

SA asks for more time on Al-Bashir matter

PRETORIA: The South African government says it has approached the International Criminal Court (ICC) to ask for more time to respond to a request regarding the visit of Sudan's President Omar al-Bashir to the country.



Omar al-Bashir at the 12th AU Summit

The reason for the extension is to seek clarity on legal principles dealing with the granting of immunity from arrest of leaders of countries not party to the Rome Statute.

"This was done in view of the complex and conflicting legal principles involved, both in international and in South African domestic law, and the fact that the South African domestic courts are still seized with the matter," the Department of international Relations and Cooperation said on Monday, 5 October.

Monday marked the deadline of a request by the ICC that South Africa make submissions about its decision not to honour a request to arrest Al-Bashir while he was attending an African Union summit in Sandton in June.

The department said the ICC had told South Africa it had to arrest Al-Bashir if he attended the AU summit.

It also invited it to consult with the court in terms of Article 97 of the Rome Statute.

Article 97 provides that where a state party to the Rome Statute that established the court receives a request for cooperation to which it identifies problems which may impede or prevent the execution of the request, the requested state shall consult with the court in order to resolve the matter.

"Recognising that South Africa was faced with possible conflicting obligations with respect to the request for arrest and surrender from the court and the immunities that international law accords to serving Heads of State and Government, as acknowledged by Article 98 of the Rome Statute, South Africa then approached the Court with a view to consult with it in terms of Article 97," explained the department.

However, what was interpreted by South Africa to be a diplomatic and political process, was morphed into a judicial process based on an urgent application by the Prosecutor of the Court for an order on the South African obligations to the Court.

"South Africa was unfortunately not afforded the opportunity to present legal arguments on this application, and hence it is of the view that the principles of justice were not adhered to."

South Africa, which has argued that Al-Bashir enjoyed diplomatic immunity during his visit, is of the view that a "serious infringement of South Africa's rights as a state party has taken place and that the court has acted against the letter and spirit of the Rome Statute".

The department said South Africa will therefore approach the Secretariat of the Assembly of States Parties (ASP) to ensure that the upcoming ICC meeting ensures clarity on the Article 97 consultation process and on the interpretation of Article 98 which deals with issues around immunity of serving presidents who were not party to the Rome Statute, like Sudan.

The assembly is scheduled to take place in The Hague from November 18 to 26.

Pretoria, which is a signatory to the Rome Statute, the treaty that established the ICC, is of the view that these discussions will serve to enhance the proper execution of international criminal justice.

"The government remains committed to international criminal justice and to cooperate with the Court in the pursuit thereof as was envisaged in the Rome Statute," the department said.

The ICC issued two warrants of arrest for Al-Bashir, in 2009 and 2010, for crimes against humanity, war crimes, and genocide.

For more, visit: <https://www.bizcommunity.com>