

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09

Date: 30 November 2016

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.* OMAR HASSAN AHMAD AL BASHIR
("OMAR AL BASHIR")**

Confidential

With one confidential annex

**Transmission of information and requests for guidance by the Republic of South
Africa**

Source: The Registry

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

The Office of the Prosecutor

Ms. Fatou Bensouda, Prosecutor

Mr. James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Authorities of the Republic of South
Africa

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. In accordance with rule 176(2) of the Rules of Procedures and Evidence, the Registry transmits a note verbale dated 21 November 2016 from the Republic of South Africa. This note verbale has been transmitted to the Court in the context of Pre-Trial Chamber II 's "Decision following the Prosecutor's request for an order further clarifying that the Republic of South Africa is under an obligation to immediately arrest and surrender Omar Al Bashir" ("Decision") dated 13 June 2015".¹ Further to this Decision, Pre-Trial Chamber II issued a "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", dated 15 October 2015.² Three progress reports transmitted by the Republic of South Africa have been filed subsequently.³

II. Classification

2. Pursuant to regulation 23bis(1) of the Regulations of the Court ("Regulations"), the present filing and its Annex 1 are filed as confidential pending confirmation by the South African authorities that the said note verbale can be made public.

III. Submissions

3. On 29 November 2016,⁴ the Secretariat of the Assembly of States Parties transmitted to the Registry a note verbale dated 21 November 2016 from the Embassy of South Africa ("Embassy") to the Registry. In this note verbale, the Embassy notes, *inter alia*, that as of 18 November 2016 "the domestic court

¹ ICC-02/05-01/09-242.

² ICC-02/05-01/09-249.

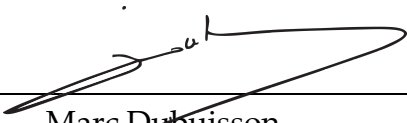
³ ICC-02/05-01/09-256 dated 21 December 2015, ICC-02/05-01/09-257 dated 24 December 2015, ICC-02/05-01/09-258 dated 4 May 2016.

⁴ Email from the Director of the Secretariat to the Assembly of States Parties to the Registrar, on 29 November 2016, at 12:04.

processes have now been concluded". The Embassy also "request[s] guidance on the rules and procedures which would govern the submissions of its views and observations in terms of Article 87(7), in view thereof that South Africa also wishes the Court to, as part of this process, review the application of Article 97 during the consultations between South Africa and the Court, as well as the finding resulting from these consultations". Finally, the Republic of South Africa "is considering an appeal against the Decision [...] and requires guidance on how an appeal should be filed".

V. Conclusion

4. The Registry hereby transmits in annex:
 - The note verbale from the Republic of South Africa.



Marc Du Bois
Director of the Division of Judicial Services
per delegation of
Herman von Hebel, the Registrar

Dated this 30 November 2016

At The Hague, the Netherlands