

ANNEXURE “Krk 14”

(SALC’S LETTER OF 8 DECEMBER 2015)

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)

SOUTHERN AFRICA LITIGATION CENTRE

8 December 2016

WITH PREJUDICE

To:

National Director of Public Prosecutions
Adv. Shaun Abrahams
skabrahams@npa.gov.za

Dear Sir,

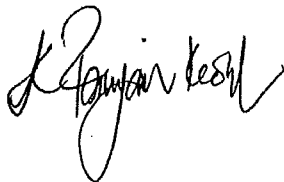
RE: IN THE MATTER OF SOUTHERN AFRICA LITIGATION CENTRE V THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND OTHERS: SUBMISSIONS PERTAINING TO BASHIR'S DEPARTURE FROM THE REPUBLIC OF SOUTH AFRICA ON 15 JUNE 2015.

1. The above matter and your letter dated 21/8/2015 (attached as Annexure I) refers.
2. As you are aware, on 14 June 2015, the High Court issued an interim order prohibiting President Omar al-Bashir of Sudan from leaving South Africa, and directed the respondents to take all necessary steps to prevent him from doing so, until a final order had been issued in the application. Despite that, President Bashir left South Africa during the course of 15 June 2015, before proceedings had been finalized.
3. A written judgment in the matter was handed down by the Full Bench of the High Court on 24 June 2015. For ease of reference, a copy is enclosed as Annexure II. Paragraph 39 thereof expressly invites you to consider whether criminal proceedings should appropriately be brought in respect of the apparent contempt of the court's interim order.
4. The matter went on appeal before the Supreme Court of Appeal and it ruled that the state's failure to arrest President Bashir was unlawful. The state initially applied to the Constitutional Court for leave to appeal the Supreme Court of Appeal's judgment, but subsequently withdrew that application on 25 October 2016. In doing so, it accepted that the Supreme Court of Appeal's judgment would remain operative as the final judgment in the matter. The Constitutional Court noted and accepted the withdrawal of the application on 18 November 2016 (attached as Annexure III).

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5. The Southern Africa Litigation Centre (SALC) wrote to your office on 9 July 2015 (attached as Annexure IV) indicating that it, as the original applicant in the matter, has an interest in any contempt proceedings and regards itself as the complainant in respect thereof. As such, we requested that you keep us apprised of, and engage with us in respect of, any decision to bring (or not to bring) contempt charges. We also offered our assistance, should you deem it appropriate.
6. We received no response from that letter and sent a second letter on 6 August 2015 (attached as Annexure V).
7. We received your response dated 21 August 2015 in which you undertook to revert to us once judgment in the Supreme Court of Appeal matter had been delivered.
8. Given that the Supreme Court of Appeal judgment has been delivered and the matter has been finalized, we kindly request the following again:
 - a. That you inform us of the steps that your office intends to take in relation to potential contempt charges. In particular, please advise us who within the National Prosecuting Authority has been tasked to handle this matter and to whom we can direct further correspondence.
 - b. That you formally acknowledge the Southern African Litigation Centre as the complainant in respect of the complaint of criminal contempt. If you disagree or if there are further steps that you consider necessary for SALC to be regarded as the complainant, please advise us accordingly and notify us of what further steps should be taken by SALC.
9. We look forward to hearing from you.

Yours faithfully,



Kaajal Ramjathan-Keogh

Executive Director