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UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Tel: +251-11-5517 700 Fax: +251-11-5517844
website: www.africa-union.org

STATEMENT

BY

**THE HON. FREDERICK RUHINDI, DEPUTY ATTORNEY
GENERAL/MINISTER OF STATE FOR JUSTICE AND
CONSTITUTIONAL AFFAIRS OF THE REPUBLIC OF UGANDA**

ON BEHALF OF THE AFRICAN UNION

**AT THE 12th ASSEMBLY OF STATES PARTIES TO THE ROME
STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC)**

THE HAGUE, NETHERLANDS

21 NOVEMBER 2013

Madam President
Distinguished Delegates and participants
Ladies and Gentlemen

I am honoured to deliver this statement on behalf of the African Union at this important meeting. I would like to thank you Madam President and the Secretariat for all efforts exerted towards the successful organization of this meeting.

At the outset, let me point out that the issues to be discussed during this meeting are of significant importance to the African continent. Millions of children, women and men on our continent have been victims of unimaginable atrocities that shock the conscience of humanity. Without doubt therefore, there is need to combat impunity, promote democracy, the rule of law and good governance throughout the continent as enunciated in the Constitutive Act of the African Union which characterises the commission of these crimes as unacceptable to AU Member States and as a sufficient legal basis for intervention by the Union in a Member State, without the consent of the concerned State.

Madam President

The fight against impunity –including the crime of genocide, war crimes and crimes against humanity- constitutes a fundamental principle in the basic law of the Union, and is part of the shared values of the Union to which all Member States have committed themselves. This principle is therefore well articulated and pursued within the Union and is not negotiable.

Having said this, I would now like to turn to the situation in Kenya and to highlight the inescapable link between peace and justice. We at the AU would like to see an intelligent interaction between justice and peace because it is only in this way that we can

succeed in promoting democratic governance with strong institutions, the rule of Law and constitutionalism.

The African Union believes that if Kenya does not qualify for use of Article 16 of the Rome Statute and subsequently the principle of complementarity then no other State Party will. If this turns out to be the case, then not only Article 16 would be deemed to be redundant for the United Nations Security Council to legitimately and constructively resort to it, but the irresistible conclusion will also be that the ICC, whose establishment Africa and the Organization of African Unity strongly supported and advocated for is no longer a Court for all but only to deal with Africans in the most rigid way.

Madam President

The situation in Kenya is very complex. There are at play important dynamics and tensions of politics, peace, justice, and the rule of law and a very acute sense of ethnicity that cannot be wished away or swept under the carpet. We therefore believe that the recent position of some Members of the UN Security Council that the Kenyan situation does not fall under Chapter VII of the UN Charter missed the point about the need to pursue justice in a manner that does not jeopardise efforts aimed at promoting lasting peace, national healing and reconciliation. Secondly, the position that has been made that Kenya should instead go directly to the ICC by using only the legal framework of the Rome Statute is self defeating and will defeat the purpose of a deferral. This may be the right way in most cases but will not do for the exceptional situation in Kenya.

Kenya had been a beacon of peace and stability in the Eastern Africa Region apart from the unfortunate post election violence of 2007-2008; and it is important for the country to consolidate its stability. It had taken necessary actions towards peace and

reconciliation including through the reform of its judiciary and police as well as other institutions of governance. Reparations were paid to the victims and all Internally Displaced Persons had been resettled; and the President and Deputy President of Kenya had played a significant role in redressing the negative impacts of the post election violence of 2007-2008.

The decision of the people of Kenya to elect the President and Deputy President should be respected and the latter need to be able to discharge their constitutional responsibilities efficiently and effectively, in particular in light of the Westgate terrorist attack and the clear danger posed by *Al shabab/al* Qaeda in the region as recognized by UN Security Council in its statement after the Westgate tragedy wherein it reaffirmed that terrorism in all its form and manifestations was a threat to international peace and security.

The concerns of Africa, if Kenya was to be destabilized, were genuine and it was important for the International Community to trust Africa and to prevent any further crisis in a region that is so volatile and where the difference between peace and no peace is not easy to define. Therefore, the AU's position cannot be perceived as having no justification and the Kenyan situation warrants UN Security Council to exercise its mandate under Article 16 of the Rome Statute of the ICC read together with Chapter VII of the UN Charter to allow Kenya to move forward and deal with the challenges confronting it.

**Madam President,
Ladies and Gentlemen**

The time had come for both the ICC and UN Security Council to stop ignoring the voice of Africa and to give a satisfactory response to the request for deferral of the proceedings against

the President and Deputy President of Kenya in accordance with Article 16 of the Rome Statute of the ICC.

At this juncture, allow me to make a mention in passing to the special segment of this session of ASP, which will consider tomorrow afternoon the issue of indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation in African Union Member States. We firmly hold the view that it would be important to address this issue seriously and to make the necessary amendments to the Rome Statute in particular its article 27.

Finally, allow me to reaffirm that, we in the African Union strongly believe in African Solutions to African problems.

In the light of the above, I wish to reiterate the call by the African Heads of States and Government for a deferral of the ICC investigations and prosecutions in relation to the 2008 post election violence in Kenya under Article 16 of the Rome Statute.

**Madam President,
Ladies and Gentlemen**

I wish this important meeting fruitful deliberations for the interest of peace and justice.

I thank you.