done all that could be done to attract the very best of candidates from national jurisdictions to express interest in being selected.

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In that connection, I am bound to engage a very difficult subject matter. I have noted the statements of some delegations, expressing concerns about judicial proceedings that some judges commenced in the matter of their conditions of service.

Let us keep in mind that this is the second time that judges of the Court have felt constrained to seek the avenue of judicial proceedings in order to resolve questions concerning their conditions of service. The first occasion was the proceedings commenced by two judges – one from Uganda and the other from France – who have since left the Court. In light of these developments, the question that arises must go beyond asking 'What happened here?' For, that question must necessarily drag in the relate question 'Why did these things happen?'.

And, here, I especially note Minister Blok's remarks at the ASP made on Monday, as well as his opinion piece in the Washington Post published the same day.[2] Minister Blok is a strong and unwavering friend of the Court. And I doff my hat to him for his firm and unequivocal support of this Court that belongs to all of us.

I do, however, regret very much that he and I have not been able to agree on the matter of the current circumstances of the judges' conditions of service; nor on what to do about them. Since the matter is now before a court of law with jurisdiction over that issue, it would be in appropriate for me to debate the merits here. In that regard, for purposes of the present audience, it suffices for us to take refuge in the very ordinary occurrence that friends and reasonable people can hold very different views on difficult questions. What is important is to be fair and respectful in doing so. But it is very, very wrong to suggest that judges may be focussing on their privileges more than their work.[3] There is absolutely no place in respectful discourse for that kind of suggestion.

[2] See *ibid*.
[3] See *ibid*.

But, now that some delegations have engaged this matter - both in this ASP and in the last one - I feel called upon to put this on the record, especially in the context of the review:

(1) It was almost 10 years ago that the judges of the Court started expressing grievance about their conditions of service. Those of you who were ~~here~~ in New York at the ASP session in 2010 will recall that Lord Justice Fulford – then a judge of the Court – addressed the Assembly and urged that the judges conditions of service needed attention, and that it was unsustainable to leave things as they were;

(2) The ASP direction at the time shut out the judges, firmly rejecting any prospect of entertaining discussion on the matter;

(3) In the following years, judges continued to request that the matter be taken up by the ASP. But, consistently, the judges were shut out of any prospect of discussion on the matter;

(4) Almost 10 years later, given that judges had – at all times - been shut out – outside the door of dialogue - ~~they~~ a number of them felt constrained to commence legal proceedings;

(5) But, before they did, they did send the message to the ASP that they were about to commence the proceedings; and there was a need to engage in a good faith discussion with the judges, with the view to resolving the matter and avoiding the imminent litigation. The judges were told, in effect, to go ahead with ~~your~~ their litigation, if they wished. And, that the ASP will engage with no discussion with judges on the matter. And some delegations clearly communicated that under no circumstances would they allow the existing conditions of service of judges to be reconsidered, let alone revised.

(6) And here we are. One should not forget that judges of the ICC come from the ranks of the most senior lawyers in the world. One should expect that if they feel shut out of meaningful discussions to resolve grievances, they would eventually exercise their right of access to justice, described in article 6 of the European Convention in the following terms: '*In the determination of his civil rights … everyone is*

entitled to a fair and public hearing … by an independent and impartial tribunal established by law …'.

That is the background of the matter, in the outlines. The record needs to reflect that.

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I said earlier that the Court is a human institution and, like any other human institution, will always need review. But we are not relying on that kind of thinking, to avoid looking at how we can improve. Nor are we content to wait for the expert review before we can do what we can to improve.

Continuous improvement has always been a key ethos in the Court's approach to its mandate. And all organs are actively working to enhance their functioning. And there is much to improve, as there is with any human institution. We are attentive to criticisms from the Court's stakeholders. We take steps to address them.

For instance, from the perspective of the Court's Judiciary, I am happy to report that the Judges have this year further expedited efforts to increase the efficiency of proceedings through internal measures.

These efforts have already borne very significant results.

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Sir Robert Megarry, a most eminent jurist once observed that '*Justice in full takes time; but often it is time well spent.*'[4]

But, ICC Judges have resolved to ensure that the '*time well spent*' is not cast into dispute by time spent unreasonably.

At our last judicial retreat, held two months ago here in the Netherlands, the Judges adopted concrete internal guidelines – not only in relation to best practices for the conduct of trials, but also timeframes for key decisions at the pre-trial, trial and appeals stages.

Such timelines do not exist in any international jurisdiction. Nor do they exist in many national jurisdictions. The Judges felt that the duration of proceedings is

[4] See R E Megarry, *A New Miscellany-at-Law* (2005) p 111.

such a critical aspect that affects fairness as well as perceptions of the Court's work, that we should formalise measures to prevent excessive delays.

Just last Friday, these self-imposed time limits have been incorporated and published in the Chambers Practice Manual, which is available on the ICC website.

These collective efforts are fundamental to enhancing the efficiency of the judiciary and will continue in 2020.

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