



STATEMENT BY THE LEADER OF DELEGATION

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Parties, World Forum Theatre, The Hague,**

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Madam President,

1. May I congratulate you once more for the efficient manner you have conducted the affairs of this Session.

Madam President,

2. My delegation wishes to underscore the importance of the Assembly of State Parties (ASP) as an organ of the Rome Statute responsible for setting general policies for the administration of the Court and reviewing its activities. Its decisions on any aspect of the work of the Court should therefore enjoy pre-eminent status among State Parties and the Court. My delegation therefore considers this special segment requested by the African Union on "**Indictment of sitting Heads of State and Government and its consequences on peace and stability and reconciliation**" most auspicious.

3. As you all aware, 33 African States are Parties to the Rome Statute thus making Africa the region with the highest endorsement of the ICC. Despite this general acceptance of the Court across Africa, Africa's relationship with the Court has unfortunately been less than cordial. As I noted in my general statement this morning, the Court's tendency to focus more on the pursuit of justice to the detriment of measures aimed at fostering peace and reconciliation and the non-recognition of customary international law immunities for serving Heads of State and Government have been thorny issues in the relationship of the AU and the Court.

Madam President

4. My delegation believes that it is time for the Court to redress this anomaly and create a harmonious relationship with the AU. While the issue of past indictments cannot be revisited in the light of current realities, my delegation is of the view that a lot can still be done to ameliorate the adverse effect of these indictments issued against serving Heads of State and Government. It is in this connection that my delegation wishes to reaffirm the decision of the Extra Ordinary Session of the Assembly of the African Union of 12th October 2013 to the effect that" **to safeguard the constitutional**

order, stability and integrity of Member States, no charges shall be commenced or continued before any International Court or Tribunal against any AU Head of State or Government or anybody acting or entitled to act in such capacity during their term of office”.

5. Nigeria therefore urges the ASP to give due consideration and support for the decisions of the AU and current efforts to address all concerns of the AU on its relationship with the ICC, including the deferral of the Kenyan and the Sudan cases. It is apposite to note that AU Member States do not condone impunity or reject the imperatives of accountability especially by those responsible for the most grievous crimes of international concern.

6. The current wave of democratization across Africa makes it imperative for the Court to make a clear distinction between democratically elected leaders with fixed terms in office from dictators of the past who were without tenure. In this vein, democratically elected leaders who are ordinarily accountable to the people, should be allowed to discharge their mandate and address the developmental challenges of their countries without the distractions, which attend indictments and trials before the ICC until the end of their tenure. This situation is even more urgent in the case of the Republic of Kenya currently one of the frontline states in the war against terrorism.

Madam President

7. To address these concerns, my delegation is of the view that the trigger mechanism provided by Article 16 of the Rome Statute relating to deferrals need to be re-examined in the light of current realities and experiences in order to engender greater flexibility in decision making. Experience has shown that achieving unanimity in decision-making is not one of the great attributes of the UNSC. This means that the ability of the UNSC to achieve the necessary consensus to respond positively to requests under Article 16 may be a herculean task. This is more so as it our belief that the UNSC requires a greater threshold on the threat to world peace and security to act under Chapter 7 of the UN Charter. While still vesting the UNSC with the power under Article 16, my delegation

recommends that the Article be amended to also vest the ASP with the power to grant a request for deferral especially where the circumstances prevalent in the concerned state are grave and serious but may fall short of the threshold required by the UNSC to act under Chapter 7 of the UN Charter.

Madam President

8. Closely related to the issue of indictment of sitting Heads of State and Government is the non-recognition by the Court of customary international law immunities for serving Heads of State and Government as enshrined in Article 27 of the Rome Statute. The unprecedented wordings of the Rome Statute rejecting such official capacities and immunities has created hardships for State Parties in their external relations with non-State Parties who continue to assert respect for customary international law immunities for their Heads of State and Government and other senior officials. It is therefore recommended that Article 27 be amended to include a proviso exempting democratically elected serving Heads of State and Government from the application of the Article. This amendment will instill sanity and eliminate the present difficulties. We are also of the reasoned view that Article 63 of the Rome Statute should be amended to engender flexibility to dispense with the presence of the accused person in order to prevent future situations such as that which the Kenyan Situation has presented to the Court.

9. Finally, we call on all State Parties to reaffirm their commitment to the ideals of the Rome Statute and strengthen the Courts ability to discharge its mandate. The ASP should also encourage the Court to be sensitive to the concerns of State Parties especially the AU Members who have raised genuine concerns about the AU's relationship with the Court in order to engender universality, enhance cooperation and positive complementarity.

10. To address the recommendations for amendment of Articles 16 27 and 63 of the Rome Statute, we therefore call for a review meeting as soon as possible to consider in detail, the proposals we have placed before this Session of the ASP. Nigeria recognizes and commends the work of the Working Group on Amendments of the

Rome Statute and the efforts being made to amend the Rules of Procedure and evidence to address some of the challenges facing the Court.

11. I thank you for your kind attention.

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