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**OPENING STATEMENT
BY**

**MR AC NEL, MP,
DEPUTY MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT OF THE
REPUBLIC OF SOUTH AFRICA**

**DURING THE GENERAL DEBATE AT THE TENTH
MEETING OF THE ASSEMBLY OF STATES PARTIES
OF THE INTERNATIONAL CRIMINAL COURT**

**UNITED NATIONS
NEW YORK
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President,

This meeting follows shortly after South Africa had the honour to host the Seventeenth Conference of the Parties to the UN Framework Convention on Climate Change.

At this conference the Secretary General of the United Nations, Mr. Ban Ki-moon, made this call to delegates: "Let us find the will to lead, despite the many difficulties. Let us prove that we not only know where we are going - and how to get there - but that we are prepared to take action that will move us down that road."

These words apply equally to this Assembly of States Parties, which you, President, have been entrusted with leading. In congratulating you we pledge you the same support we gave to your predecessor Ambassador Christian Wenaweser, whom we salute for his outstanding commitment to and leadership of the Assembly.

President,

This 10th meeting of the Assembly of States Parties takes place here at the headquarters of the United Nations, designed by, amongst others, that great Brazilian architect and activist for social justice, Oscar Niemeyer. It is with joy then that, tomorrow, we join him in celebrating his 104th birthday.

Niemeyer concludes his memoirs with the words: "Here, then, is what I wanted to tell you of my architecture. I created it with courage and idealism, but also with an awareness of the fact that what is important is life, friends and attempting to make this unjust world a better place in which to live."

Indeed, the architects who gathered in Rome thirteen years ago to design the International Criminal Court did so with courage and idealism and an awareness that what is important is to attempt to make this unjust world a better place in which to live by ending impunity for the most serious crimes of concern to humanity.

Over the past decade we have continued to build on these foundations and the Court has become a vital edifice in the institutions of international governance designed to enhance and protect human dignity, rights and security.

South Africa is proud to be a State Party to the ICC, committed to the objectives of the Statute and the fight against impunity. Our commitment to honouring our obligations under the Statute has been steadfast and to this end we incorporated the Rome Statute into our domestic law as early as 2002.

Since we last met, six bricks have been added to the structure of the Court. We welcome Tunisia, Cape Verde, the Philippines, the Maldives, Grenada and Vanuatu into the family of states committed to ending impunity.

We urge others to follow this example and, in doing so, we recall the words of the former Secretary General of the UN, Kofi Annan, at the Review Conference of the Rome Statute held last year on the shores of Lake Victoria:

"The States Parties to this historic Statute must therefore pose the question, "What kind of leadership is this which would absolve the powerful from the rules they apply to the weak?"

A laggard leadership is no excuse. The States Parties to the Rome Statute are on the right side of history. You are in the majority."

President,

Indeed, the 120 States Parties to the Rome Statute constitute almost two thirds of the membership of the United Nations. That African states constitute more than a quarter of these states parties remains for us a source of pride and inspiration.

In this context, we welcome the positive interactions that took place between the Court and the African Union over the past year as a foundation for further consolidation and strengthening of relations.

Significantly these developments took place during the thirtieth anniversary of the adoption of the African Charter on Human and Peoples' Rights, which forms the basis for the establishment of the African Court of Human and Peoples' Rights.

At a time when all the Court's present situations are in Africa, the steady construction of a peace and security architecture on the continent bodes well for the future protection of human rights and the termination of impunity.

President,

Not only have more bricks been added to the Court but the protective cover of its roof expanded as it deals with an increasing number of situations.

Confirmation of the jurisdiction of the Court by Cote d'Ivoire, a non State Party, and the referral to the Court, by the United Nations Security Council, of the situation in Libya both underscore the centrality of the Court in the international architecture designed to enhance and protect human rights and security.

We also welcome the signing of a Memorandum of Understanding between the President of the ICC and the Secretary-General of the Commonwealth during the Commonwealth Law Ministers meeting held in Sydney in July 2011. This meeting resolved to approve a Model Law on core crimes including the crime of aggression, and mandated the Commonwealth Secretariat to render expert technical assistance in respect of the ratification of the Rome Statute.

President,

The Libya referral by the Security Council, the second time that the Council has exercised this power, also focuses our attention on the relationship between the Court and the Council.

In deciding whether or not to refer a situation to the Court, as is also the case with deferrals, the danger is always lurking that political, rather than humanitarian, considerations may prevail, which in turn may politicise the role of the Court as an impartial judicial institution.

This factor, together with the fact that the Court deals so often with situations of internal conflict and political competition, may raise challenges regarding perceptions of its impartiality.

To prevent such unfortunate and unnecessary perceptions, the Office of the Prosecutor must ensure that atrocities committed by whatsoever side in a conflict are investigated, and, if necessary, prosecuted.

The credibility and integrity of the Court as an independent arbiter of justice should be protected at all costs.

Let us again confirm our absolute trust and confidence in the Court and its officials in this regard.

President,

The fight against impunity can only be won when domestic jurisdictions are able to investigate and prosecute serious crimes where they occur, at the national level. Then justice will not only be done but will also be seen to be done.

South Africa is proud to have served, together with Denmark, as Focal Point for the topic of complementarity at the Kampala Review Conference and we have continued to be co-facilitators thereof within the Assembly of States Parties.

We welcome the momentum that this topic has gained within the international community, especially progress towards the mainstreaming of complementarity within the UN system, and welcome the efforts of the United Nations Development Programme and other agencies in this regard.

We are pleased to host a side event together with our partners Denmark on this topic on Friday, 16 December. We will be reporting on the outcomes of a highly successful workshop on complementarity hosted by South Africa, Denmark, the UNDP and the International Centre for Transitional Justice.

President,

The Libya referral and Cote d' Ivoire investigation came at a time of great pressure on the economies and national budgets of many Member States, including our own.

However, it is important that we produce a budget that will allow the Court to continue to fully implement its mandate, including its increased workload. In this regard we support the approach outlined by the President of the Court in his opening remarks.

Consideration should also be given to how the United Nations can assist the Court financially in exercising its mandate with respect to Security Council referrals.

If it is true, as the Nigerian writer Ben Okri says, that, "Politics is the art of the possible, creativity is the art of the impossible", then we have no choice but to ensure that the budget of the ICC represents the unity of politics and creativity.

President,

We take this opportunity to file what lawyers might call, "a pre-emptive motion of farewell" to one of the pioneer builders of the ICC system, Mr. Luis Moreno Ocampo, the current, and first, Prosecutor. His term of office will come to an end as the Court celebrates ten years of existence in June 2012. We pay tribute to his role in establishing the Office of the Prosecutor and leading it through its formative years to the imminent conclusion of the Court's first case, *The Prosecutor v Lubanga Dyilo*.

We also congratulate Ms Fatou Bensouda on her election as Prosecutor. She has, as the Deputy Prosecutor, already shown her unwavering commitment to prosecute the most serious crimes of concern to humanity without fear, favour or prejudice. South Africa was privileged to have represented the African State Parties on the Search Committee tasked with finding a consensus candidate for the position of prosecutor.

We also congratulate the judges elected during this meeting. They will be the defenders and upholders of international criminal justice, and we wish them well in taking up this great responsibility.

In thanking the Secretariat for its hard work, it is also appropriate to pay tribute to the memory of the first Director of the Secretariat, Dr Medard Rwelamira, who passed away half a decade ago. He also played a leading role in the negotiation of the Rome Statute as a member of the South African delegation.

President,

We thank organisations of civil society for their ongoing support and valuable contributions to many areas of the work of the Court and the Assembly of States Parties.

President,

South Africa commemorates 16 December as The Day of Reconciliation.

We recall the words of Secretary General Ban Ki-moon earlier this year during an event leading up to the celebration, next year, of the centenary of the founding of the African National Congress of South Africa on 8 January 1912:

"The ANC is more than a political party. It is a movement - and a tangible expression of a vision. The commitment and sacrifice of its members led to the emancipation of a nation from racist colonial rule" and he continued by saying that, "Defeating racism,

tribalism, intolerance and all forms of discrimination will liberate us all, victim and perpetrator alike."

We conclude then, confident that, through our words and deeds, this Assembly will continue to teach the lesson taught by the great Chilean poet and partisan for social justice, Pablo Neruda, that: "You can cut all the flowers but you cannot keep spring from coming."

Thank you.