

## **ANNEXURE “KRK 3”**

(SALC’S LETTER TO RELEVANT GOVERNMENT AUTHOURITIES)

**CITED IN SOUTHERN AFRICA LITIGATION CENTRE’S**

REQUEST FOR LEAVE TO SUBMIT *AMICUS CURIAE*

*IN*

*THE PROSECUTOR vs. OMAR HASSAN AHMAD AL BASHIR, NO. ICC-02/05-01/09*

(Decision Convening a Public Hearing for the Purposes of a determination under article 87(7) of the Statute with respect to the Republic of South Africa)

KRK II

# SOUTHERN AFRICA LITIGATION CENTRE

Minister of International Relations and Co-operation  
 Ms Maite Nkoana-Mashabane  
[Minister@foreign.gov.za](mailto:Minister@foreign.gov.za)

Minister of Justice and Correctional Services  
 Mr Tshililo Michael Masutha  
[Ministry@justice.gov.za](mailto:Ministry@justice.gov.za)

Minister of Police  
 Mr Nkosinathi Nhleko  
[MonahengAmelia@saps.gov.za](mailto:MonahengAmelia@saps.gov.za)

cc. Ms. Nonkululeko Sindane  
 Director General of the Department of Justice and Constitutional Development  
[NSindane@justice.gov.za](mailto:NSindane@justice.gov.za)

cc. Chief State Law Advisor  
 Mr Enver Daniels  
[IDstein@justice.gov.za](mailto:IDstein@justice.gov.za)

cc. National Director of Public Prosecutions  
 Mxolisi Nxasana  
[communication@npp.gov.za](mailto:communication@npp.gov.za)

21 May 2015

Dear Honourable Ministers,

**RE: Anticipated Presence of President Omar al Bashir at the 25<sup>th</sup> African Union Summit**

I write on behalf of the Southern Africa Litigation Centre (SALC), an organisation concerned with South Africa's international obligations and international criminal justice obligations specifically, in respect of the African Union (AU)'s invitation to President Omar al Bashir in his capacity as a head of state and government for the 25<sup>th</sup> AU Summit to be held in Johannesburg, South Africa 7-15 June 2015.

In 2009, the former Director-General of the Department of International Relations and Co-operation issued a public statement indicating that, "If today, President al Bashir landed in terms of the provision [of the Rome Statute], he would have to be arrested."<sup>1</sup>

I write to affirm your previous position on this matter and aim to remind South Africa of its international criminal justice obligations in this respect.

<sup>1</sup> Director General for International Relations and Cooperation Ayanda Ntsaluba accessed 21 May 2015, available at <http://www.sanews.gov.za/south-africa/sa-obliged-arrest-al-bashir-says-ntsaluba>

Second Floor, President Place, 1 Hood Avenue/148 Jan Smuts Avenue (corner Bolton Road), Rosebank, 2196,  
 Johannesburg, South Africa  
 PO Box 122 Parklands 2121 South Africa  
 T: +27 (0) 10 556 8538

[www.southernafricalitigationcentre.org](http://www.southernafricalitigationcentre.org)

an initiative of the International Bar Association and the Open Society Initiative of Southern Africa  
 NPO 138-058

KRK

SALC applauds the South African government's uncompromising stance in the past and seeks to ensure that South Africa remains compliant with its commitments made in terms of the international criminal justice framework.

South Africa played an important leadership role in the development of the Rome Statute and thus the establishment of the ICC. This country is also one of the only states in Africa to have domesticated the Rome Statute's provisions into South African law – a crucial step for translating political commitments into action.

In addition, the highest forum of adjudication in the country, the Constitutional Court has ruled decisively that South Africa's international law obligations must be upheld.<sup>2</sup> Given these notable achievements, SALC respectfully seeks to remind all the relevant parties of South Africa's obligations, as a State Party to the Rome Statute, and in terms of South Africa's own domestic law, the Implementation of the Rome Statute of the International Criminal Court 27 of 2002 (the ICC Act).

In the preamble of the ICC Act, South Africa boldly commits itself to bringing persons who are suspected of committing genocide, war crimes and crimes against humanity, to justice pursuant to its commitment as a signatory to the Rome Statute of the ICC and in terms of its domestic law obligations.

Under former president Nelson Mandela it was made clear that "South Africa's future foreign relations will be based on our belief that human rights should be the core concern of international relations... The time has come for South Africa to take up its rightful and responsible place in the community of nations." It is with that in mind that we urge the South African government to act decisively and within the bounds of the law.

Specifically, were President al Bashir to be present on the territory of South Africa, and the International Criminal Court were to request his arrest and surrender, the Director-General of the Department of Justice and Constitutional Development "must immediately on receipt of that request, forward the request and accompanying documents to a magistrate, who must endorse the warrant of arrest for execution in any part of the Republic."<sup>3</sup>

Accordingly, the South African government is required to make it clear, as it has done before, that should President al Bashir accept the AU Summit invitation, the South African government will be duty bound to arrest him.

It is our hope that the government of South Africa will act in accordance with the law and prevent the Republic of South Africa from becoming a temporary safe haven for those who have been indicted by the ICC.

Kind regards,



Kaajal Namjathan-Keogh  
Executive Director

<sup>2</sup> National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another [2014] ZACC 30

<sup>3</sup> See section 8 (2) of the ICC Act.

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