

ANNEX

CONFIDENTIAL

**NV 023/2023**

The Embassy of the Republic of South Africa to the Kingdom of the Netherlands presents its compliments to Pre-Trial Chamber II of the International Criminal Court.

The Embassy has the honour to convey the Government of South Africa's appreciation to the Court for scheduling the hearing of 8 June 2023 to engage in consultations in terms of Article 97 of the Rome Statute of the International Criminal Court.

The Embassy has the further honour to inform Pre-Trial Chamber II that the Government of South Africa wishes to abide by the oral submissions that have been made by its representatives during the hearing and that the Government does not intend to make further submissions in writing.

The Embassy has the further honour to inform Pre-Trial Chamber II that the Government of South Africa takes note that the request for cooperation to all States Parties to the Rome Statute, transmitted under cover of the Registry note verbale 2023/IOR/00088 of 1 May 2023, for the provisional arrest of Vladimir Vladimirovich Putin pursuant to Article 92 of the Rome Statute in implementation of Pre-Trial Chamber II's Order of 24 April 2023, to which the abovementioned consultations relate, is marked confidential. It is also noted that the existence of the warrant of arrest for Mr Putin has been made public by the International Criminal Court on 17 March 2023. Furthermore, it appears to the Government of South Africa that the fact that a request for cooperation to States Parties to implement the aforementioned arrest warrant has been issued is also in the public domain, despite its confidential classification.

The Embassy has the further honour to inform Pre-Trial Chamber II that the Government of South Africa is currently engaged in litigation before the High Court in Pretoria (case number 2023-050604) that relates to the Government's implementation of the Rome Statute.

The Embassy has the further honour in this regard to refer to the Registry of the Court's note verbale NV/2023/EOSS/084/JCA/jt informing the Embassy of the scheduling of the Article 97 consultations, in which it is stated as follows:

“The Chamber further indicates that at the start of the hearing, which will commence in closed session, the Chamber will address the appropriate level of publicity and/or confidentiality of the matter at hand.”

It is therefore the understanding of the Government of South Africa that a measure of publicity regarding the consultations has been contemplated by the Court.

The Embassy has the further honour to convey to Pre-Trial Chamber II that the Government of South Africa regards the abovementioned High Court proceedings as falling within the ambit of its implementation of the request for cooperation and therefore within the exception stated in the Registry’s note verbale 2023/IOR/00088 of 1 May 2023 (referred to above) that disclosure of the request for cooperation is permitted to the extent that the disclosure is necessary for the implementation of the request.

The Embassy has the further honour therefore to request the permission of Pre-Trial Chamber II that the Government may refer in its court papers to be filed at the High Court in Pretoria to the fact that it has requested consultations under Article 97 of the Rome Statute. At this stage, the Government is not seeking permission to make public any further details regarding the consultations, any submissions made by the participants in the consultations, or the outcome of the consultations, other than the fact that it has sought to engage in Article 97 consultations with the Court, pending a final decision on the matter from Pre-Trial Chamber II.

The Embassy has the further honour to inform Pre-Trial Chamber II that while the Notice of Motion in the abovementioned High Court application sets 12 June 2023 as the due date for filing of an answer by the Government of South Africa, an extension until at least 15 June 2023 will be requested at a case management meeting to take place between the parties.

The Embassy of the Republic of South Africa to the Kingdom of The Netherlands avails itself of this opportunity to renew to Pre-Trial Chamber II of the International Criminal Court the assurances of its high consideration.



The Hague, 9 June 2023

Pre-Trial Chamber II of the International Criminal Court
The Hague