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No business as usual as Al-Bashir flees South Africa

Civil society and high court action lead to early departure of ICC fugitive from AU summit

New York/The Hague—A South African court's consideration of a request by civil society for the arrest of Sudanese President Omar Al-Bashir has demonstrated that it is no longer business as usual for fugitives from international justice, the Coalition for the ICC said today.

With Al-Bashir in South Africa to attend an African Union (AU) summit, the South African Litigation Center filed a motion in Pretoria's high court to compel the execution of two International Criminal Court (ICC) arrest warrants for the Sudanese president. The court ordered Al-Bashir to remain in the country pending a ruling on the matter, but he fled before a decision on the arrest motion was issued.

"With governments too often unwilling to act on arrest warrants for Al-Bashir and others sought by the ICC, actions by civil society are increasingly important to ensure state cooperation with the Court, as are independent judiciaries like in South Africa," **said William R. Pace, convenor of the Coalition for the ICC.** "Al-Bashir's hasty departure from South Africa shows that legal action can have a real impact."

"The ICC's governing body and the UN Security Council must take whatever steps necessary to ensure that the next time Al-Bashir leaves Sudan, he is ultimately brought before the Court," **Pace added.**

The Court's governing body, the Assembly of States Parties, can refer acts of non-cooperation to the UN Security Council, which can then take further action.

As a party to the Rome Statute, the founding treaty of the ICC, South Africa was obligated to arrest Al-Bashir, who is wanted for war crimes, crimes against humanity and genocide allegedly committed in Darfur, Sudan.

The South African government said that Al-Bashir had immunity because he was attending an AU summit as a head of state. However, the UN Security Council, in its 31 March 2005 Resolution 1593 referring the situation in Darfur to the ICC, implicitly waived any immunity for Al-Bashir. This follows the Rome Statute's core principle that explicitly precludes immunity regardless of government office. The AU Charter also contains significant anti-impunity measures. An AU proposal to give criminal jurisdiction to the African Court of Human Rights includes an article giving immunity to sitting heads of state and senior government officials, but has yet to be ratified. A total of 34 African states have ratified the Rome Statute.

"The assertion made by some African rulers that heads of state have immunity from prosecution flies in the face of the Rome Statute and the AU Charter, which preclude

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any immunity for war crimes, crimes against humanity and genocide,” **said Pace.** “The court ruling ordering Al-Bashir’s arrest, the mere consideration of which prompted him to flee the country, is a firm affirmation of that principle.”

South Africa was reminded of its obligations in an urgent decision issued by ICC Judge Cuno Tarfusser on 13 June. Judge Tarfusser explicitly stated that no other decisions, including those made by the AU, could be invoked to grant immunity to Al-Bashir. ASP President Sidiki Kaba also reminded South Africa of its obligations in a public statement prior to his arrival in the country.

Background: The ICC is the world’s first permanent international court to have jurisdiction over war crimes, crimes against humanity, and genocide. Central to the Court’s mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unable or unwilling to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes.

There are currently nine active investigations before the ICC: the Central African Republic I & II; DRC; Darfur, Sudan; Kenya; Libya; Uganda; Côte d’Ivoire and Mali. The ICC has publicly issued 31 arrest warrants and nine summonses to appear. Two trials are ongoing. There have been two convictions and one acquittal.

Nine preliminary examinations are currently ongoing, including into situations in Palestine, Honduras, Ukraine, Iraq, Afghanistan, Colombia, Georgia, Guinea and Nigeria. The Office of the Prosecutor has concluded preliminary examinations relating to Venezuela, Palestine, the Republic of Korea and the Comoros referral, declining in each case to open an investigation.

The Coalition for the International Criminal Court is a global network of civil society organizations in over 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. www.coalitionfortheicc.org.

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