

**Civil Society Declaration on
Sudanese President Omar al-Bashir's visit to South Africa without Arrest**
1 July 2015

The undersigned civil society groups, working on international criminal justice and human rights, express our deep disappointment with the actions of South African officials in allowing Sudanese President Omar al-Bashir, under charges of the most serious crimes, to depart the country in defiance of a court order and South Africa's international legal obligations. We applaud the efforts of the Southern Africa Litigation Centre (SALC), which sought to ensure that the government of South Africa abided by its international obligations by arresting al-Bashir.

President al-Bashir, charged with genocide, war crimes and crimes against humanity in connection with the conflict in Darfur was in South Africa from 13-15 June for an African Union Summit. South Africa was under a clear obligation to arrest him pursuant to two warrants of arrest issued against him by the International Criminal Court (ICC) on 4 March 2009 (for war crimes and crimes against humanity) and on 12 July 2010 (for genocide).

South Africa is a party to the Rome Statute of the International Criminal Court. Pursuant to the terms of that treaty mandating international cooperation and assistance with the ICC, South Africa was required to facilitate the arrest and surrender of President al-Bashir to The Hague in the Netherlands, the seat of the International Criminal Court. In addition, South Africa's domestication of the Rome Statute of the ICC makes the government's failure to arrest President Omar al-Bashir a contravention of domestic law as well.

On 13 June, ICC Presiding Judge Cuno Tarfusser issued a decision declaring that "there exists no ambiguity or uncertainty with respect to the obligation of the Republic of South Africa to immediately arrest and surrender Omar al-Bashir to the Court, and that the competent authorities in the Republic of South Africa are already aware of this obligation."

Against this background, and because the South African authorities did not appear to intend to effect the arrest of President al-Bashir, the Southern African Litigation Centre moved an application once al-Bashir was in South Africa to compel the Government of South Africa to discharge its legal obligations to arrest al-Bashir and surrender him to the ICC. During the proceedings before the Pretoria High Court, Justice Hans Fabricius made an interim order "compelling Respondents to prevent President Omar al-Bashir from leaving the country until an order is made in this court" after the State opposed the application.

We noted with deep concern reports that rather than arresting President al-Bashir, South African officials apparently allowed him to leave the country in direct defiance of the order by the Pretoria High Court. The actions pose serious consequences for the independence of the judiciary in South Africa and demonstrate a flagrant lack of respect for the rule of law and the rights of Darfur's victims to have access to justice.

As made clear by ICC Presiding Judge Cuno Tarfusser in his 13 June decision: "the immunities granted to Omar Al Bashir under international law and attached to his position as a Head of State have been implicitly waived by the Security Council of the United Nations by resolution 1593

(2005) referring the situation in Darfur, Sudan to the Prosecutor of the Court, and that the Republic of South Africa cannot invoke any other decision, including that of the African Union, providing for any obligation to the contrary.”

The recent actions by South Africa have the potential to erode the people’s confidence in the administration of justice particularly because it raises issues of equality before the law, the legitimacy of the courts and court orders being binding on everyone as provided for in Article 165 (2), (4) and (5) of the Constitution of South Africa (1994) respectively. If State officials can disregard with impunity the interim order of the Pretoria Court, what will stop them from undermining future court orders? That is the question foremost on the minds of many South Africans today.

We call on the courts of South Africa to establish accountability and on the government to undertake an independent investigation into the circumstances that allowed for the departure of President al-Bashir in defiance of the Pretoria Court order and international arrest warrant and for full cooperation with the Court’s own inquiry on the matter. Those responsible must be brought to prompt justice, including for contempt of court. We also call on the Assembly of States Parties of the ICC to take appropriate action to address non-compliance by South Africa and other States who breach their obligations of cooperation and assistance under the ICC Statute. We call on the United Nations Security Council which was briefed by the ICC Prosecutor on the situation in Darfur on 29 June to strongly reaffirm the obligation of States parties to duly cooperate with the ICC. Members of the Security Council, who referred Darfur to the ICC, have a special responsibility to fully support and facilitate the prosecutor’s continued work.

We also call on governments and political parties alike to respect the space afforded to civil society organisations, pursuant to the South African Constitution, to litigate in the interests of the public. Matters of justice and accountability are pursued in the interests of the public, and civil society organisations have a mandate that warrants action when government authorities act in contravention of constitutionally protected values. Access to justice is a constitutionally enshrined right that all are entitled to utilise.

This document has been signed by the following organizations:

1. Associação de Reintegração dos Jovens/Crianças na Vida Social, Angola
2. Associação Justiça Paz e Democracia, Angola
3. Missão de Beneficência Agropecuária do Kubango, Inclusão, Tecnologias e Ambiente, Angola
4. Omunga Association, Angola
5. DITSHWANELO – The Botswana Centre for Human Rights, Botswana
6. Coalition Burundaise pour la Cour Pénale Internationale, Burundi
7. Cameroon Coalition for the International Criminal Court, Cameroon
8. Associação Caboverdiana de Mulheres Juristas, Cape Verde
9. Coalition pour la Cour Pénale Internationale de la République Centrafricaine, Central African Republic
10. Coalition Ivoirienne pour la Cour Pénale Internationale, Côte d’Ivoire
11. Groupe de Travail sur les Instruments Internationaux de l’ONU, Côte d’Ivoire

12. Observatoire Ivoirien des Droits de l'Homme, Côte d'Ivoire
13. Réseau Equitas, Côte d'Ivoire
14. Action Congolaise pour le Respect des Droits Humains, Democratic Republic of the Congo
15. Club des Amis du Droit du Congo, Democratic Republic of the Congo
16. Observatoire decentralize de la RADDHO pour la Région des Grands Lacs, Democratic Republic of the Congo
17. Vision Sociale, Democratic Republic of the Congo
18. Human Rights Concern, Eritrea
19. African Centre for Democracy and Human Rights Studies, Gambia
20. Africa Legal Aid, Ghana, Netherlands
21. Media Foundation for West Africa, Ghana
22. International Center for Policy and Conflict, Kenya
23. International Commission of Jurists, Kenya
24. Kenya Human Rights Commission, Kenya
25. Kenyans for Peace with Truth and Justice, Kenya
26. Transformation Resource Centre, Lesotho
27. National Civil Society Council of Liberia, Liberia
28. Centre for Human Rights and Rehabilitation, Malawi
29. Centre for Human Rights Education, Advice and Assistance, Malawi
30. Centre for the Development of People, Malawi
31. Network of Religious Leaders Living with or Personally Affected by HIV and AIDS, Malawi
32. Maphunziro Foundation, Malawi
33. Coalition Malienne pour la Cour Pénale Internationale, Mali
34. Femmes et Droits Humains, Mali
35. Association Mauritanienne des Droits de l'Homme, Mauritania
36. Associação, Mulher, Lei e Desenvolvimento, Mozambique
37. Mulher e Lei Na Africa Austral/Women And Law in Southern Africa, Mozambique
38. AIDS & Rights Alliance for Southern Africa, Namibia
39. NamRights, Namibia
40. Access to Justice, Nigeria
41. Civil Resource Development and Documentation Centre, Nigeria
42. Coalition for Eastern NGOs, Nigeria
43. Legal Defence & Assistance Project, Nigeria
44. National Coalition on Affirmative Action, Nigeria
45. Nigerian Coalition for the International Criminal Court, Nigeria
46. Socio-Economic Rights and Accountability Project, Nigeria
47. West African Bar Association, Nigeria
48. Women Advocates' Research and Documentation Center, Nigeria
49. Rencontre Africaine pour la Défense des Droits de l'Homme, Senegal
50. African Center for Democratic Studies, Sierra Leone
51. Centre for Accountability and Rule of Law, Sierra Leone
52. Society for Democratic Initiatives, Sierra Leone
53. Centre for Human Rights, University of Pretoria, South Africa
54. Corruption Watch, South Africa
55. Gay and Lesbian Network, South Africa

56. Global Interfaith Network on Sex, Sexual Orientation, Gender Identity, and Expression, South Africa
57. International Crime in Africa Programme, Institute for Security Studies, South Africa
58. Human Rights Institute of South Africa, South Africa
59. Khulumani Support Group, South Africa
60. Ndifuna Ukwazi, South Africa
61. Section27, South Africa
62. Sonke Gender Justice, South Africa
63. Street Law South Africa, South Africa
64. New Sudan Council of Churches, South Sudan
65. Voice for Change, South Sudan
66. Darfur Bar Association, Sudan
67. Children Education Society, Tanzania
68. Kisarawe Paralegals Organization, Tanzania
69. LGBT Voice, Tanzania
70. Services Health & Development For People Living Positively HIV/AIDS, Tanzania
71. Tanzania Human Rights Defenders Coalition, Tanzania
72. Tanzania Network of Women Living with HIV and AIDS, Tanzania
73. The Legal and Human Rights Centre, Tanzania
74. African Centre for Justice and Peace Studies, Uganda
75. African Freedom of Information Centre, Uganda
76. Empowered at Dusk Women's Association, Uganda
77. Foundation for Human Rights Initiative, Uganda
78. Human Rights Network, Uganda
79. Initiative for Rural Development, Uganda
80. Uganda Coalition for the International Criminal Court, Uganda
81. Uganda Victims Foundation, Uganda
82. Engender Rights Centre for Justice, Zambia
83. Initiative for Civil Liberties, Zambia
84. Southern Africa Centre for the Constructive Resolution of Disputes, Zambia
85. Counselling Services Unit, Zimbabwe
86. Research and Advocacy Unit, Zimbabwe
87. Zimbabwe Human Rights Association, Zimbabwe
88. Zimbabwe Human Rights NGO Forum, Zimbabwe
89. Darfur Relief and Documentation Centre, Switzerland
90. Sudan Zero Conflict, UK
91. Waging Peace, UK
92. Act for Sudan, USA
93. Coalition for Darfur & Marginalized Sudan, USA
94. Darfur Women Action Group, USA
95. Dear Sudan, Love Marin, USA
96. International Justice Project, USA
97. Investors Against Genocide, USA
98. Massachusetts Coalition to Save Darfur, USA
99. Pittsburgh Darfur Emergency Coalition, USA
100. San Francisco Bay Area Darfur Coalition, USA

101. Sudan Unlimited, USA
102. Coalition for the International Criminal Court
103. Commonwealth Lawyers Association
104. Commonwealth Legal Education Association
105. Commonwealth Magistrates and Judges Association
106. Fédération Internationale des Droits de l'Homme
107. Human Rights Watch
108. International Commission of Jurists
109. Women's International League for Peace and Freedom