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No.: ICC-02/05-01/09
Date: 23 February 2017

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's Response to Transmission of a note verbale from the Embassy of the
Republic of South Africa dated 20 February 2017**

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 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

Others

United Nations

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Prosecution has no objection to the request (the “Request”) made by the Republic of South Africa (“South Africa”) in a note verbale to the Registry dated 20 February 2017, to extend the page limit for the submissions it intends to file in advance of the hearing scheduled for 7 April 2017 (the “Hearing”), for the purposes of a determination by the Chamber under article 87(7) of the Rome Statute.¹ In its 8 December 2016 decision convening the Hearing (the “Decision”), Pre-Trial Chamber II (the “Chamber”) invited such submissions by 17 March 2017 (the “Written Submissions”),² from the Prosecutor, representatives of South Africa and representatives of the United Nations (the “Participants”).

II. Submissions

2. In the Request, on the basis of exceptional circumstances, South Africa seeks an extension of the page limit for its Written Submission. The Request contemplates that, absent an extension, the applicable page limit would be 20 pages, pursuant to regulation 37(1) of the Regulations of the Court. The Prosecution notes that regulation 38(3)(e),³ pursuant to which the applicable page limit shall not exceed 30 pages “[u]nless otherwise ordered by the Chamber”, could also be considered the applicable regulation.⁴
3. Whichever regulation the Chamber determines applicable, the Prosecution does not oppose South Africa’s request to extend the page limit for its Written Submission, but asks that the representatives of the United Nations (if applicable) and the Prosecution be permitted the same page limit in their respective Written Submissions.

¹ The Registry filed this note verbale with the Chamber on 22 February 2017, *see* ICC-02/05-01/09-276.

² *See* ICC-02/05-01/09-274, page 8.

³ As amended and entered into force on 6 December 2016.

⁴ On the basis that these Written Submissions could relate to a “request by any participant to the Pre-Trial Chamber to take specific measures or to issue orders and warrants or to seek State cooperation.” (Regulation 38(3)(e)).

4. The Prosecution notes that in its Decision, the Chamber contemplated the provision of these Written Submissions prior to the Hearing in “the interest of a focused and streamlined discussion” at the Hearing.⁵
5. Given the apparent intention of at least one of the Participants to provide lengthy written submissions, the Prosecution proposes that the Chamber provide further guidance on the issues it would like the Participants to focus on and which it considers most relevant to the purpose of the Hearing as described by Chamber in its Decision.⁶ Such guidance will assist the Participants in focussing and streamlining their Written Submissions and their oral arguments during the Hearing, and assist the Chamber in reaching its decision.

III. Relief requested

6. For the reasons given above, the Prosecution requests that the Chamber:
 - a. clarify the regulation governing the page limit and set an equal page limit for the Written Submissions; and
 - b. provide additional guidance on the issues it considers most relevant to the Written Submissions.



Fatou Bensouda, Prosecutor

Dated this 23rd February 2017

At The Hague, The Netherlands

⁵ See ICC-02/05-01/09-274, para. 16.

⁶ See ICC-02/05-01/09-274, paras. 13 and 15.