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No.: ICC-02/05-01/09
Date: 15 October 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

Public

Decision on the request of the Republic of South Africa for an extension of the time limit for submitting their views for the purposes of proceedings under article 87(7) of the Rome Statute

Document to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Competent authorities of
the Republic of South Africa

Others

REGISTRY

Registrar

Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or the “ICC”) issues this decision on the Republic of South Africa’s (“South Africa”) request for an extension of the time limit for submitting their views for the purposes of proceedings under article 87(7) of the Rome Statute (“Statute”) in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.

I. PROCEDURAL HISTORY AND BACKGROUND

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations (the “UN”) adopted Resolution 1593(2005), referring the situation in Darfur, Sudan to the Court.¹
2. On 4 March 2009 and 12 July 2010 Pre-Trial Chamber I issued two warrants of arrest against Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”).² These warrants of arrest remain to be executed.
3. On 28 May 2015, acting in compliance with the Chamber’s orders and on the basis of media reports of Omar Al Bashir’s potential travel to South Africa for the purposes of attending the African Union summit scheduled from 7 to 15 June 2015, the Registrar notified the Embassy of South Africa with a *Note verbale*, reminding South Africa of its obligation to consult with the Court, should it foresee any difficulties in implementing the request for cooperation.
4. On Friday 12 June 2015, the Registrar informed the Chamber that the Embassy of South Africa had requested a meeting between the Registrar and the Chief State of Law Adviser from the Ministry of Justice, with a view to engaging into consultations pursuant to article 97 of the Statute. A meeting before Judge Cuno Tarfusser with the representatives of South Africa was held on the same

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, “[Warrant of Arrest for Omar Hassan Ahmad Al Bashir](#)”, 4 March 2009, ICC-02/05-01/09-1; “[Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir](#)”, 12 July 2010, ICC-02/05-01/09-95.

day, with representatives of both the Office of the Prosecutor and of the Registry also attending.

5. During this meeting, Judge Cuno Tarfusser pointed out *inter alia* (i) that all of the issues tabled by South Africa had already been decided upon by the Court and (ii) that the consultations had no suspensive effect on South Africa's outstanding obligations.

6. On 4 September 2015,³ the Chamber requested the competent authorities of the Republic of South Africa to submit, no later than Monday 5 October 2015, their views on the events surrounding Omar Al Bashir's attendance of the African Union summit in Johannesburg on 13, 14 and 15 June 2015, with particular reference to their failure to arrest and surrender Omar Al Bashir, for the purposes of the Chamber's determination pursuant to article 87(7) of the Statute.

7. On 5 October 2015, the submissions from the Republic of South Africa were filed as public annex I to the "Registry transmission of the submissions from the Republic of South Africa in response to the Order requesting submissions for the purposes of proceedings under article 87(7) of the Rome Statute (ICC-02/05-01/09-247), dated 4 September 2015"⁴.

8. The Republic of South Africa requests for an extension of the time limit set for 5 October 2015 pursuant to regulation 35 of the Regulations of the Court (the "Regulations") "until the finalisation of the judicial process in South Africa", submitting *inter alia* (i) that the circumstances surrounding Al Bashir's departure from the African Union summit in South Africa are currently "before the South African courts and have not been established"; (ii) that "the facts of this matter are inextricably linked with the judicial process concerning the legal obligations

³ ICC-02/05-01/09-247.

⁴ ICC-02/05-01/09-248 and AnxI thereto.

of the Government under both international and domestic law” and that, accordingly, (iii) the requested extension “would allow the Pre-Trial Chamber to have the opportunity to consider this matter on the basis of all the information available”. Should its request be granted, the Republic of South Africa also undertakes “to periodically inform the Registrar of the progress made in the domestic court process in South Africa”.

9. The Chamber notes regulation 35(2) of the Regulations which provides that the “Chamber may extend or reduce a time limit if good cause is shown”.

10. In the view of the Chamber, the circumstances detailed in the submissions (in particular, the fact that the subject matter of the ongoing domestic proceedings includes the determination of the circumstances surrounding Al-Bashir’s departure from South Africa and notwithstanding the fact that these proceedings are fully independent from those ongoing before the South African domestic courts), provide a reasonable basis for establishing the existence of “good cause” within the meaning of regulation 35(2) of the Regulations and hence to extend the time limit originally set for 5 October 2015.

11. By the same token, the Chamber underscores that it is paramount that the granted extension does not undermine the efficiency and the expeditiousness of these proceedings: accordingly, the Republic of South Africa is ordered to promptly inform the Court of any developments in the relevant domestic judicial proceedings as they occur. Should no such development materialise prior to 15 December 2015, the Republic of South Africa is hereby instructed to inform the Court accordingly no later than 31 December 2015. Should the relevant domestic proceedings conclude before this date, the Republic of South Africa is hereby ordered to submit its views on the events surrounding Omar Al Bashir’s attendance of the African Union summit in Johannesburg on 13, 14 and 15 June 2015, 15 days after such conclusion.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Republic of South Africa's request for an extension of the time-limit to submit their views on the events surrounding Omar Al Bashir's attendance of the African Union summit in Johannesburg on 13, 14 and 15 June 2015, until such time as the currently ongoing relevant judicial proceedings before the courts of South Africa are finalised;

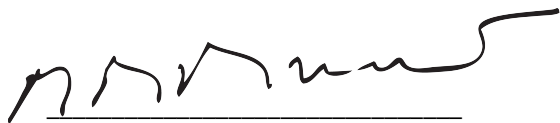
ORDERS the competent authorities of the Republic of South Africa to promptly report to the Chamber on any developments in the relevant domestic judicial proceedings as they occur;

ORDERS the competent authorities of the Republic of South Africa, should no such developments occur prior to 15 December 2015, to submit a report detailing the status of the relevant domestic judicial proceedings no later than 31 December 2015.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated this Thursday, 15 October 2015
At The Hague, The Netherlands