

WEDNESDAY, 22 MARCH, 2017

MINISTERIAL STATEMENT

BY THE

HON. MINISTER OF JUSTICE, MR LUBINDA,

ON THE

**COMMENCEMENT OF THE CONSULTATIVE PROCESS ON ZAMBIA'S
MEMBERSHIP TO THE INTERNATIONAL CRIMINAL COURT**

Mr Speaker, I am grateful to you for giving me this opportunity to render this ministerial statement to address this august House and through it, the nation on Zambia's membership to the International Criminal Court (ICC).

Sir, the ICC is established under Article 1 of the Rome Statute. The Rome Statute is an international treaty which established a permanent court which has the power to exercise jurisdiction over persons who commit serious crimes within member states.

Mr Speaker, as of 3rd December, 2016, a total of 124 states had ratified or acceded to the Rome Statute. Zambia signed the Rome Statute on 17th February, 1998, and ratified it on 13th November, 2002. The Rome Statute entered into force on 1st February, 2003.

Sir, the ICC was established to promote deterrence of massive killings, torture of targeted groups, apartheid, transfer of children as child soldiers, enslavement and many other massive atrocities. The ICC imposes criminal liability on individuals for crimes committed in times of war as well as in times of peace. It supplements national criminal systems because it only assumes jurisdiction if the national criminal system fails to prosecute individuals who commit large scale crimes. The jurisdiction of the ICC covers the following crimes as listed in Article 5 of the Rome Statute:

- (a) genocide;
- (b) crimes against humanity;
- (c) war crimes; and
- (d) crimes of aggression.

Mr Speaker, you may wish to note that there are limited circumstances under which a matter may be referred to the ICC. Essentially, the only instances when the ICC can assume jurisdiction over a matter are as follows:

- (a) referral by the state party to the ICC;
- (b) referral by the United Nations (UN) Security Council; and
- (c) where the prosecutor of the ICC has initiated an investigation.

Sir, there have been concerns raised by member states regarding the impartiality of the ICC. This has prompted debate amongst member states on whether they should withdraw or retain their membership to the ICC. Proponents for the withdrawal, such as Burundi, Kenya and South Africa argue that the ICC unfairly targets Africans. They argued that since its establishment in 2002, nine of the ten situations that the ICC has investigated relate to African states namely; the Democratic Republic of Congo (DRC), the Republic of Uganda, the Central African Republic, the Republic of Sudan, Kenya, Libya, Côte d'Ivoire and Mali. Georgia is the only country outside Africa facing an ICC investigation.

Mr Speaker, they further argued that some practices of the ICC are incompatible with domestic and international norms, citing the immunity of a Head of State as an example. They argue that indicting a sitting President of a country is equivalent to indicting the country itself, and yet, Sub-Article 1 of Article 25 of the Statute states that:

“The court shall have jurisdiction over natural persons pursuant to the Statute.”

Sir, in addition, those in support of the withdrawal from the ICC argue that the indictments against sitting Presidents interferes with the on-going peace processes to mediate conflict situations and that there are legal mechanisms at national, regional and continental levels that can handle African cases. They contend that the ICC was meant to be a court of last resort.

Mr Speaker, another argument in support of withdrawal from the ICC is that the ICC is futile as some of the states which are responsible for violating international criminal law are

not members of the court. It is argued that some of these countries have made themselves out of reach of international justice by not signing the Rome Statute, and yet, they are part of the United Nations (UN) Security Council, which can refer situations to the ICC.

Mr Speaker, I have tried to give a rundown of the arguments in favour of withdrawal. Let me now give a rundown of the arguments presented by those against the withdrawal from the ICC in Africa such as Botswana, Cape Verde, Nigeria and Senegal. These countries argue that there are good reasons why most of the investigations by the Office of the Prosecutor of the ICC have been in Africa. They also argue that the jurisdiction of the ICC is limited because there are specific crimes over which the ICC has jurisdiction. The ICC supplements national criminal systems because it only assumes jurisdiction if a national criminal system fails to prosecute individuals who commit international crimes.

Furthermore, they argue that investigations into African situations have been opened at the request or with the support of African states themselves. Five of the African situations under investigation were self-referred while two were referred by the UN Security Council and the last two upon request of the ICC Prosecutor.

Mr Speaker, the five that were self-referred are as follow:

- (a) Uganda;
- (b) Democratic Republic of Congo (DRC);
- (c) Central African Republic;
- (d) Mali; and
- (e) Central African Republic, for the second time.

Those that were referred by the UN Security Council are Sudan and Libya whereas those that were brought *proprio motu*, meaning by request of the prosecutor are Kenya and Côte d'Ivoire. In addition to those against the withdrawal from the ICC, opine that situations under investigations or prosecutions in Africa are distinguished by the gravity of crimes perpetrated

in Africa and an unwillingness or inability, on the part of the states concerned, to investigate or prosecute the crimes of such great magnitude. Furthermore, those against the withdrawal from the ICC argue that the ICC is necessary to hold leaders accountable and afford justice to many victims of war crimes and genocide worldwide.

Mr Speaker, at the 28th Summit of the Assembly of the African Union (AU) that was held from 30th to 31st January, 2017, in Addis Abba, Ethiopia, member-states resolved on a non-binding recommendation for a mass withdrawal of African countries from the ICC, citing the impartiality of the court.

Sir, in keeping with the tenets of good governance, which His Excellency espoused in his inspiring Speech, delivered to this honourable House on Friday, last week, the President, Mr Edgar Chagwa Lungu, decided that before Zambia commits itself to this debate, we consult the people of Zambia as this is an important matter of both national and international concern.

Sir, Zambia, like all other member-states of the AU is expected to give her position on the matter during the 29th Summit of the Assembly of the AU, scheduled for June/July, 2017. In this regard, Cabinet, at its sitting on Monday, 13th February, 2017, authorised the Minister of Justice to initiate and spearhead a countrywide consultation process regarding Zambia's position on its membership to the ICC and to prepare a report on the findings, which will affirm Zambia's position at the June/July Summit of the AU.

The consultations will commence on 27th March, 2017 and are expected to be concluded by 31st May, 2017. The consultative process will be conducted through public hearings in thirty districts where members of the public would be invited to make oral and written submissions on the matter. A detailed schedule indicating the dates and locations for the hearings will be publicised in the print and electronic media. Further, the Ministry of Justice has made an invitation to members of the public to make written submissions through the offices of the district commissioners by 20th April, 2017, particularly in districts where public hearings shall not be conducted.

Sir, may I use this opportunity to call upon all Zambians in all the ten provinces to turn up in large numbers and make their submissions during this important national exercise. I particularly implore hon. Members of this august House to make written and oral submissions

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on this subject matter and to also encourage members of their constituencies and members of the general public to do likewise.

Mr Speaker, as I conclude my statement, may I bring to the attention of this House and the nation at large, that there is currently no formal complaint which has been referred to the ICC over Zambia or by Zambia. Further, there is no formal complaint admitted by the ICC against any Zambian national. Therefore, the Government of His Excellency, President Edgar Chagwa Lungu, is embarking on this consultative process with clean hands.

Sir, Let me end by, again, imploring all hon. Members of this honourable House to do as is expected of them and that is to provide leadership on this very important matter.

Mr Speaker, I thank you.