

Annex

Confidential



NV 031/2023

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 and has the honour to refer to the *Prosecution's additional observations on article 97 consultations relating to the implementation of warrants of arrest by the Republic of South Africa*, received from the Registry of the Court on 23 June 2023.

While the Government of South Africa informed the Court in the Embassy's note verbale 023/2023 of 9 June 2023 that it wishes to abide by the oral submissions that have been made by its representatives at the hearing of 8 June 2023 before Pre-Trial Chamber II and that the Government does not intend to make further submissions in writing, having now had the opportunity to study the Prosecution's additional observations, the Government of South Africa requests the leave of the Court to submit brief written clarifications on a limited number of points where the Government of South Africa is of the view, respectfully, that its submissions during the hearing have not been correctly or adequately construed by the Prosecution.

The issues on which the Government of South Africa wishes to provide the Court with clarifications are the following:

1. The basis for the Government of South Africa's submission that the Court's Appeals Chamber Judgment in the Jordan Referral re Al-Bashir (case ICC-02/05-01/09-397-Corr) is controversial, particularly as it relates to Article 27 and Article 98 of the Rome Statute, customary international law on state immunity, and treaty law; and
2. The rationale for referring to Article 16 of the Rome Statute and its relevance for the consultations under Article 97 in the context of a peace process, and the relevance of South African domestic law and procedure to fulfil requests for cooperation.

The Embassy has the further honour to inform the Court that the Government of South Africa does not wish to introduce new arguments in these consultations under Article 97. Given the limited scope of the clarifications the Government of South Africa seeks to make, it is submitted that a short deadline for submission to the Court of these clarifications would be appropriate. In this regard the Government is

prepared to submit these clarifications within two days after receipt of the Court's decision regarding this request.

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, 27 June 2023

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