



PRESS STATEMENT

2 December 2011

Kenyans for Peace with Truth and Justice, a coalition of citizens and organisations working in human rights, governance and legal areas, have come together to congratulate the judiciary for their progressive decision operationalizing the arrest warrant against the President of Sudan Omar al Bashir in Kenya.

We recall; the International Criminal Court issued two warrants of arrest against President Bashir in 2009 and 2010. In line with its international obligation as a state party to the Rome Statute, it was incumbent upon the Kenyan government to declare their intention to arrest President Bashir for alleged crimes of genocide and crimes against humanity in the Darfur region of Sudan when and if he entered Kenya. This obligation stands for as long as Kenya is a signatory to the Rome Statute.

It was therefore a grave violation of state obligation and a show of disrespect for international treaties for the Kenyan government to invite and host President Bashir in Kenya on 27 August 2010, on a day when Kenyans were celebrating the promulgation of our new Constitution – a manifestation of the rule of law and of justice for all Kenyans.

The Rome Statute has been domesticated into Kenyan law. It must be noted that treaties are the primary means by which a state acquires obligations in international law. Treaties are voluntary agreements that a state enters into of its own free will. It is assumed that this is done after expert advice by its lawyers and consultations with national constituencies. Once signed and ratified, they are sources of binding obligations. The fundamental principle of international law is that “agreements shall be kept.” Other states have a legitimate expectation that their co-signatories are not ratifying treaties merely to deceive or present themselves in a positive light.¹ It is on this basis that the high court of Kenya is within its rights and indeed its duties in keeping with the International Crimes Act of 2010 to operationalize warrants of arrest on persons who are wanted by the ICC to answer charges of crimes against humanity.

We laud ICJ-Kenya for championing the cause for the Public, by initiating the application for the warrants of arrest. We also commend Chief Justice Mutunga’s defense of the independence of the judiciary and of individual judges in keeping with the spirit of our new constitution.

¹A country that disrespects other countries will disrespect its citizens by Wachira Maina. Monday, January 24 2011, The East African online edition. <http://www.theeastfrican.co.ke/news/-/2558/1094394/-/ojtxh4z/-/index.html>

In the same breath, we urge fellow African Governments and IGAD in particular to respect the fact that Kenya is on course towards reforming the judiciary. Through this decision Kenya has now joined a list of countries that fight for international justice such as South Africa, which applied for President Bashir's arrest warrant long before Uganda which issued public statements on his arrest. This had the effect of dissuading President Bashir from going to these countries. We stress the need for Kenya and Africa to recognize that real peace and security in the region will be sustainable only in an environment of justice and accountability; not of fear and impunity.

As members of the civil society, we are wary that the conduct of the Government in response to this decision may be an indication of the Government's unwillingness to co-operate with the ICC with respect to the two Kenyan cases. We remind the Government of its obligation and commitment to co-operate with the ICC in keeping with the strong wishes of the Kenyan public.

We want to make it clear that what is at stake here is not merely a legal point. We are talking about the faithful implementation of the Constitution. A government that rides roughshod over its international obligations, which it has freely assumed, is a government that will not listen to its own people. A government that has a casual and irresponsible approach to law at the international level, will have a casual and irresponsible approach to law at the national level.

We therefore urge the Government to respect the judicial decision and desist from attacking the judiciary for carrying out its functions. If dissatisfied by that decision, it should exercise its right of appeal.

We finally wish to commend the people of Kenya for promulgating a Constitution that allows persons, both institutions and individuals, to fight against human rights violations and ensure that Kenya is not a safe haven for alleged perpetrators of human rights violations.

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