

# **ANNEX B**

## **PUBLIC**

Supporting Affidavit of Director-General of the Presidency and the Secretary of Cabinet before the High Court of South Africa (North Gauteng High Court, Pretoria), 15 June 2015

**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)**

**CASE NUMBER:**

In the matter between:

**THE SOUTH AFRICA LITIGATION CENTRE**

**APPLICANT**

and

**THE MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT**

**FIRST RESPONDENT**

**THE DIRECTOR-GENERAL OF JUSTICE  
AND CONSTITUTIONAL DEVELOPMENT**

**SECOND RESPONDENT**

**THE MINISTER OF POLICE**

**THIRD RESPONDENT**

**THE COMMISSIONER OF POLICE**

**FOURTH RESPONDENT**

**THE MINISTER OF INTERNATIONAL  
RELATIONS AND COOPERATION**

**FIFTH RESPONDENT**

**THE DIRECTOR-GENERAL OF  
INTERNATIONAL  
RELATIONS AND COOPERATION**

**SIXTH RESPONDENT**

**THE MINISTER OF HOME AFFAIRS**

**SEVENTH RESPONDENT**

**THE DIRECTOR-GENERAL OF  
HOME AFFAIRS**

**EIGHTH RESPONDENT**

**THE NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE**

**NINTH RESPONDENT**

**THE NATIONAL DIRECTOR OF  
PUBLIC PROSECUTIONS**

**TENTH RESPONDENT**

**THE HEAD OF THE DIRECTORATE FOR  
PRIORITY CRIMES INVESTIGATION**

**ELEVENTH RESPONDENT**

**THE DIRECTOR OF THE PRIORITY  
CRIMES LITIGATION UNIT**

**TWELFTH RESPONDENT**

*[Handwritten signatures]*

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**SUPPORTING AFFIDAVIT**

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I, the undersigned,

**DR REGINALD CASSIUS LUBISI**

do hereby make oath and state as follows:

1.

I am the ~~Director-General of the Presidency and the Secretary of Cabinet,~~  
with offices situated at the Union Building, Arcadia, Pretoria, Gauteng.

2.

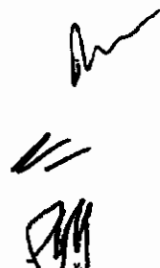
The facts contained in this affidavit are within my own personal knowledge, unless otherwise stated or indicated and are to the best of my knowledge and belief true and correct.

3.

I confirm that I have read the founding and supplementary affidavits deposed to by **KAJAL RAMJATHAN-KEOGH** in support of the application. I do not intend to answer to the allegations raised by the Applicant. I have read the draft answering affidavit of the Second Respondent and I confirm and support the contents thereof. The

purpose of my affidavit is to inform this Honourable Court of a decision taken by Cabinet which directly relates to the issues raised by the Applicant in this application. I do not intend to repeat what is already stated by the Second Respondent in her answering affidavit, but fully align myself with the arguments raised therein. I therefore respectfully refer the Court to the following:

- 3.1 On or about the beginning of June 2015, Cabinet was made aware of the fact that Omar Hassan Ahmad Al Bashir, the President of the Republic of Sudan ("President Bashir") was invited by the African Union ("AU") to attend an AU Summit to be hosted in the Republic of South Africa and indeed confirmed his attendance.
- 3.2 The confirmation of President Bashir's attendance was accompanied by a request from the Republic of Sudan that President Bashir will be accorded all the privileges and immunities of a delegate attending an AU Summit.
- 3.3 It is in this regard important to note that it is public knowledge that the International Criminal Court ("ICC") has issued two warrants of arrest during 2009 and 2010, respectively in regards to President Bashir for various crimes as defined in the Rome Statute.

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3.4 The Republic of South Africa is a State Party to the Rome Statute and therefore obliged to give effect to any request by the ICC pertaining to a warrant of arrest.

3.5 Accordingly and as a result of the two warrants of arrests issued by the ICC and the concomitant hosting of the AU Summit, Cabinet deemed it prudent and necessary to deliberate and discuss the issue on whether the Republic of South Africa is required to arrest President Bashir whilst attending an AU Summit.

3.6 During early June 2015, Cabinet requested advice from the Chief State Law Advisor and deliberated on this issue at length. During the said discussions, Cabinet was apprised of the host agreement with the AU together with the intention of promulgating Article VIII of the host agreement as well as the implications thereof on the immunities and privileges enjoyed by President Bashir as head of a member state of the AU.

3.7 Cabinet collectively accepted and decided that the South African Government as the hosting country is first and foremost obliged to uphold and protect the inviolability of President Bashir in accordance with the AU terms and conditions and to consequently not arrest President Bashir in terms of the ICC arrest warrants whilst he is attending the AU Summit.

No  
alleg.

3.8 In addition to the above, Cabinet collectively appreciated and acknowledged that the aforesaid decision can only apply for the duration of the AU Summit.

4.

In the premises, I deny that the Applicant is entitled to any relief set out in the notice of motion.

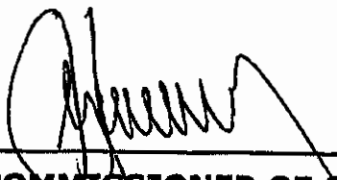
**WHEREFORE** I respectfully support the Respondents prayer for an order dismissing the relief sought in the notice of motion with costs consequent upon the employment of two counsel.



**Deponent**

Signed and sworn before me at PRETORIA on this 15 day of JUNE 2015 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).





**COMMISSIONER OF OATHS**  
**FULL NAMES:** Gert Holiday  
**CAPACITY:** Major  
**ADDRESS:** SAPS Head Office  
Financial Services  
Pretorius Str. 231

15 JUN 2015  
PRIVAATSAK/PRIVATE BAG X04  
PRETORIA  
THE NATIONAL COMMISSIONER OF  
THE SOUTH AFRICAN POLICE SERVICE

