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STATEMENT

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THE PERMANENT MISSION OF THE REPUBLIC OF KENYA

TO THE UNITED NATIONS

AGENDA ITEM 83

RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS

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Mr. Chairman,

Thank you. My delegation aligns itself with the statement delivered by the representative of Iran on behalf of the Non-Aligned Movement and by the representative of Egypt on behalf of the African Group. We appreciate the Secretary General's reports under this agenda item for the insight they bring to our deliberations.

Kenya supports an international order that is firmly grounded on the rule of law. This is based on our belief that the rule of law is the bedrock of peaceful co-existence and sustainable development in any society. Indeed, this principle is substantively embedded in the Charter of the United Nations which is the foundation of the rule of law at the international level. The Charter envisages States' collective responsibility in the maintenance of international peace and security and international cooperation in addressing issues of economic, social, cultural, humanitarian and human rights.

Mr. Chairman,

A fundamental requirement for the rule of law in any society is an impartial and independent judiciary, able to resolve disputes and assure respect for the laws. Since the promulgation of our Constitution in 2010, the Kenya judiciary has undergone fundamental and positive reforms. The reforms include increased transparency and public participation in the process of staffing the judiciary, improved terms of service for judicial officers thus attracting high calibre work force and increased recruitment of both judicial and administrative staff. The judiciary is now independently funded pursuant to Article 173 of the Constitution. This has enabled it to undertake structural reforms including streamlining of court processes that have led to the expeditious dispensation of matters brought before the Courts.

Further, the judicial reforms are being complemented by additional reforms in the justice sector including the establishment of an independent Constitutional office of the Director of Public Prosecutions, Commission on Administration of Justice, National Gender and Equality Commission; far reaching reforms in the security sector including the establishment of the Kenya Police Service Commission and the Kenya Police Oversight Authority. In addition to these overarching and comprehensive reforms; the Constitution created county governments in a broad-based approach to devolution. This devolved governance ensures that the effect of this transformation permeates to the grassroots by bringing services closer to the people and promoting access to justice. We believe that all these reforms will lead to an efficient, effective and coherent justice sector that is accessible and accountable to all.

Mr. Chairman,

As a firm believer in the rule of law, Kenya continues to participate and actively so at all fora where we renew our pledge to uphold, preserve and promote the purposes of the Charter and international treaties and agreements with the purpose of entrenching the rule of law and advancing full respect of international law.

The State Parties to the Rome Statute established an independent permanent International Criminal Court with authority over the most serious crimes that threaten peace, security and the well being of the world. This Court being complementary to national criminal jurisdictions ensures that effective prosecution measures are taken at the national level with an enhanced international cooperation and where necessary capacity strengthening. The Preamble of the Rome Statute, while recognizing the primacy of the national criminal jurisdictions recalls that it is the duty of every State to exercise its criminal jurisdiction over the perpetrators of serious crimes.

Kenya has made unprecedented strides in fighting impunity. Kenya is committed to fighting impunity. In this respect, the Government has put in place robust legislative and administrative reforms to reinforce the fight against impunity. Kenya signed, ratified and domesticated the Rome Statute in very short order. Our International Crimes Act is very detailed and comprehensive – in fact our relatively new Constitution entrenches the principles of the Rome Statute. As a State Party, a friend to the ICC, Kenya together with its top leadership have co-operated, even at times when it is very difficult politically and socially to do so. We have unequivocally reiterated our steadfast intention to continue co-operating with the ICC.

Kenya notes that cooperation and coordination among all States will ensure that the international justice systems and institutions remain relevant and effective to the meet current, new and emerging threats and challenges. The current mechanical interpretation and implementation of the Rome Statute shows little or no accommodation to the concerns of an active, cooperating State Party and best illustrates the application of the Statute in a manner that is highly prejudicial to a member State's national, regional and international interests. Matters of procedural and administrative operations should not be used to hold Member States hostage. Cooperation with the Court should be mutually reinforcing; in as much as the ICC expects States Parties to cooperate with it; it should also cooperate with the States Parties – cooperation on both sides should be facilitative and respectful while remaining within the confines of the Statute.

This present challenge is not only about the future management of international Justice in the world. It is about the future management of cases of impunity and violence in the world; and, it is also about the way in which States relate to each other in the context of the international justice system. This system, as much as it focuses on justice, it must also ensure respect of the fundamental nexus between peace, security and justice – there cannot be justice without peace as without justice is in itself inadequate state of being.

The ICC must endeavour to carry out its mandate objectively and efficiently while States Parties must guarantee it earnest cooperation based on a robust, accountable and transparent application of the Statute. It may appear to the innocent eye that in the present state of interpretation and implementation, the ideals of Rome Statute namely, punishment of serious crimes, fighting impunity, national healing and reconciliation and reparations for victims may be

achieved. However it is Kenya's contention that the current implementation of the Rome Statute is counterproductive and antagonistic to these very ideals. This is not what States Parties signed up to.

Mr. Chairman,

For the avoidance of doubt, Kenya as a State Party and a fully responsible actor in keeping with its obligations under ~~the Rome~~ Statute intends to continue to accord the Court the fullest possible support in the context of the Rome Statute and the Constitution of Kenya. However, to contend that the methods and choices of action on the legal and administrative aspects of the Kenyan cases have no bearing on the ICC and the political dynamics attached to it and that the outcomes of those cases have no political consequences, which must be balanced in the face of pursuing justice is naïve and dangerous to the challenges and realities that the Court is facing. It is perhaps the time to re-look again at the issue of complementarity and the principle of the Court being a Court of last and not first instance.

Global discussions arrive at collective and shared solutions. Challenges are not overcome by dictates but through candid, realistic negotiations within the camaraderie of the family of Nations. The reality is that if member States of the community of Nations are not to be accused of being in denial, then we must all collectively be willing to interrogate the system, seek amendments to the system as required, adjust the system as necessary in order to respond to the complexity and circumstances of global democracies and social realities.

As I conclude, **Mr. Chairman**, let me reiterate my Government's commitment to upholding the rule of law and ending impunity at both national and international levels. The complexities of challenges in the promotion of the rule of law require collaborative effort at national, regional and international levels. Like the fight against terrorism, all States must work closely in collaboration to uphold the rule of law and end impunity. These complexities pose an even bigger challenge to developing countries due to competing budgetary demands. These challenges could be addressed through sharing of capacities or strengthening/building where required; technology and information transfer. In this regard, Kenya reiterates its unwavering support of the United Nations Programme of Assistance in Teaching, Study, Dissemination and Wider Appreciation of International Law and calls for adequate and sustainable funding to its activities with a view to facilitating and sustaining capacities at national jurisdictions.

I thank you.