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South Africa appears before ICC for failure to arrest Sudanese President Bashir

South Africa is to appear before a scheduled hearing at the International Criminal Court on 7 April 2017 (ICC) in The Hague for a hearing on its failure to arrest Sudanese President Omar Hassan Ahmad al Bashir when he visited South Africa in June 2015. The hearing, before the pre-trial Chamber of the ICC will consider whether South Africa was in breach of its obligations under the ICC Rome statute when it failed to effect the ICC arrest warrant on President Bashir.

The International Commission of Jurists (ICJ), represented by South African Justice Johann Kriegler, will be attendance observing the proceedings.

President Bashir has been indicted by the ICC on charges of genocide, war crimes and crimes against humanity in relation to atrocities committed from 2003 to 2008 in Darfur.

"The case is critical for ensuring the effectiveness of the ICC as an institution. The only means the ICC has of enforcing its orders is through the cooperation of States" said Sam Zarifi the Secretary General of the ICJ. "The failure to arrest President Bashir and the subsequent efforts to withdraw from the ICC Rome statute raise important questions about South Africa's commitment to the fight against impunity in Africa and globally" added Zarifi.

South Africa gave notice last October that it intended to leave the ICC, but this notice has been withdrawn, at least pending debate in Parliament.

The ICJ had filed a brief with the South African Parliament calling on South Africa to remain with the ICC Rome statute. The brief was signed by retired South African Constitutional Court Justices **Laurie Ackermann; Richard Goldstone; Johann Kriegler; Yvonne Mokgoro, Kate O'Regan, Zak Yacoob**. It was co-signed by **Navi Pillay**, former United Nations High Commissioner for Human Rights, former judge of the ICC and former President of the International Criminal Tribunal for Rwanda (ICTR) and **Wilder Tayler**, then Secretary General of the ICJ. The brief can be located here <https://www.icj.org/south-africa-icj-calls-for-south-africa-to-stay-in-the-icc/>

Justice Zak Yacoob remarked that "pursuit of justice and pursuit of peace are complementary and mutually reinforcing objectives that South Africa will best achieve by remaining party to the Rome Statute of the ICC. Its not an either or situation. Protecting heads of States from justice whatever they do compromises peace too much,"

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BACKGROUND INFORMATION

South Africa was among the first States to ratify the Rome Statute of the ICC. It signed the Rome Statute on the day it was adopted, 17 July 1998, and ratified it on 27 November, 2000. Both during the negotiations preceding the Rome Conference that

established the Court in 1998, and at the Conference itself, South Africa played a leading role.

However, the events of June 2015 surrounding the arrival of President Omar al Bashir of Sudan in South Africa appears to have engendered a shift in South Africa's posture, leading many observers to call into question the country's commitment to international justice.

The failure by South African authorities to arrest and surrender President al Bashir to the ICC, although he had been indicted by the ICC for war crimes, crimes against humanity and genocide, led to the Southern Africa Litigation Centre (SALC) taking the government to court to compel it to fulfill its obligations both under the Rome Statute and the Implementation of the International Criminal Court Act 27 of 2002 (Implementation Act).

On 19 October 2016, the Minister of International Relations and Co-operation gave notice of South Africa's intention to withdraw from the Rome Statute.

The Portfolio Committee on Justice and Correctional Services put out a call for submissions to be made to the Parliamentary Portfolio Committee on Justice and Correctional Services on the Implementation of the Rome Statute of the International Criminal Court Act Repeal Bill [B23-2016] to be made by 8th March 2017.