



THE KENYAN SECTION OF THE
INTERNATIONAL COMMISSION OF JURISTS

Press Release: Kenya must arrest President Omar al Bashir.

The invitation of President Omar al Bashir by the government of Kenya is both Unconstitutional and a breach of Kenya's International obligations. Omar al Bashir is expected to attend the celebrations for the promulgation of a new constitutional order which upholds Human Rights, the Rule of Law and Social Justice scheduled to take place later on today (27th August 2010).

The presence of President Bashir against whom there are two pending arrest warrants from the ICC in relation to his involvement in war crimes, crimes against humanity and genocide committed in Darfur, could not be more unwelcome especially at a time when Kenya is celebrating the passage of a new Constitution. Taking into account that this Constitution is a result of the reform process initiated following the post poll crisis 2007-2008, which has also resulted to the Kenya being put under investigation by the ICC for crimes against humanity it is therefore unacceptable that the Kenyan government can play host to a indictee of the ICC.

Victims of post election violence in Kenya suffered violations concurrent with crimes against humanity as set out in the Rome Statute, including systematic acts of rape and other forms of sexual and gender based violence. Similarities can be drawn between the harm suffered by victims in Kenya and Darfur notwithstanding the difference in scale. By inviting President Bashir, given his inability to travel to other parts of the world, the Kenyan government is effectively endorsing international crimes, particularly crimes against humanity as suffered by both Kenyan and Sudanese victims.

The new Constitution is clear that International Law is a source of law in Kenya, recognizing also that Kenya is a signatory to the Rome statute and is obliged both the Statue and the international crimes act to cooperate with the ICC. On 6th March 2009 Kenya received a request to arrest and surrender Omar al Bashir to the ICC, this request still stands and Kenya is expected to arrest and surrender President Omar al Bashir, on his arrival in Kenya.

The new constitutional order that will be ushered in is one of respect for the Rule of law, Human Rights and governmental obligations nationally and internationally, the government can therefore not begin implementing the new Constitution in a manner that defeats the spirit of the Constitution.

Other State Parties to the Rome Statute have been clear on their obligations under the treaty in relation to the ICC's arrest warrants against President Bashir. South Africa, Nigeria and Uganda expressly stated that they would be under an obligation to arrest President Bashir were he to set foot on their territory. We expect no less of the Kenyan Government.

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