



**Statement on
the failure by the South African Government to arrest President Omar al-Bashir, President of
Sudan for crimes against humanity**

The Commonwealth Legal Education Association (CLEA), the Commonwealth Lawyers Association (CLA) and the Commonwealth Magistrates' and Judges' Association (CMJA) are concerned that the South African Government ignored a North Gauteng High Court interim order preventing President Omar al-Bashir of Sudan who is wanted for crimes against humanity from leaving the country with the result that a warrant for his arrest issued by the International Criminal Court (ICC) could not be executed. The South Africa Government also appears to have misled a full bench of the North Gauteng High court concerning the whereabouts of President al-Bashir so that by the time the three judges issued an order for President al-Bashir's immediate arrest he had already left the country.

The South African Government has signed and ratified the Rome Statute creating the ICC and has domesticated the Rome Statute into its national legislation as required by the Constitution. The Government was therefore legally bound to execute the arrest warrant for President al-Bashir issued by the ICC as held by the High Court of South Africa in its judgement of 23 June 2015.

By virtue of its membership of the Commonwealth, South Africa is committed to the shared fundamental values and principles of the Commonwealth, at the core of which is a shared belief in, and adherence to, democratic principles including respect for the authority of an independent and impartial judiciary. Any measure on the part of the Executive which is capable of being seen as eroding the authority and independence of the judiciary, is a matter of serious concern. As the High Court Judgement of 23 June 2015 provides: “.... *there are clear indications that the order of Sunday 14 June 2015 was not complied with. It is in this reason that we are moved to state that:*

A democratic State based on the rule of law cannot exist or function, if the government ignores its constitutional obligations and fails to abide by Court orders. A Court is the guardian of justice, the corner-stone of a democratic system based on the rule of law. If the State, an organ of State or State official does not abide by Court orders, the democratic edifice will crumble stone-by-stone until it collapses and chaos ensues”.

The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (2003) state: ‘Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity.



The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.'

The CLEA, the CLA and the CMJA urge the Government of South Africa to respect the Constitution regarding its constitutional and international obligations and to desist from undermining the authority of the judiciary and the courts whose decisions are binding on all persons and organs of the state.

Commonwealth Legal Education Association (CLEA)
Commonwealth Lawyers Association (CLA)
Commonwealth Magistrates' and Judges' Association (CMJA)

26 June 2015

NOTE TO EDITORS:

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. www.commonwealthlawyers.com

The **Commonwealth Legal Education Association** is an international non-profit organisation which fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters and Committees in South Asia, Southern Africa, West Africa, the Caribbean and the UK. www.clea-web.com

The **Commonwealth Magistrates' and Judges' Association** is a not for profit organisation, registered in the UK, whose aims are to promote judicial independence, advance education in the law, the administration of justice the treatment of offenders and the prevention of crime in the Commonwealth. It brings together judicial officers of all ranks from all parts of Commonwealth and provides a forum for the promotion of the highest judicial standards at all levels. www.cmja.org