

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **2023-050604**

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

PRESIDENT OF SOUTH AFRICA

First Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Second Respondent

**DIRECTOR GENERAL: JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Third Respondent

**MINISTER OF INTERNATIONAL RELATIONS
AND COOPERATION**

Fourth Respondent

**DIRECTOR GENERAL: INTERNATIONAL
RELATIONS AND COOPERATION**

Fifth Respondent

MINISTER OF POLICE

Sixth Respondent

**NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICE**

Seventh Respondent

DEPUTY PRESIDENT OF SOUTH AFRICA

Eighth Respondent

AFFIDAVIT

*B
DM*

I, the undersigned,

DOCTOR MASHABANE

do hereby state under oath that:

- 1 I am an adult male, and the Director-General in the Department of Justice and Constitutional Development ("**the Department**").
- 2 The facts to which I depose are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 I am cited as the third respondent in the application by the Democratic Alliance.
- 4 In terms of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 ("**Implementation Act**"), I am the Central Authority required to take certain steps once a request for cooperation is received from the International Criminal Court ("**ICC**").
- 5 The purpose of this affidavit is to outline the steps that I have taken since receiving the request for cooperation from the ICC

STEPS TAKEN SINCE THE RECEIPT OF THE REQUEST

- 6 On 8 May 2023, I received a copy of a confidential *note verbale* from the Department of International Relations and Cooperation ("**DIRCO**"), containing two requests for assistance directed to all state parties from the ICC in relation to the provisional arrest of President Putin and Ms Lvova-Belova. DIRCO is the

Handwritten signature and initials in the bottom right corner of the page.

relevant diplomatic channel through which requests for cooperation are communicated in terms of Article 87 of the Rome Statute.

- 7 I annex, marked "**DM1**", a copy of DIRCO's covering letter sent to me on 8 May 2023.

- 8 In terms of section 9 of the Implementatin Act, I was obliged to forward the ICC's requests for cooperation to the National Director of Public Prosecutions ("**NDPP**"). In discharging my obligation in terms section 9 of the Implementation Act, there were various considerations that had to be taken into account. I initiated a process in terms of Article 97 of the Rome Statute to seek clarity from the ICC with regards to South Africa's obligations under the Roman Statute. The Article 97 consultations with the ICC were held on 8 June 2023. The discharge of my obligation was with consideration of the fact that President Putin's arrival in South Africa was to attend the BRICS 2023 Summit, which is to be held in August 2023.

- 9 On 29 June 2023, I signed and authorised the dispatch of the letter to the NDPP, a copy of which I annex hereto marked "**DM2**", in which I transmitted the ICC's requests for cooperation to the NDPP.

- 10 I later became aware that my letter to the NDPP, as well as the ICC's requests for cooperation, were transmitted to the office of the NDPP on 17 July 2023. I annex, marked "**DM3**", a copy of the relevant email from Mr Chris Mfunzana, the head of my office within the Department, transmitting both the letter and the ICC's requests.

A handwritten signature in black ink, appearing to be 'DM', located in the bottom right corner of the page.

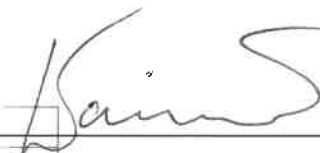
CONCLUSION

11 I respectfully submit that I have complied with my obligations under the Implementation Act.





DOCTOR MASHABANE

SIGNED and SWORN to before me at Pretoria on this 20th day of July 2023, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on her conscience, and the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



NATIONAL TRADING	COMMISSIONER OF OATHS
PRIVATE BAG	Full names: <u>Y Swain</u>
2023 -07- 20	Business address: <u>40 Church Square</u>
DESIGNATION	Designation: <u>Attorney</u>



"DM1"



**international relations
& cooperation**

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA

Private Bag X152, PRETORIA, 0001 • OR Tambo Bid, 460 Soutpansberg Road, Rietondale, PRETORIA,
0084
Tel +27 (0) 12 351 1000. www.dirco.gov.za

Adv Doctor Mashabane
Director-General, Department of Justice and Constitutional Development
Private Bag X81
PRETORIA, 0001

Dear Colleague

Receipt of request for provisional arrest from the International Criminal Court

On 17 March 2023, the Pre-Trial Chamber II ("PTCII") of the International Criminal Court ("ICC"), issued a Press Release wherein it stated that on the same day it had issued warrants of arrest for two individuals in the context of the situation in Ukraine, namely President Vladimir Vladimirovich Putin, President of the Russian Federation, and Ms Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President of the Russian Federation.

The ICC stated that the warrants are secret in order to protect victims and witnesses and also to safeguard the investigation. However, it was in the interests of justice to authorise the ICC Registry to publicly disclose the existence of the warrants, the name of the suspects, the crimes for which the warrants are issued, and the modes of liability as established by the Chamber.

On 2 May 2023, the South African Embassy in The Hague received a Note Verbale from the Registry of the ICC (Annex A) containing two requests for assistance directed to all States Parties to the ICC in relation to the provisional arrest of President Putin and Ms Lvova-Belova (Annex B and C). State Parties are requested to keep the Note Verbale and the request for provisional arrest confidential, except to the extent that the disclosure of the information is necessary for the implementation of the request.

The requests for provisional arrest are hereby transmitted to the Central Authority, as required by the Implementation of the Rome Statute of the International Criminal Court Act, 2002 ("Implementation Act"), which provides in section 9 that the Central Authority must immediately forward a request to the National Director of Public Prosecutions to apply for a warrant of arrest of President Putin and Ms Lvova-Belova.

Yours sincerely

Mr Zane Dangor
Director-General
Date: 8 May 2023
Ref: 10/10/1

Kgoro ya liri ano le Hhomi ano ya Olmaga la Bodli habal haba • Lefapha fa Dikamano le Tshebedisano Dinaheng tsa Matjhaba • Lefapha la Oikamano lsa Bodli habal haba
le Tirisano • UMnyango Wezobudlelwano Nokubambisana Bamazwe Namazwe • Liliiko Letebudlelwane Bemave kanye Nekusebenti sana • ISebe lezobuOialwane
naNleehenziswano yamZwo ngamaZwe • UmNyango weTjhebiswano nokuSebenzisana kweenTjhabatjhaba • Mufoho wa Vhushakaha Dzitshakatsheka na Tshumisano •
Ndzawulo ya Vuxaka bya Maliko ya Mtsava na Ntirisoano • Oepartemnt van Intemasionale Betrekkings en Samewerking

Batho Pele - putting people first



the doj & cc

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

"DM2"

J 464

OFFICE OF THE DIRECTOR GENERAL

Private Bag X 81, PRETORIA, 0001 • Momentum Centre, 329 Pretorius Street,
PRETORIA
Tel (012) 315 1658, Fax (012) 315 1557

Ref: 9/14/4 (Provisional Arrest)
Enq: Mr M Lingwati
E-mail: MLingwati@justice.gov.za

Adv. Shamila Batohi
National Director of Public Prosecutions
Private Bag X 752
Pretoria
0001

Dear Adv Batohi

**RECEIPT OF REQUEST FOR PROVISIONAL ARREST FROM THE REGISTRY OF
THE INTERNATIONAL CRIMINAL COURT**

Please find enclosed herewith for your urgent attention the two Letters of Request for cooperation received from the Registry of the International Criminal Court regarding Mr Vladimir Vladimirovich Putin and Ms Maria Alkseyevna Lvova-Belova.

The requests for provisional arrest are forwarded to your Office as set out in Section 9 of the Implementation of the Rome Statute Act, 2002 (Act No. 27 of 2002).

Your cooperation is highly appreciated.

Yours sincerely


Adv. D. Mashabane

DIRECTOR-GENERAL: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Date: 29/6/23

1
DM

"DM3"

Sebelemetsa Ramathiti

From: Mfunzana Masibulele Chris
Sent: Monday, 17 July 2023 20:07
To: Kubheka Xolisile (NPA Contact)
Cc: Lotz LLoyd; Justice Hlungwani
Subject: ICC Document
Attachments: Request for provisional arrest - VVP (4).pdf; LETTER TO ADV BATOHI.pdf

Afternoon Xoli,

As discussed just now, please receive attached above the documents in relation to the President Putin matter.

Can you please share same with the NDPP. Mr Radise is on his way to hand-deliver the original documents.

Thanks in advance.

Kind regards,
Chris Mfunzana
Head of DG's Office: DOJCD
Tel: 012 4064821
Cell: 0791057467

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15
DM