

**STATEMENT BY CIVIL SOCIETY ORGANISATIONS AND CONCERNED
INDIVIDUALS ON SOUTH AFRICA'S SUPPORT FOR THE DECISION BY THE
AU TO REFUSE COOPERATION WITH THE ICC**

WEDNESDAY 15 JULY 2009

On 3 July 2009 a meeting of African heads of state at the Assembly of the African Union (AU) decided to withhold cooperation from the International Criminal Court (ICC) in respect of the arrest and surrender of President Omar al-Bashir of The Sudan. President al-Bashir has been indicted by the ICC for war crimes and crimes against humanity allegedly committed in Darfur. The decision by the AU represents the most serious challenge to the struggle against impunity and lawlessness on the African continent.

South Africa's President and Foreign Minister were present at meetings of the AU Assembly on 2 and 3 July 2009 when this decision was debated and approved. Neither the President nor the Foreign Minister is reported to have raised any objections to the decision. South Africa's endorsement of the declaration requires it to break its international treaty obligations and to defy its own law and Constitution.

South Africa played an important role in the establishment of the ICC and was one of the first countries to ratify the Court's enabling statute, the Rome Statute, and incorporate it into domestic law (*The Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002*). That statute passed by Parliament requires South Africa to execute the ICC's warrant of arrest should President al-Bashir enter South African territory. The South African Constitution is equally clear on the obligations of the state. Where an international agreement or treaty has been enacted into law by national legislation it is binding law.

As a State Party to the Rome Statute, South Africa is obliged to cooperate fully with the ICC in the arrest and transfer of President al-Bashir to the ICC, whether or not it agrees with the indictment. Should the South African government persist with its support for the decision it will do so in open defiance of its own Constitution and law.

The undersigned civil society organisations and individuals call upon President Jacob Zuma and the South African government to:

- state unequivocally that South Africa will honour its treaty obligations under the Rome Statute to cooperate fully with the ICC;
- respect and abide by the South African Constitution and the *Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002*.

The South African based organisations that have endorsed the statement are:

1. Aids Consortium
2. Centre for Applied Legal Studies (CALS)
3. Centre for Human Rights, Faculty of Law, Pretoria University
4. Centre for Justice and Crime Prevention (CJCP)
5. Centre for the Study of Violence & Reconciliation (CSVR)
6. Human Rights Institute of South Africa (HURISA)

7. International Centre for Transitional Justice (ICTJ)
8. International Crime in Africa Programme, Institute for Security Studies (ISS)
9. Khulumani Support Group
10. Legal Resources Centre (LRC)
11. Lawyers for Human Rights (LHR)
12. Open Society Foundation of SA (OSF-SA)
13. Open Society Initiative of Southern Africa (OSISA)
14. Sonke Gender Justice Network
15. South African History Archive (SAHA)
16. South African Human Rights Commission (SAHRC)
17. Southern African Litigation Centre (SALC)

Individuals who have endorsed the statement are:

1. Adam Weiss, The AIRE Centre, London
2. Adetokunbo Mumuni, Executive Director, Socio-Economic Rights & Accountability Project (SERAP), Nigeria
3. Alan Dodson, former judge of the Land Claims Court
4. Alice Edwards, Lecturer in British Human Rights Law, University of Nottingham
5. Anyakwee Nsirimovu, Executive Director, Institute of Human Rights and Humanitarian Law (IHRHL), Nigeria
6. Biong Deng, Pretoria
7. Catherine Jenkins, Centre for Law and Conflict, SOAS, University of London
8. Christopher Whitcutt, Johannesburg
9. Colin Warbrick, Honorary Professor, Birmingham Law School, UK
10. David Borgstrom, Advocate, Cape Bar
11. David Simonsz, Advocate, Cape Bar
12. The Most Reverend Desmond Mpilo Tutu, former Chairperson of the TRC
13. Dumisa Buhle Ntsebeza SC, former Commissioner on the International Commission of Inquiry on Darfur appointed pursuant to UN Resolution 1564
14. Erin Cramer, London
15. Fadlah Adams, South African Human Rights Commission
16. Garth Abraham, Associate Professor of Law, University of the Witwatersrand
17. Geoffrey Robertson QC, Doughty Street Chambers, London
18. Glenn Goosen SC, Port Elizabeth Bar
19. Prof Hennie Strydom, University of Johannesburg and President, South African Branch of the International Law Association
20. Professor Hugh Corder, Professor of Public law, University of Cape Town
21. Ignatius Murorua, Namibia
22. Ivan Hare, Blackstone Chambers, London
23. Dr J Dippenaar, Walmer
24. Jem Sandford, London
25. Dr Jenny Kuper, London School of Economics
26. Jennifer McDermott, London
27. Jody Kollapen, Chairperson of the South African Human Rights Commission
28. Professor John Dugard, Centre for Human Rights, University of Pretoria
29. Jonathan Cooper, Barrister, Doughty Street Chambers, London
30. Professor Jon Klaaren, Wits Law School
31. Professor Kader Asmal, Former Minister and Honorary Professor at the University of Cape Town and University of Western Cape

32. Professor Karthy Govender, Commissioner of the South African Human Rights Commission and Professor of Law, University of KwaZulu Natal
33. Kerenza Millard, Johannesburg
34. Kevin Boyle, Professor of Law, University of Essex, UK
35. Prof Kieran McEvoy, Institute of Criminology and Criminal Justice & Professor of Law and Transitional Justice School of Law, Queens University Belfast
36. Kiran Arora, UK
37. Lord Lester of Herne Hill QC, London
38. Madeleine Colvin, Human rights consultant, UK
39. Marelise Maritz, Pretoria
40. Max du Plessis, Associate Professor of Law, University of KwaZulu-Natal, Senior Research Associate, Institute for Security Studies
41. Mia Swart, Associate Professor, Wits Law School
42. Ndung'u Wainaina, Executive Director, International Center for Policy and Conflict, Nairobi
43. Professor Neville Botha, Pretoria
44. Osman Hummada, Director, African Centre for Justice and Peace Studies
45. Pauline Dempers, National Coordinator, Breaking The Wall of Silence, Namibia
46. Peter Hodes SC, Cape Bar
47. Peter Leon, Johannesburg
48. Peter Roth QC, London
49. Richard Clayton QC, London
50. Richard Goldstone, former chief prosecutor of the International Criminal Tribunal for the former Yugoslavia and Rwanda; former judge of the Constitutional Court of South Africa
51. Robert Latham, Doughty Street Chambers, London
52. Robyn Leslie, Kings College, London
53. Dr Sejal Parmar, Visiting Lecturer in International Human Rights Law, Queen Mary, University of London
54. Shaida Mahomed, Member of the Johannesburg Bar
55. Tshepo Madlingozi, Faculty of Law, University of Pretoria
56. Undule Mwakasungura, Centre for Human Rights & Rehabilitation, Malawi
57. Wayne Gray, Attorney, Port Elizabeth
58. Prof Werner Scholtz, Faculty of Law, NWU, Potchefstroom Campus
59. William Kerfoot, Attorney, Cape Town
60. Adv Wim Trengove SC, Johannesburg
61. Yasmin Sooka, former TRC Commissioner