Kenya

General Debate

Speaker: H.E. Ms. Amina Mohamed, Cabinet Secretary Ministry of Foreign Affairs and International Trade

From recent experience it has become increasingly clear that the high expectations that Kenya and other States Parties had when ratifying the Rome Statute have been dampened by the manner in which the Court and its organs have chosen to interpret the Statute. Kenya’s concerns revolve around the Court’s emerging inconsistent and unfounded jurisprudence on evidentiary thresholds, complementarity, confidentiality and re-characterization of charges. The Office of the Prosecutor’s pursuit of evidence ought not to be conducted in a manner that undermines the universality of the Rome Statute, and the implied equality of States under the rule of law.

Kenya request that the legislative intent of Rule 68 be discussed during the ASP to reaffirm the non-retro-active application of the rule to situations commenced before November 27th 2013. Kenya believes that this request will not interfere with the judicial or prosecutorial independence of the Court. The legislative and managerial oversight of the ASP must be given precedence: the ASP is the rightful forum for this matter. Kenya rejects the notion that African nations lack the political will to fight international crimes, as the African nations make up one third of the ICC’s members. Kenya calls for a shift to respect for African jurisprudence and in support of home-grown solutions (for example the African Court on Human and People’s Rights).

The Office of the Prosecutor and non-governmental organizations lobbied against the creation of the Independent Oversight Mechanism (IOM) in 2009 and this reluctance to make it operational led to the inability to hold the organs of the statute accountable to the Assembly. Due to the lack of an independent body to deal with Kenya’s concerns, Kenya requests the appointment of an ad hoc mechanism to audit the conduct of the organs of the Court in relation to the issues raised by Kenya. Kenya urges all delegations to insist on the supremacy of the Assembly of its institutional organs, to demand institutional subjugation and accountability of these organs to the Assembly and not to shy away from taking part in debates of a complex nature.

Budget: The 17.3% increase of the budget is worrisome and Kenya will be hesitant in supporting activities that unnecessarily inflate the budget. The President of Kenya plans to set aside 100 million USD as restorative justice funds for purposes of reparations and compensation under the auspices of a multi-sector committee.

Special Session on Cooperation

Kenya has provided continued and unprecedented cooperation to the ICC, allowing all ICC associated officials free movement and the establishment of an ICC field office on its territory. Kenya follows the agreed protocol and the Court has been operating without interference.

Supplementary Items Debate (Proposals South Africa)

Kenya fully supports the demands made by South Africa and encourages the Assembly to engage in discussing these matters in order to find solutions and strengthen the Court. Kenya reiterates that the South African statement does not regard an ordinary issue and that the ASP is the rightful place to discuss it. The integrity of the Rome Statute arises from fair interpretation of the Rome Statute and
Kenya does not share the interpretation of the Rome Statute that Costa Rica elaborated in its statement. Kenya also supports the South African proposal to establish a panel of experts to review these issues.

**Supplementary Items Debate (Proposals Kenya)**

Kenya has been fully cooperating with the ICC and has not shied away from its responsibilities. Kenya faces many challenges (peace, stability, piracy, terrorism, refugees) and its obligations to the ICC have consumed all the other obligations that Kenya has. Kenya expects that the Court is sensitive to the environment and context in which it operates.

Kenya expects that agreements are made in good faith, and this also concerns the meetings in which Kenya was assured of the non-retroactivity of amendments to rule 68. Kenya does not want a review of article 68 but a reaffirmation of the agreement that has been made. Now Kenya is being criticized for its criticism of the Court; Kenya feels like a heavy load that the Court wants to get rid of.

Kenya does not believe that these issues threaten the independence of the Court. Kenya proposes the establishment of an ad hoc commission to audit the witness recruitment/identification process in the Kenyan cases. It is within the mandate of the Assembly to provide legal oversight.