



**OPENING STATEMENT**

**BY**

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**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES,**

**REPUBLIC OF SOUTH AFRICA**

**GENERAL DEBATE:**

**FIFTEENTH MEETING OF THE ASSEMBLY OF STATES PARTIES OF THE  
INTERNATIONAL CRIMINAL COURT**

**THE HAGUE**

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*Check against delivery*

Mr President,

The South African delegation makes this statement today against the background of South Africa's decision to withdraw from the Rome Statute of the International Criminal Court.

South Africa's commitment to the protection of human rights all over the world and the fight against impunity remains unwavering despite its decision to withdraw. This commitment was forged in the struggle for liberation against the inhumanity of colonialism and apartheid and based on the values of our nation, namely human rights, freedom and dignity as aspired to in the Freedom Charter, which was adopted by the people of South Africa in 1955 already and which have now been enshrined in our Constitution in a comprehensive, justiciable Bill of Rights.

Mr President

The decision to withdraw was not taken lightly. South Africa played a significant role in the negotiations for the Rome Statute, and was one of the first States to adopt implementation legislation.

The decision was made after very careful consideration of all relevant issues, including South Africa's obligations to the ICC, its recent interaction with the Court, its obligations towards the African Union and the role that South Africa plays to resolve conflicts and make peace on the African continent and elsewhere.

South Africa found itself in the unenviable position where it was faced with conflicting obligations: obligations contained in the Rome Statute which are in conflict with customary international law pertaining to immunity for sitting heads of state and government.

When confronted with this dilemma last year, South Africa accepted an invitation to invoke the Article 97 procedure to consult with the Court if experiencing challenges with honouring a warrant of arrest. South Africa regarded these consultations as diplomatic and not judicial in nature and wanted to share its challenges with the Court. The valid concerns raised in respect of Article 97 by South Africa at the previous ASP have now been recognised through a decision of the ASP to mandate the Bureau to remain seized with this matter.

On Article 98 and its relationship with Article 27, there unfortunately seems to be reluctance amongst States Parties to give favourable consideration to South Africa's concerns shared by a number of other states.

In complex and multi-faceted peace negotiations and sensitive post-conflict situations, peace and justice must be viewed as complementary and not mutually exclusive. It is a reality that, in an imperfect world, we cannot apply international law with an idealistic view striving only to achieve justice and accountability, leaving aside the immediate objectives of attaining peace, security and stability. The drafters of the Rome Statute were keenly aware of this peace/justice dichotomy and purposefully build mechanisms into the Rome Statute to address it. Regrettably, the Article 16 deferral power was never exercised by the Security Council, despite several African requests.

There are perceptions of inequality and unfairness in the practice of the ICC that do not only emanate from the Court's relationship with the Security Council, but also by the perceived focus of the ICC on African states, notwithstanding clear evidence of violations by others.

The credibility and acceptability of the ICC to become the universally accepted institution of justice will be questioned for as long as the concerns of Africa specifically and member states more generally are not addressed. The Rome Statute cannot be regarded as static. It must be amended to address weaknesses in it and to enhance the fair and efficient functioning of the ICC itself within a changing and dynamic global environment.

Mr President,

It is necessary to state unambiguously that South Africa will not become a safe haven for fugitives, especially those who have committed atrocity crimes. An extensive review of our legislation has been undertaken to consider whether some of our laws need to be amended and whether new laws to deal with serious violations of human rights need to be enacted by Parliament. Draft amendments have already been prepared for submission to the Cabinet for approval and for tabling in Parliament for consideration. The draft legislation will facilitate continued cooperation with international bodies like the ICC.

South Africa shall remain on the side of victims at all times. South Africa will actively promote peace, stability and development in Africa and elsewhere and will ensure that there is no impunity from prosecution for crimes against humanity anywhere in the world. South Africa will, where necessary, itself prosecute perpetrators of crimes against humanity in the future.

Thank you.