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CORRESPONDENTS' REPORTS

KENYA¹

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On 27 August 2010, President Al Bashir attended the signing of Kenya's new constitution despite the issuance of two arrest warrants by ICC judges for charges of crimes against humanity, war crimes and genocide committed in Darfur in 2003 and 2004. As a State Party to the *Rome Statute* and member of the UN, Kenya was, and still is, under obligation to arrest and surrender Al Bashir to the ICC when he entered the country's territory. As a result, ICC Pre-Trial Chamber I formally informed the UN Security Council and the Assembly of States Parties of the visit 'in order for them to take any measure they may deem appropriate.' The Coalition for the International Criminal Court (CICC) members also called on the government of Kenya to arrest and surrender Al Bashir to the ICC.²

On 28 November 2011, Justice Nicholas Ombija, a judge of the High Court of Kenya, delivered his ruling on an application for issuance of a provisional warrant of arrest against President Omar Al Bashir. The application had been filed by the Kenyan Section of the International Commission of Jurists (ICJ Kenya), and had joined both the Attorney-General and the Minister for Internal Security as Respondents.

The High Court agreed with the applicant in granting it the necessary *locus standi* to make an application. The Court also agreed to issue the provisional warrant against Al Bashir and noted that if the relevant government departments failed to enforce the provisional warrant against Al Bashir if and when he returns to Kenya, the applicant — or any other legal person with standing — would be able to apply for a writ of mandamus to require the government to effect the warrant.

In the view of ICJ Kenya, the ruling vindicated the rule of law that had come under serious threat following the visit to Kenya by President Al Bashir in August 2010, during which time Kenya failed to arrest him, contrary to its domestic and international legal obligations:

The Kenyan judiciary spoke with great clarity that the Kenya government had two choices: On the one hand, the Kenya government can uphold the decision of the Judiciary and act on Bashir if he comes to Kenya. On the other hand, the Kenya government can go on defying the Constitution, the courts, and the will of the people of Kenya, in order to protect a friend of a few people in the government.³

DAN KUWALI

¹ Information and commentaries by Lt Colonel Dr. Dan Kuwali, Post Doctoral Research Fellow, Centre for Human Rights, University of Pretoria, Senior Researcher, Centre for Conflict Resolution, University of Cape Town and Deputy Chief of Legal Services, Malawi Defence Force, Malawi.

² Available at <<http://www.coalitionfortheicc.org/?mod=darfur#20>> (28 March 2012).

³ The Kenya Section of the International Commission of Jurists, 'High Court Decision on Al Bashir Arrest Warrant' (Press Release, 2 December 2011) <<http://www.icj-kenya.org/index.php/more-news/435-pressstatement-Al-Bashir>>.