

**OPENING STATEMENT**

**BY**

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**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES,**

**REPUBLIC OF SOUTH AFRICA**

**GENERAL DEBATE:**

**SIXTEENTH SESSION OF THE ASSEMBLY OF STATES PARTIES OF THE  
INTERNATIONAL CRIMINAL COURT**

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Mr Vice President,

At the outset, it is with sadness that we bid farewell to the first person from the African continent to hold the eminent position of President of the Assembly of States Parties. We take this opportunity to commend Mr Kaba for fulfilling the role and responsibilities associated with this position with great distinction. Similarly, my delegation wishes to congratulate Mr O-Gon Kwon from South Korea on his election to the position of the President of the Assembly. His impressive background speaks for itself and the Assembly stands to benefit immensely from his wisdom and experience over the next three years.

We wish all judges who have been elected the wisdom they will need for the ponderous task ahead. We congratulate the high calibre of nominees, and all other persons who have been elected to the various positions within the Court and its structures.

Mr Vice President,

You may recall South Africa raised a concern in this Assembly regarding the absence of procedures to guide Article 97 consultations between the Court and a State Party which receives a request for cooperation and identifies challenges that impede or prevent it from executing the request. South Africa experienced such a challenge in 2015 when what it considered to be a diplomatic consultation in terms of Article 97 inadvertently became a legal process.

During the past year, the Hague Working Group of the Bureau, mandated by the Assembly, worked tirelessly through the mechanisms of an Open-Ended Working Group and a Drafting Committee to address a *lacuna* in the relationship between the Court and States Parties. It is our understanding that the text will not be re-opened at this session, but be adopted by consensus.

Whilst the concerns relating to Article 97 have to some extent been addressed, there remain some grave concerns. This year, South Africa appeared before the Pre-Trial Chamber concerning State Parties' obligations to cooperate with the ICC. This statement intends to further clarify the primary reasons that informed South Africa's

actions in that regard and should not be seen as a direct and comprehensive response to any relevant judicial decisions, both domestically or internationally on any aspects related to this matter.

Needless to say that the Pre-Trial Chamber ruling raised new issues and further clouded, rather than provided clarity on, South Africa's concerns regarding its obligations vis-à-vis the Court, specifically in respect of the relationship between Articles 27 and 98 of the Rome Statute. South Africa is therefore still left in an invidious position of needing to abide competing obligations as a State Party to the Rome Statute and having to fulfil its role as a mediator for peace especially in conflict situations on the African continent. Whilst the Pre-Trial Chamber of the ICC insists that States Parties have an obligation to arrest President Al Bashir implicit in United Nations Security Council Resolution 1593, the Court has not, to our knowledge, offered consistent or convincing reasons in arriving at such a conclusion in the face of legal provisions that appear to suggest the opposite in our estimation.

Mr Vice President,

As South Africa we have learned from our own history of crimes against humanity and still draw inspiration from the father of our democracy, Nelson Mandela, in promoting reconciliation and avoiding conflict, which in some instances may require action outside of judicial processes. The ICC cannot be the only platform through which we resolve all matters. South Africa's Truth and Reconciliation Commission is a testimony to how the gap between peace and justice can be bridged through alternatives to judicial processes which allow for accountability and also seek to achieve healing for victims. In giving effect to its obligations as a member of the African Union and in pursuance of the African Union Constitutive Act, South Africa's diplomatic efforts over the past two decades have focused on conflict resolution, prevention and mediation to carry out our commitment to ensure peace, human security and stability on the continent. When South Africa agreed to host the AU Summit in 2015 to which President Al Bashir was invited on behalf of Sudan as a full and legitimate member of the AU, it was guided primarily by a commitment to the advancement of the African Union's vision of Agenda

2063 which promotes the notion of the creation of "An integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena."

Mr Vice President,

It is our firm view that the drafters of the Rome Statute, of which South Africa was part, were keenly aware of the peace and justice dichotomy and purposefully built some mechanisms into the Rome Statute to address it, including the deferral process under Article 16. Regrettably, despite several requests from the African continent, the United Nations Security Council has never exercised this power of deferral.

Mr Vice President,

Based on the afore-going, amongst others, I wish to reaffirm the statement read out by the Government of South Africa at the Fifteenth Session of the Assembly of States Parties, in which it announced its intention to withdraw from the Rome Statute. The Government's resolve in this regard remains unchanged because of the active role that South Africa continues to play in promoting dialogue and peaceful resolution of conflicts in Africa and elsewhere. South Africa's continued membership to the Rome Statute, as it is currently interpreted and applied, carries with it the potential risk of undermining its ability to carry out its peace-making mission efforts in Africa, and elsewhere.

Mr Vice President,

In pursuance of a domestic court decision on the constitutionality of South Africa's withdrawal from the Rome Statute, I will, on behalf of the Cabinet of South Africa, shortly serve on Parliament, for approval, Government's notice of withdrawal from the Rome Statute and introduce the International Crimes Bill.

Through this Bill, Parliament will be requested to remove legal uncertainty regarding South Africa's international obligations under both domestic and international law. The Bill repeals the current Rome Statute implementation Act and enacts international crimes similar to those in the Rome Statute. The new legislation will grant extra-

territorial jurisdiction to our courts and proposes continued cooperation with other States and international bodies, including the ICC.

Mr Vice President,

The ICC has achieved a great deal over time. South Africa has demonstrated its commitment and remains committed to the principles enshrined in the Rome Statute to eradicate impunity and prevent atrocities. This is further reaffirmed through its membership to other international treaties aimed at the protection of humanity. Despite the intended withdrawal, South Africa shall remain on the side of victims at all times. We will actively promote peace, stability and development in Africa, and elsewhere, to ensure that there is no impunity from prosecution for international crimes.

Thank you.

