

STATEMENT

BY

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**AMBASSADOR OF THE REPUBLIC OF KENYA TO THE
KINGDOM OF THE NETHERLANDS**

**DURING THE GENERAL DEBATE OF THE TWENTIETH
SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE
ROME STATUTE**

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Madam President,

Excellencies,

Ladies and Gentlemen,

The Republic of Kenya lauds the leadership of Ms. Silvia Fernández de Gurmendi, President of the Assembly, the Bureau, the Secretariat and all who have worked tirelessly amidst the continuing COVID 19 pandemic to ensure that the Assembly continued to fulfil its role of providing management oversight regarding the administration of the Court.

Kenya further congratulates the new Prosecutor of the Court, Karim A.A. Khan, QC. We are confident that the next nine years of his leadership of the Office of the Prosecutor will witness more consistent prosecutorial policy that will lend confidence to all regarding the fairness, probity and integrity of the office and by extension, the Court. The Prosecutor's statement to this Assembly evincing a progressive approach to preliminary prosecutions and proffering assurance that all prosecutorial efforts will be guided by evidentiary content and strength, rather than political consideration, fortifies our confidence. Further, we have taken note of the Prosecutor's commitment to complementarity and regional cooperation which in our view will aid in strengthening the legitimacy and ownership of the Court.

Madam President, Excellencies,

The conference of parties that converged at the city of Rome twenty-three years ago and adopted the Rome Statute was driven by the firm belief that an international court was necessary to halt mass atrocities and bring accountability to perpetrators of the worst systemic crimes known to man. This August Assembly, an incarnation of the Rome Statute now ratified by one hundred and twenty-three States Parties here represented, while confronted by completely different circumstances, must always keep this imperative alive lest we fall victim to bureaucratic lethargy, institutional capture and outright sabotage by those determined to neuter the effectiveness of this important mechanism of international peace and security.

This Assembly of States Parties is the statutory framework for all stakeholders to the Rome Statute system- States Parties, civil society, victim groups and court officials- to safeguard the integrity of the Court's purpose and protect the objects of the Statute. It provides a reflective and deliberative

space to course correct and build a more perfect mechanism that performe deter the occurrence of atrocities while providing remedy where such crimes are already committed.

Madam President,

The review of the International Criminal Court and the Rome Statute system in 2020 marked a significant milestone in the efforts of States Parties towards a more robust ICC system. The review sought to strengthen transparency and fairness by all the organs of the Court. The Report of the Independent Review contains numerous recommendations, both short and long-term, with varying degrees of complexity, attendant risks and costs and urgency of implementation.

Kenya supports the comprehensive approach to resolving some of the structural and operational challenges faced by the international criminal court system. The recommendations on the governance of the prosecutorial process as well as efficiency and protection of fair trial rights made by the review team, instruct Kenya's position in pursuing amendments to certain provisions of the Rome Statute.

Kenya's proposal to amend Article 63 to allow for excusal of accused persons from continuous physical presence at trial, was prescient and remains relevant. The Covid-19 pandemic that continues to ravage our world (without racial and regional discrimination), has vindicated Kenya's proposition as it has demonstrated that the use of technology can be leveraged upon to facilitate attendance of accused persons at trial without the need for physical presence. As such, it is Kenya's position that the provision on the use of technology should further be expressly entrenched in the Rome Statute.

Madam Chair,

The integrity and competence of persons who serve as judges of the International Criminal Court cannot be gainsaid. The role of the Advisory Committee on Nomination of Judges is central to this fair and reasoned selection process. Kenya nominated Ms. Lucy Kambuni, SC- Senior Counsel, for election as a member of the Advisory Committee on Nomination of Judges. Aware of Advocate Kambuni's, SC years of criminal justice work in Kenya, we are confident that she will lend important contribution to this Committee. Kenya takes this opportunity to also congratulate the elected members of the Board of Directors of the Trust Fund for Victims and assures the Board of its cooperation.

Madam President,

In carrying out its mandate, the Court must always be alive to the objective of States Parties as expressed in the Preamble of the Rome Statute. Criminal jurisdiction is first and foremost the duty of every State. The Court does not have the capacity to investigate and prosecute cases in the many territories where atrocity crimes are being perpetuated. It is therefore imperative that State Parties, the Court, and stakeholders collaborate in strengthening national and regional institutions to enable them deal with international crimes to ensure that there is no impunity gap.

Kenya has made several strides in building its capacity to investigate and prosecute international crimes and therefore enhance cooperation with other States and foreign entities through the enactment of legislation to facilitate investigation and prosecution of international crimes, witness protection, mutual legal assistance and recovery of assets.

Madam President,

Kenya continues to demonstrate its cooperation with the Court in various spheres. The Kenya Witness Protection Agency has for instance ensured cooperation in carrying out measures aimed at facilitating the protection of witnesses and maintaining ongoing communication with regard to the implementation of protection measures, in accordance with the domestic law and other international obligations as a State Party. The Witness Protection (Amendment) Act No. 45 of 2016 made provision for reciprocal witness protection arrangements with foreign countries. The Agency is developing the Witness Protection (Reciprocal Protection Arrangements) Regulations, 2021 on admission of international witnesses, admissibility assessment of an internationally relocated witness, and international relocation to give full effect to Part III of the Witness Protection Act. Kenya today commits that the Agency will continue to cooperate and promote the rule of law by playing its critical role in providing the necessary protection to witnesses at the national and international level.

Madam President,

Accountability is key for the legitimacy and credibility of an institution. Kenya recognizes and respects the independence of the Judiciary and the Office of the Prosecutor. However, no person, organ or institution is above reproach. Allegations made against the conduct of any current or former elected official or staff member must be investigated and the results of the investigation

publicized in a timely manner. Kenya is concerned that the Annual Report of the Head of the Independent Oversight Mechanism focuses only on issues of internal discipline. A faithful understanding of the oversight mandate of the IOM suggests that its role is broader and should extend to redress for abuse of process by any of the organs of the Court in the discharge of its mandate. Kenya urges that this expansive approach towards oversight becomes the lodestar to IOM's operations.

Madam President,

Kenya recalls that at the nineteenth session, the Assembly requested the Court to present a sustainable budget proposal for its 2022 programme and notes with disappointment the 9.5% increase requested in the proposed budget. Kenya wishes to emphasize that the Court should build synergies between the organs of the Court, strengthen cooperation with States Parties and civil society organizations, streamline its working methods and strive to fulfil its mandate within the resources provided by States Parties.

Madam President,

In conclusion, Kenya urges States Parties to remain vigilant in the search for an equitable framework for the realization of international criminal justice for all.

THANK YOU