

16th June, 2015

**STATEMENT OF CONCERN ON THE SOUTH AFRICAN GOVERNMENT'S FAILURE TO
ARREST AND SURRENDER PRESIDENT AL-BASHIR TO THE ICC**

We, the undersigned groups and individuals in Sri Lanka, express our deep disappointment and outrage over the failure of the South African authorities to apprehend and detain President Omar al-Bashir of Sudan during his recent visit to South Africa for an African Union (AU) summit. This is in a context where President al-Bashir is wanted by the International Criminal Court (ICC) to face trial on charges of war crimes, crimes against humanity and genocide. Not only was President al-Bashir permitted to participate in a highly publicized conference, he was also permitted to leave South Africa in direct violation of an interim order issued on Sunday 14 June by a High Court in Pretoria. This direct violation of the court's order rendered unenforceable the same court's welcome ruling the following day that the failure of the authorities to arrest al-Bashir was unconstitutional, and that al-Bashir be arrested and detained pending surrender to the ICC.

Pursuant to Security Council resolution 1593 (2005) which referred the situation in Darfur to the ICC Prosecutor, the ICC has issued two warrants for the arrest of President al-Bashir, one in 2009 for war crimes and crimes against humanity, and another in 2010 for genocide. President al-Bashir has continued to act with impunity despite these warrants. His visit to South Africa presented a real opportunity to bring an international fugitive to justice. As a state party to the Rome Statute of the ICC, South Africa was under a binding legal obligation to arrest President al-Bashir and surrender him to the ICC. Moreover, as the High Court in Pretoria affirmed, South Africa was also under a constitutional obligation – on account of its domestic incorporation of the Rome Statute – to enforce its provisions and arrest al-Bashir pending a formal request by the ICC to surrender him. The court dismissed the South African government's claim that President al-Bashir was entitled to immunity in terms of domestic and international law. The ruling by the High Court demonstrates the critical role national courts play in supporting the ICC and upholding the international rule of law.

Given the involvement of the government of South Africa in the design of truth and reconciliation processes in Sri Lanka, we the undersigned wish to reiterate the centrality of the rule of law and victims' right to justice in any efforts aimed at truth-seeking and reconciliation. We also wish to underscore that states must fully comply with their obligations under international law to bring the authors and perpetrators of heinous crimes to justice. We stand in solidarity with victims and human rights defenders from Sudan, South Africa and throughout the globe who continue to struggle to bring to justice those accused of mass atrocities. We also note that the shameful circumstances surrounding President al-Bashir's visit to, and departure from South Africa will inevitably raise serious concerns over the propriety of the South African government's involvement in the pursuit of truth and reconciliation in Sri Lanka and elsewhere.

Signatories:

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8. Chamila Thushari
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32. Rev. Fr. Jeyabalan Croos
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34. Rev. Fr. Nandana Manatunga
35. Rev. Fr. Terrence Fernando – Archdiocese of Colombo
36. Rev. Sr. Deepa Fernando HF
37. Rosanna Flamer-Caldera
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Organizations

49. Centre for Human Rights and Development (CHRD)
50. Centre for Policy Alternatives (CPA)
51. Dabindu Collective
52. Equal Ground
53. Human Rights Office, Kandy
54. INFORM Human Rights Documentation Centre
55. Mannar Women's Development Federation (MWDF)
56. National Fisheries Solidarity Movement (NAFSO)
57. Right to Life Human Rights Centre (R2L)
58. Rights Now – Collective for Democracy
59. South Asian Centre for Legal Studies
60. Women's Action Network (WAN)