



**Statement  
on behalf of the  
Republic of South Africa  
by**

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**before the Sixth Committee of the  
73rd Session of the United Nations General  
Assembly**

**under Agenda Item 86  
“Rule of Law at the National and International  
Levels”**

**New York, 8 October 2018**

## **Chair**

On behalf of my delegation I would like to thank you for this opportunity. At the outset, let me associate myself with the statement delivered by the representatives of the Islamic Republic of Iran speaking on behalf of the Non-Aligned Movement and The Gambia speaking on behalf of the African Group.

## **Chair**

It has been twelve years since the topic on the rule of law at the national and international levels was introduced to the Sixth Committee in 2006, during which its key role in the realisation of sustained economic growth, sustainable development, the eradication of poverty and hunger, and the protection of all human rights and fundamental freedoms was highlighted.

The rule of law at the national and international levels has been recognised as a critical component for the achievement of the 2030 Agenda for Sustainable Development. Its important role in the achievement of peaceful relations cannot be underestimated and we are thus bound to ask ourselves whether we have advanced the rule of law at both the national and international levels.

## **Chair**

South Africa wishes to express its deep gratitude and applaud the Secretary-General for his comprehensive report (A/73/253) which deals with the assistance provided by the United Nations in relation to the rule of law at the national and international levels during the past twelve months, and provides a reflection on the progress made on key issues to strengthen the Organisation's efforts in supporting Member States. My delegation has studied the report with keen interest. We commend the United Nations for continuing to provide rule of law support to Member States in the development, fragility, conflict and peace building context.

## **Chair**

South Africa fully supports the efforts by the United Nations of continuing to facilitate the codification, development and promotion of an international legal framework of norms, standards and mechanisms on a vast array of subjects.

In relation to the promotion of the rule of law at the international level through international courts, the Secretary-General highlights in paragraphs 49 to 52 of his report, the significant developments before the International Court of Justice. In particular, the decision taken by the General Assembly on 22 June 2017 whereby it requested the International Court of Justice, in accordance with resolution 71/292, to give an advisory opinion on the legal consequences of the separation of the Chagos

Archipelago from Mauritius in 1965. There were two legal questions that were placed before the Court. First, the Court was requested to advise whether the decolonisation of Mauritius was lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius in 1965 and, secondly, the Court was requested to advise what the legal consequences are of the continued administration of the Chagos Archipelago by the United Kingdom of Great Britain and Northern Ireland.

The Court invited States to present written statements and make oral submissions to the Court. South Africa took this opportunity provided by the Court to engage in the important process of promoting the rule of law and presented written statements and its oral submission to the Court.

In its written statement, South Africa *inter alia* submitted that the United Nations General Assembly is competent to request the advisory opinion from the Court in terms of the Charter of the United Nations on a matter that falls within its competence and responsibility; the questions raised are legal questions; and the Court, as the principal legal organ of the United Nations is competent to give an advisory opinion that will assist the United Nations General Assembly to deal with the issue.

## **Chair**

The report of the Secretary-General invites Member States to engage in in-depth discussions on the means to establish a rules-based international legal order to help to resolve intra-State and inter-State conflicts and suggests four subtopics. South Africa supports these four subtopics.

## **Chair**

South Africa subscribes to the view that strengthening the rule of law must not only be on the international level, but must also occur on the national level.

In this regard, South Africa's Constitution, in its founding provisions, entrenches the supremacy of the Constitution and the rule of law. The Constitutional Court of the Republic of South Africa has explained the rule of law in the following terms:

*“The exercise of public power must ... comply with the constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the constitution. It entails that both the Legislature and the Executive ‘are constrained by the principle that they may exercise no power and perform no function beyond that conferred on them by*

*the law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."*

The judicial authority of the Republic of South Africa is vested in the courts. These provisions are contained in Section 165 of the Constitution of the Republic of South Africa, 1996. The courts are independent and subject only to the Constitution and the rule of law, which they must apply impartially and without fear, favour or prejudice. No person or organ of state may therefore interfere with the functioning of the courts. The principles of the rule of law are an essential cornerstone for any democracy. Where the rule of law is undermined, the courts must fearlessly address this.

## **Chair**

In conclusion, South Africa strongly maintains the view that whilst the rule of law is essential on the international level, the importance of strengthening it on the domestic level should not be discounted.

**I thank you for your attention.**