



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CRIMINAL APPLICATION No. 685 OF 2010

**THE KENYAN SECTION OF THE
INTERNATIONAL COMMISSION OF JURISTS.....APPLICANT**

-versus-

**THE ATTORNEY GENERAL.....1ST RESPONDENT
MINISTER OF STATE FOR PROVINCIAL ADMINISTRATION
AND INTERNAL SECURITY.....2ND RESPONDENT**

-and-

KENYANS FOR JUSTICE AND DEVELOPMENT.....INTERESTED PARTY

To: **Professor George Saitoti, E.G.H., M.P.
Minister of State for Provincial Administration
and Internal Security
Harambee House
Harambee Avenue
P.O. Box 30510 Nairobi 00100
KENYA**

**PROVISIONAL WARRANT OF ARREST UNDER SECTION 32 OF THE
INTERNATIONAL CRIMES ACT, 2008**

WHEREAS the International Criminal Court (“the ICC”) on 4th March 2009 considered that there are reasonable grounds to believe that **OMAR HASSAN AHMAD AL BASHIR**, a male,

who is a national of the State of Sudan, born on 1st January 1944 in Hoshe Bannaga, Shendi Governorate, in the Sudan, member of the Jaáli tribe of Northern Sudan, President of the Republic of the Sudan since his appointment by the RCC-NS on 16th October 1993 and elected as such successively since 1st April 1996 and whose name is also spelt Omar al-Bashir, Omer Hassan Ahmed El Bashire, Omer al-Bashir, Omar al-Beshir, Omar el-Bashir, Omer Albasheer, Omar Elbashir and Omar Ahmad el-Béshir (hereinafter referred to as “**Omar al Bashir**”), is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator, under Article 25(3)(a) of the Rome Statute of the International Criminal Court (“the Rome Statute”), for:

- i. Intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities as a war crime, within the meaning of Article 8(2)(e)(i) of the Rome Statute;
- ii. Pillage as a war crime, within the meaning of Article 8(2)(e)(v) of the Rome Statute;
- iii. murder as a crime against humanity, within the meaning of Article 7(1)(a) of the Rome Statute;
- iv. Extermination as a crime against humanity, within the meaning of Article 7(1)(b) of the Rome Statute;
- v. Forcible transfer as a crime against humanity, within the meaning of Article 7(1)(d) of the Rome Statute;
- vi. Torture as a crime against humanity, within the meaning of Article 7(1)(f) of the Rome Statute; and
- vii. Rape as a crime against humanity, within the meaning of Article 7(1)(g) of the Rome Statute;

AND WHEREAS the ICC on 12th July 2010 further considered that there are reasonable grounds to believe that the said **Omar Al Bashir** is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator, under Article 25(3)(a) of the Rome Statute, for:

- i. Genocide by killing, within the meaning of Article 6(a) of the Rome Statute;
- ii. Genocide by causing serious bodily or mental harm, within the meaning of Article 6(b) of the Rome Statute; and
- iii. Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction, within the meaning of Article 6(c) of the Rome Statute;

AND WHEREAS in consequence thereof the ICC issued a Warrant of Arrest against the said **Omar al Bashir** on 4th March 2009, and a second Warrant of Arrest on 12th July 2010;

AND WHEREAS the ICC further considered, at the time of issuing each of the Warrants of Arrest, that under Article 58(1) of the Rome Statute, the arrest of the said **Omar Al Bashir** appeared necessary to ensure:

- i. that he will appear before the ICC;
- ii. that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Rome Statute; and
- iii. that he will not continue with the commission of the above-mentioned crimes;

AND WHEREAS the High Court of Kenya sitting at Nairobi (“the High Court”) on 28th November 2011 was satisfied that Warrants of Arrest had been issued by the ICC against the said **Omar al Bashir** as aforesaid, and that a Request and a Supplementary Request for the Arrest and Surrender of the said **Omar al Bashir** were subsequently made to Kenya as a State Party to the Rome Statute by the ICC, pursuant to Articles 89(1) and 91 of the Rome Statute;

AND WHEREAS the High Court took judicial notice of the fact that the said **Omar al Bashir** was in Kenya on 27th August 2010, and on the basis of the information presented the High Court was satisfied that the said **Omar al Bashir** may come to Kenya in future;

AND WHEREAS the High Court was further satisfied on the basis of such information that it is necessary or desirable for a Provisional Warrant of Arrest to be issued urgently against the said **Omar al Bashir** under the provisions of Section 32 of the International Crimes Act, 2008:

NOW THEREFORE the High Court **HEREBY ISSUES THIS PROVISIONAL WARRANT OF ARREST** against the said **Omar al Bashir** and **COMMANDS YOU, Professor George Saitoti, E.G.H., M.P., Minister of State for Provincial Administration and Internal Security** and, failing you, the Minister for the time being responsible for matters relating to national security, to apprehend the said **Omar al Bashir** should he come to Kenya, and to surrender him to the ICC in accordance with the “Request to All States Parties to the Rome Statute for the Arrest and Surrender of Omar al Bashir” dated 6th March 2009, and the “Supplementary Request to All States Parties to the Rome Statute for the Arrest and Surrender of Omar Hassan Ahmad al Bashir” dated 21st July 2010.

ISSUED under My Hand and the Seal of the Court this **23rd** day of **JANUARY** 2012



[Handwritten signature]

(Signature)

Judge, High Court of Kenya, Nairobi