STATEMENT

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AGENDA ITEM 73

REPORT OF THE INTERNATIONAL CRIMINAL COURT

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Mr. President this is the 10th Report that we have received from the International Criminal Court. We thank the Secretary General for the Report. I would also like to take this opportunity to recognise Judge Sang-Hyun Song, President of the International Criminal Court. Judge Song has without doubt presided over the ICC during a most difficult and challenging period. During his tenure, the ICC has grown both in stature and reach. As this will be his last attendance of the General Assembly as President of the Court, I would like to wish him, on behalf of the Republic of Kenya, all the very best in his future endeavours.

Mr. President

Over the years we have continued to encourage the ICC to expand activities, to enhance its work, to improve its efficiencies and to continue to deliver for us as member States and, more importantly, for the victims of crimes within the ambit of its jurisdiction.

We created this Court, Mr. President, because we believed that the international community, by which we mean all countries both rich and poor, needed a common platform for the exercise of international jurisprudence.

As President Uhuru Kenyatta recently stated in his address to a joint sitting of the Senate and National Assembly, "Given our experience with the Court, many have since asked why we acted with such enthusiasm (to join the Court). It was because we believed then, as we do now, that in an unequal world, only a common set of rules governing international conduct could keep anarchy at bay".

The Court was created to ensure that no country would have a privileged relationship within it and no individual either would enjoy special privileges before the Court. Like any young institution in the early years we continued to engage, encourage and provide guidance to the Court to try to instruct it in order to keep it faithful to our objectives, to keep it aligned to the Rome Statute, and to keep it focused on what we believed was the kind of future we wish to see in the context of the work of international jurisprudence.

As we look at the report of the International Criminal Court that is before us today we cannot help but feel deeply disappointed and a little let down by this institution for which we had such great expectations and aspirations.
Mr. President
The conclusion contained in this report tells a sad and disheartening story of low ambition, poor execution and little success. The Court says in the conclusion that “the activities of the International Criminal Court continue to grow with the first ever final judgment rendered and 8040 victims represented in six cases at the trial preparation or trial stage of proceedings which, is more than ever before”. In a World that has been consumed by violent and astronomically devastating regional wars and clashes and where hundreds of thousands if not millions of people over the past 10 years have died, it seems extraordinary that the ICC has only one judgment to show for its years of existence and a victims’ footprint of only 8,040. The ICC has registered in its report an anemic underachieving account of itself to member States. This is simply confounding.

It is truly depressing to imagine that this Court would stand before member States and state in this, its most recent 10th report, that it has finalized just one judgment and rendered representation for only 8040 victims in a decade

Mr. President
Clearly something is deeply wrong at the ICC. It comes as no surprise therefore that the conclusion contained in this report also states that for the first time ever no new State has ratified the Rome Statute during the current reporting period. Clearly this Court that continues to only enjoy membership from a small segment of countries in the world is having serious difficulties convincing countries that are not signatories to the Court to join the Court and enhance its international reputation and work.

Mr. President
For those of us who have interacted with this Court intimately over the past few years it is clear that something radical and urgent must be done if this Court is to stand any chance of long-term survival as a viable and credible international institution. Kenya remains deeply concerned by the current interpretation and implementation of the Rome Statute and for us this may very well be the undoing of this Court. While the ICC endeavours to carry out its mandate and continues to receive earnest cooperation from States Parties it may appear 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 achievable.
A cursory and superficial reading of this annual report may even lead one to believe that indeed success is at hand. However our delegation believes that the current interpretation and implementation of the Rome Statute is counterproductive and antagonistic to these very ideals contained in the Statute.

Kenya, as a situation country, continues to be painfully aware of the manner in which the ICC operates and the interpretation it gives to the Rome Statute. After 6 years, as a situation country and one election cycle later, we are beginning to recognize that the manner in which the ICC and the Office of the Prosecutor operates can be severely disruptive and even detrimental to the process of political and social, progress, healing and the promotion of peace and security.

The Kenyan population has a deep desire to proceed ahead with matters of social reconciliation and development. It is therefore deeply regretted that the ICC continues to be a hindrance and a stumbling block for this aspiration of the Kenyan people. Surely, this can to be why we created the International Criminal Court.

Our continued silence and acceptance of the status quo, therefore, will only undermine the legitimacy of the Court and its core mandate including, the fight against impunity. It also does a great disservice to the victims in whose name the proceedings continue to be perpetuated not to mention that it also violates the rights of the accused as protected in the Rome Statute.

**Mr. President**

One of the first things that this Court must do to mend its ways is that it must unshackle itself from a pernicious group of countries that have hijacked its operational mandate and created a distorted institution that now represents the moral, ethical and, most disturbingly, political values of this group of countries.

The agenda of this group of countries is shameless, disruptive and unrelenting. This is witnessed in the Assembly of States Parties Working Groups here in New York and at The Hague, in the recruitment and operations practices of the Court, in its judicial and prosecutorial behavior and even in their insidious manipulation of third party actors, particularly civil society organizations, as interlocutors of the Court.
The wealth and power that has given this group of countries their arrogance to lay claim to high-ground of the international community action is well known. But what is also known is the genesis of this wealth, mostly borne of imperialists and colonial adventure, tax and financial Havens and a dogged proprietorship over intellectual property in a manner that denies other countries the technology they need for their development.

Indeed there exists a similar proprietorship that this cabal of countries exercises over the ICC. This is driven by those who think that because they fund a disproportionately larger amount of the budget for the operations and digressions of the ICC, that therefore they have an inherent right to lay claim to a special relationship with the ICC including its Staff, Prosecutor and Judges. But what we say Mr. President, is that money like might, does not make this right.

I know I digress Mr. President, but only to make a simple point. The point is that the ICC is failing us because in its leadership, in its core professional staffing, in its financing and its operations it seeks to represent an ethos, morality, values and jurisprudential paradigm that represents only one segment of the Assembly States of Parties.

Mr. President, the ICC was created as an international institution that was intended to work for all the signatory member states irrespective of size or wealth or political dispensation. But what we have witnessed in the Courts over the past five years, in particular, is seriously disturbing. The Court seems more interested in quasi-judicial theater that is not in pursuit of justice and the fight against impunity nor supplicant service to its broad membership but rather seems to be driven by the parochial issues and political objectives of a small group of member States.

In paragraph 64, the report states that the Rome Statute was never intended to replace national courts. While that is true, we also know that the Rome Statute is not only about complementarity. Beyond complementarity, no attempt to give member States the benefit of the Court’s experiences in implementing the Rome Statute, is provided by this report. Yet we all know that it is its judicious impartial application of the Rome Statute that the Court seems to be unable to muster.

When we, the member States, were forming the International Criminal Court, we were convinced that we were setting up a Court with higher standards of practices and procedures than those found in our national jurisdictions. However,
today we find ourselves saddled with a Court that has lower thresholds and standards than those found in our national courts. This is simply unacceptable.

We therefore believe Mr. President that the Rome Statute is undergoing a test of veracity, relevance and impartiality both in its application as well as in its value and we therefore urge member States to revisit the Rome Statute and relook at its interpretation and implementation for the sake of the Court.

In conclusion, Mr. President, the report we have in front of us is a sad litany of low ambition and obfuscation, couched in professional none statements. Paragraphs 2 through to 84 of the report leave us none the wiser on the experience of this Court. None of the organizational realities and challenges that the Court has faced in implementing its mandate, including its singular myopic obsession with African situations, are contained in this Report. It lacks analysis and perspective. The report is a lame accounting of what is in fact institutional failure of historical proportions. A heartbreaking account where the aspirations of millions of people and the investment in time and tens millions of dollars from State Parties has no correlation whatsoever with outcomes that can be enjoyed and celebrated by the ICC membership and indeed the world at large.

Mr. President
Were it not for the fact that the noble objectives of international rule of law and the historical imperative of our time to fight impunity where such a pressing, urgent and necessary requirement for international peace and security, it would also be our historical duty to put the ICC to rest, thus save it further self-inflicted misery and the international community tens of millions of dollars while sparing the long suffering victims, the pangs of false hope and empty promises.

I thank you.