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PRE-TRIAL CHAMBER II

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

**SITUATION IN DARFUR, SUDAN
IN THE CASE OF**

The Prosecutor v Omar Hassan Ahmad AL BASHIR

Public

**Prosecution observations on Victims' notification of withdrawal from the case
(ICC-02/05-01/09-250)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Legal Representatives of the Victims

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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States' Representatives

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 19 October 2015, the Legal Representative of Victims a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 and a/0450/09 filed a notification of withdrawal from the case *Prosecutor v Omar Hassan Ahmad Al Bashir* (“*Bashir* case”) and the Darfur case generally (“Notification”),¹ because, it submitted, of the Prosecutor’s decision to suspend “active” investigations into the Darfur situation in late 2014.² Indeed, the tenor of the Notification suggests that the Office of the Prosecutor (“Prosecution” or “Office”) has abandoned the *Bashir* case and the Darfur situation generally. This suggestion is inaccurate. The Prosecution files this submission in order to correct the factual record on several points.
2. Contrary to assertions made in the Notification, investigations and inquiries in the *Bashir* and other cases in the Darfur situation are currently taking place.
3. As the Prosecution clarified when it submitted its Statement to the United Nations Security Council (“UNSC”) pursuant to the UNSC Resolution 1593 (2005) - Twenty-first Report in relation to the Darfur Situation (“Prosecutor’s Statement”), even though the Office is “struggling to commit to full, active investigations of the on-going crimes in Darfur”, given its “finite resources and a heavy caseload”, this status “should not in any way be misconstrued or interpreted to mean that the investigations have been closed or that we have abandoned the victims of mass atrocities in Darfur.”³
4. As stated by the Prosecutor, there is a “[a] team of lawyers and investigators dedicated to the Darfur investigations [...] continu[ing] to carry out its work, [...] monitoring and documenting incidents as they occur and to conducting witness interviews where possible and necessary.”⁴ The Prosecutor also “urge[d] anyone with reliable information and potential evidence of on-going

¹ ICC-02/05-01/09-250.

² Citing, *inter alia*, the Twenty-first Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005) 29 June 2015 (“Prosecutor’s 21st Report”), at http://www.icc-cpi.int/iccdocs/otp/21st-report-of-the-Prosecutor-to-the-UNSC-on-Darfur_%20Sudan.pdf – see ICC-02/05-01/09-250, para. 2.

³ Prosecutor’s Statement, para. 25 at <http://www.icc-cpi.int/iccdocs/otp/otp-stat-29-06-2015-eng.pdf>.

⁴ Prosecutor’s Statement, para. 25.

crimes in Darfur to contact [her] Office and to proactively support this on-going investigation".⁵

5. In short, the Prosecution continues to investigate and collect information and evidence pursuant to its obligations under article 54(1) of the Rome Statute ("Statute"), and within the resource constraints that it currently faces.
6. Beyond the current investigative activity, and as stated by the Prosecutor in her 21st Report, the Office continues to call for the arrest of all fugitives and continues to expend all efforts in order to obtain the necessary assistance from States to execute the outstanding arrest warrants.⁶ This includes requesting findings of non-compliance under article 87(7) of the Statute against Sudan for its failure to arrest and surrender suspects Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman,⁷ Omar Hassan Ahmad Al Bashir,⁸ and Abdel Raheem Muhammad Hussein.⁹



Fatou Bensouda
Prosecutor

Dated this 3rd day of November 2015

At The Hague, The Netherlands

⁵ Prosecutor's Statement, para. 26.

⁶ Prosecutor's 21st Report, para. 8.

⁷ ICC-02/05-01/07-57.

⁸ ICC-02/05-01/09-227.

⁹ ICC-02/05-01/12-33.