

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

Case no. 83145/2016

In the application of

DEMOCRATIC ALLIANCE

Applicant

And

**MINISTER OF INTERNATIONAL
RELATIONS AND COOPERATION**

First respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Second respondent

**PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA**

Third respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth respondent

**CHAIRPERSON OF THE NATIONAL
COUNCIL OF PROVINCES**

Fifth respondent

SOUTHERN AFRICAN LITIGATION CENTRE

Sixth respondent

**PROFESSOR JOHN DUGARD AND PROFESSOR
GUÉNAËL METTRAUX**

Seventh respondent

AMNESTY INTERNATIONAL LIMITED

Eighth respondent

**PEACE AND JUSTICE INITIATIVE AND
CENTRE FOR HUMAN RIGHTS**

Ninth respondent

HELEN SUZMAN FOUNDATION

Tenth respondent

FILING SHEET

DOCUMENT: 1ST, 2ND AND 3RD RESPONDENTS' FURTHER
SUPPLEMENTARY AFFIDAVIT

ON ROLL: 5 AND 6 DECEMBER 2016

FILED BY:. 1ST, 2ND AND 3RD
RESPONDENTS' ATTORNEY
STATE ATTORNEY PRETORIA
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA,
Ref: 7641/2016/Z49
Tel: 012 – 309 1520
Fax: 086 507 0909
E-mail: eturner@justice.gov.za
kmeier@justice.gov.za
Enq: J Meier (082 940 3938)

TO: THE REGISTRAR OF THE
HIGH COURT, GAUTENG DIVISION
PRETORIA
E-mail: PMathunywa@judiciary.org.za
Mtroskie@judiciary.org.za

**AND
TO:**

**APPLICANT'S ATTORNEY
MINDE SHAPIRO & SMITH INC
TYGERVALLEY OFFICE PARK II
TYGERVALLEY
BELLVILLE
Tel: 021 918 9000
Fax: 021 918 9070
E-mail: elzanne@mindes.co.za /
Antonia@cm-attorneys.com**

**C/O KLAGSBRUN EDELSTEIN BOSMAN
DE VRIES INC
PRETORIA
E-mail: venashan@kebd.co.za**

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**ATTORNEYS FOR CASAC
NORTON ROSE FULBRIGHT
10TH FLOOR,
NORTON ROSE HOUSE
8 RIEBEECK STREET
CAPE TOWN
Tel: 021 405 1205
Fax: 021 405 5582
E-mail: nicki.vantriet@nortonrosefulbright.com**

**C/O KLAGSBRUN EDELSTEIN BOSMAN
DE VRIES INC
PRETORIA
E-mail: venashan@kebd.co.za**

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**FOURTH and FIFTH RESPONDENTS' ATTORNEYS
THE STATE ATTORNEY
22 LONG STREET
CAPE TOWN**

By E-mail: TGangen@justice.gov.za

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**SIXTH RESPONDENT'S ATTORNEY
WEBBER WENTZEL
90 RIVONIA ROAD
SANDTON
JOHANNESBURG, 2196**

Tel: 063 003 0640

Ref: M Hathorn / 3001742

E-mail: moray.hathorn@webberwentzel.com

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**SEVENTH RESPONDENT'S ATTORNEY
ROSIN WRIGHT ROSENGARTEN
LE VAL, NORTH BLOCK
SOUTH WING, GROUND FLOOR
45 JAN SMUTS AVENUE
(CNR THE VALLEY RD)
WESTCLIFF**

Ref: D Rosengarten / K Mitchell

Tel: 011 486 0242/3

Fax: 086 218 4930

E-mail: danr@rwr.co.za

kathrynm@rwr.co.za

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**EIGHTH RESPONDENT'S ATTORNEYS
WERKSMANS ATTORNEYS
155 5TH STREET
SANDTON
Ref: Ms D Naidoo/dn/PROB9999.526/#4481350v1
Tel: 011 535 8318
Fax: 011 535 8623
E-mail: enquiries@werksmans.com /
dnaidoo@werksmans.com**

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**NINTH RESPONDENT'S ATTORNEYS
CENTRE FOR HUMAN RIGHTS
LEGAL RESOURCES CENTRE
FLOOR 16, BRAM FISCHER TOWERS
20 ALBERT STREET, MARSHALLTOWN
JOHANNESBURG
Ref: 1113715L/MJ Power/ A Singh
Tel: 011 836 9831
E-mail: Michael@lrc.org.za / avani@lrc.org.a**

SERVED BY E-MAIL AS PER ARRANGEMENT

**AND
TO:**

**TENTH RESPONDENT'S ATTORNEY
WEBBER WENTZEL ATTORNEYS
90 RIVONIA ROAD
SANDTON
JOHANNESBURG
Ref: V Movshovich / P Dela / D Cron / D Rafferty 3005285
Tel: 011 530 5422
Fax: 011 530 6422
E-mail: Pooja.dela@webberwentzel.com
vlad.movshovich@webberwentzel.com
daniel.rafferty@webberwentzel.com
Anel.DeMeyer@webberwentzel.com
Michael.Spargo@webberwentzel.com**

SERVED BY E-MAIL AS PER ARRANGEMENT

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case no: 83145/16

In the application between:

DEMOCRATIC ALLIANCE

Applicant

and

**MINISTER OF INTERNATIONAL RELATIONS
AND COOPERATION**

First respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Fourth respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Fifth respondent

SOUTHERN AFRICA LITIGATION CENTRE

Sixth respondent

**PROFESSORS JOHN DUGARD
AND GUENAELE METTRAUX**

Seventh respondent

AMNESTY INTERNATIONAL LIMITED

Eighth respondent

**PEACE AND JUSTICE INITIATIVE AND
CENTRE FOR HUMAN RIGHTS**

Ninth respondent

HELEN SUZMAN FOUNDATION

Tenth respondent

FIRST TO THIRD RESPONDENTS' FURTHER SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

JAKOBUS MEIER

M.S.



do hereby make oath and state as follows:

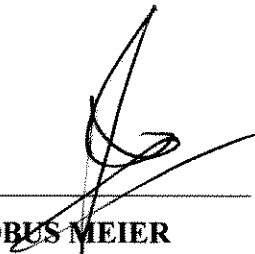
1. I am an attorney of this Court, and the deponent to the first to third respondents' main answering affidavit filed on 9 November 2016. I am duly authorised to depose also to this affidavit.
2. The facts to which I depose are within my own knowledge. They are true and correct.
3. In the urgent circumstances in which the Minister's supplementary answering affidavit was deposed, not all annexures were available for inclusion. I depose to this affidavit in order to place those annexures before Court. These documents are of an official nature. Their status and contents are beyond controversy. I therefore respectfully submit that they should be received. No prejudice is caused by introducing them in a separate affidavit, which affidavit will be filed either simultaneously with the Minister's supplementary affidavit or very soon thereafter. It is, moreover, in the interests of justice that these documents be placed before Court.
4. The first document is the *note verbale* delivered today, to which the Minister's affidavit refers. It is attached, marked "Y". The second is the Minister's tabling of the instrument of withdrawal in the National Assembly for parliamentary approval. It is attached, marked "Z1". The third and final document is the Acting Minister of International Relations and Cooperation's tabling of the instrument of withdrawal in the National Council of Provinces for parliamentary approval. It is attached, marked "Z2".

M.S.



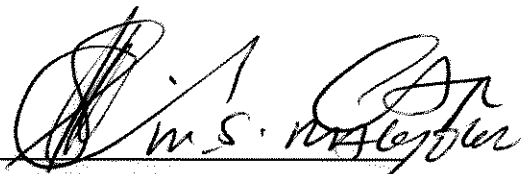
- 5. Collectively these three documents comprise less than ten pages. The facts borne out by them and their essential content have already been confirmed by the respondents' answering affidavits. These annexures therefore introduce no new factual matter; they merely constitute the best evidence of facts already adduced.

- 6. I therefore ask that this affidavit and its annexures be received.



JAKOBUS MEIER

I certify that the deponent acknowledged to me that he knows and understands the contents of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience; that the deponent thereafter uttered the words, I swear that the contents of this declaration are true, so help me God; and signed this declaration in my presence at Pretoria on this 21 day of November 2016.



COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2016 -11- 21
PRETORIA CENTRAL
SOUTH AFRICAN POLICE SERVICE

Full names: Molego M.S.
Designation: SAPS
Area: Pretoria

" Z "



NV 66/2016

The Embassy of the Republic of South Africa presents its compliments to the Secretariat of the Assembly of States Parties and has the honour to request the Court to provide guidance with respect to the rules and procedures governing the processes in terms of Article 97 and Article 87(7) of the Rome Statute, in which South Africa is presently engaged with the Court.

In this respect, it is recalled that on 28 May 2015, the Registrar of the Court wrote to remind South Africa of its obligation to cooperate with the Court in the arrest of President Al Bashir of Sudan and also of its obligations to consult the Court should it face any difficulties in implementing the request for cooperation.

On 12 June 2015, South Africa requested to consult the Court in terms of Article 97 of the Statute. A preliminary meeting between South Africa and the Court took place on 12 June 2015. South Africa's view in respect of this meeting was formally recorded in the minutes of the meeting. It was the understanding of South Africa that the official Article 97 consultations will take place officially on 15 June 2015.

Despite this understanding, on 13 June 2015 the Prosecutor made an urgent request to the Court for clarity regarding the Article 97 consultations, without any notice being given to South Africa of the request and without South Africa being afforded an opportunity to be heard. In response to this request by the Prosecutor, the Pre-Trial Chamber II issued the *Decision following the Prosecutor's request for an order further*

MS

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clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Al Bashir on the same day, 13 June 2015.

In part the decision, referring to the *Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court, 9 April 2014, ICC-02/05-01/09-195*, reads as follows, (see in particular paras 28 to 31):

"7. In this sense, the Chamber clarified that "there also exists no impediment at the horizontal level" regarding the arrest and surrender to the Court of Omar Al Bashir (paragraph 29). In addition, the Chamber stated that since the Security Council, acting under Chapter VII of the UN Charter, had lifted the immunities of Omar Al Bashir by virtue of Resolution 1593(2005), the Republic of the Democratic Republic of Congo could not invoke any other decision, including that of the African Union, providing for any obligation to the contrary (paragraph 31).

8. The same applies squarely to the Republic of South Africa as well. The delegation from the Republic of South Africa was reminded of this during the meeting of 12 June 2015. In particular, the Presiding Judge repeatedly made clear, in unequivocal terms, that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir as soon as on its territory and that the consultation between the Court and the Republic of South Africa under article 97 (or any other further discussion on the point at any later stage) do not trigger any suspension or stay of this standing obligation. As there exists no issue which remains unclear or has not already been explicitly discussed and settled by the Court, the consultations under article 97 of the Statute between the Court and the Republic of South Africa have therefore ended."

South Africa responded on 15 June 2015, stating its views that the consultation requested under Article 97 had not been concluded, that it and the South African domestic court system are seized with the matter and that the 13 June 2015 Decision is in violation of South Africa's basic right to fair procedures and more, particularly, the right to be heard.

M.S.



On 4 September 2015, the Pre-Trial Chamber II of the Court issued an order on *The Situation in Darfur, Prosecutor v Omar Hassan Ahmad Al Bashir: Order Requesting Submissions from the Republic of South Africa for the purposes of Proceedings under Article 87(7) of the Rome Statute*. The Court requested South Africa in terms of Article 87(7) of the Rome Statute to submit its views for the purposes of proceedings under Article 87(7) of the Rome Statute, with particular reference to their failure to arrest and surrender Omar Al-Bashir, no later than 5 October 2015.

On 5 October 2015, South Africa requested an extension of the time limit for submitting its views in terms of Regulation 35 of the Regulations of the Court until such time as the domestic legal processes have been finalised. The Court granted this extension by taking 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* on 15 October 2015.

Subsequently, progress reports on the domestic court processes in South Africa were submitted to the Court on 21 December 2015, 23 December 2015, 4 May 2016 and 23 May 2016.

The domestic court processes have now been concluded. South Africa wishes to record that the Supreme Court of Appeal of South Africa (whose judgment has of 18 November 2016 become final) has stated that the rule of customary international law pertaining to the immunity of sitting heads of state has not changed.

South Africa will be submitting its views and observations for the purposes of the Article 87(7) proceedings mentioned above.

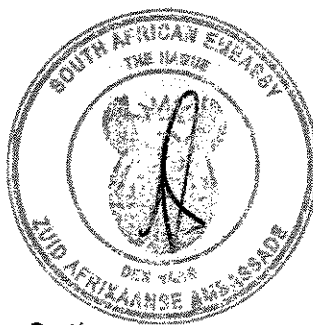
M.S.



In this respect, South Africa has the honour to request the Court to provide guidance on the rules and procedures which would govern the submission 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.

In this respect, it is recalled that South Africa is of the view that its right to a fair hearing has been impaired by the way in which the Article 97 consultations were conducted. The domestic processes in South Africa having been now concluded by the Constitutional Court's directive issued on 18 November 2016, South Africa is considering an appeal against the decision of the Pre-Trial Chamber made on 13 June 2015 and requires guidance on how an appeal should be filed.

The Embassy of the Republic of South Africa to the Kingdom of the Netherlands avails itself of the opportunity to renew to the Secretariat of the Assembly of States Parties the assurance of its high consideration.

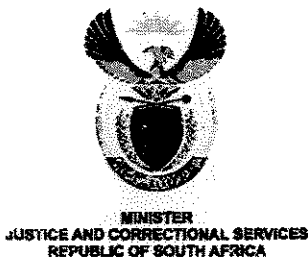


The Hague
21 November 2016

The Secretariat of the Assembly of States Parties
The Hague

M-S

"Zi"



Office of the Chairperson:
NCOP
03 NOV 2016
RECEIVED

Private Bag X276, PRETORIA, 0001 • SALU Building, 316 Thabo Sehume Street, PRETORIA • Tel: (012) 406 4669 • Fax: (012) 406 4680
Private Bag X256, CAPE TOWN, 8000 • 120 Plain Street, CAPE TOWN • Tel: (021) 467 1700 • Fax: (021) 467 1730

Ref: S/S/aig/1
Enq: Ministry
E-mail: Ministry@justice.gov.za

Ms T R Modise, MP
Chairperson of the National Council of Provinces
P O Box 15
CAPE TOWN
8000

Dear Ms Modise

SUBMISSION OF BILL IN TERMS OF JOINT RULE 159

Cabinet approved the introduction of the Implementation of the Rome Statute of the International Criminal Court Act Repeal Bill, 2016, into Parliament on 19 October 2016.

A copy of the Bill and an explanatory memorandum are hereby submitted to you in accordance with Rule 159 of the Joint Rules of Parliament.

With kind regards

TM MASUTHA, MP (Adv)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
Date: 03/10/2016

M.S.

"Z2"



MINISTER
INTERNATIONAL RELATIONS AND COOPERATION
REPUBLIC OF SOUTH AFRICA

Private Bag X152, PRETORIA, 0001, South Africa • OR Tambo Bldg, 460 Soutpansberg Road, Fietsondale, PRETORIA • Tel: 012 351 1000 • Fax: 012 329 1000
17th Floor, Room 1703, 120 Plain Street, CAPE TOWN, 8001 • Tel: 021 464 3700 • Fax: 021 465 6546 • www.dirc.gov.za

03 November 2016

Dear Chairperson

**TABLING OF THE INSTRUMENT OF WITHDRAWAL FROM THE ROME
STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

In terms of section 231 (2) of the Constitution of the Republic of South Africa, 1996 I hereby table the Instrument of Withdrawal from the Rome Statute of the International Criminal Court and its attached Declaratory Statement for approval by parliament. The Instrument of Withdrawal was deposited to the United Nations Secretary-General on 19 October 2016, and will become effective one year later. The electronic version of the document and 60 copies of the report will be delivered to the Clerk of Papers prior to tabling as per parliamentary requirements.

Yours sincerely

**Mr David Mahlobo, MP
Acting Minister of Department of International Relations and Cooperation**

Ms T Modise, MP
Chairperson of the National Council of Provinces
Parliament
CAPE TOWN
8000

M.S.