

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09

Date: 18 August 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

Public Document

**Decision requesting observations about Omar Al-Bashir's recent visit to the
Republic of Chad**

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

The Office of the Prosecutor
Mr Luis Moreno-Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives
Competent authorities of
the Republic of Chad

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively),

NOTING United Nations Security Council Resolution 1593 (2005) (“UNSC 1593”),¹ whereby the United Nations Security Council referred the situation in Darfur to the Court and “urge[d] all States and concerned regional and other international organizations to cooperate fully” with the Court;

NOTING the warrants of arrest against Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”) issued by the Chamber respectively on 4 March 2009 and 12 July 2010 which are yet to be executed;²

NOTING the “Request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”, dated 6 March 2009,³ and the “Supplementary request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”, dated 21 July 2010⁴ (“Cooperation Requests”), issued by the Registry at the Chamber’s request and asking for cooperation from all States Parties in the arrest and surrender of Omar Al-Bashir pursuant to, *inter alia*, articles 89(1) and 91 of the Rome Statute (“Statute”);

NOTING the “Decision informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir’s recent visit to the Republic of Chad”, issued by the Chamber on 27 August 2010;⁵

¹ S/RES/1593 (2005).

² ICC-02/05-01/09-1; ICC-02/05-01/09-95.

³ ICC-02/05-01/09-7.

⁴ ICC-02/05-01/09-96.

⁵ ICC-02/05-01/09-109.

NOTING the Registry's "Report on the second visit of Omar Al Bashir to Chad", confidentially filed on 9 August 2011 ("Report"),⁶ whereby the Registrar informed the Chamber that, according to the media information available, Omar Al Bashir visited the Republic of Chad on 7 and 8 August 2011 to attend the inauguration ceremony of the Republic of Chad's Head of State Idriss Deby Itno;

NOTING the urgent correspondence sent by the Registry to the Republic of Chad Embassy in Belgium dated 5 August 2011⁷, wherein the Registry reminded the Republic of Chad that it had the "obligation d'arrêter et de remettre à la Cour les personnes qui font l'objet d'un mandat d'arrêt délivré par la Cour pénale internationale, obligation qui vaut pour le Président Al Bashir comme pour toute autre personne à l'encontre de laquelle un mandat d'arrêt a été délivré par la Cour";

NOTING articles 86, 87(7) and 89 of the Statute and regulations 109(2) and 109(3) of the Regulations of the Court ("Regulations");

CONSIDERING that the Republic of Chad, being a State Party to the Statute since 1 January 2007, is under the obligation, in accordance with articles 86 and 89 of the Statute, to abide by the Cooperation Requests;

CONSIDERING that the Registry reminded the Republic of Chad "qu'en application de l'Article 87(7) du Statut de Rome, lorsqu'un Etat partie n'exécute pas une demande d'arrestation et de remise en violation des dispositions du Statut de Rome, la Cour peut faire un constat de non

⁶ ICC-02/05-01/09-131-Conf.

⁷ ICC-02/05-01/09-131-Conf, Annex 2.

coopération et en référer au Conseil de sécurité de l'Organisation des Nations Unies (ONU)";⁸

CONSIDERING that, although invited by the Registry to consult with the Court in case of any difficulty with respect to the execution of the Cooperation Requests, as provided for in article 97 of the Statute, the Embassy of the Republic of Chad in Belgium only acknowledged receipt⁹ of the Registry's correspondence and no consultation was undertaken;

CONSIDERING that article 87(7) of the Statute provides that "[w]here a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute [...] the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council";

CONSIDERING regulation 109(2) of the Regulations, which allows a Chamber which has made a request for cooperation to initiate proceedings under article 87(7) of the Statute;

CONSIDERING that the Report's allegations, if confirmed, make it the second time when the government of the Republic of Chad has allowed Omar Al-Bashir into its territory without arresting him in contravention of the Cooperation Requests;

CONSIDERING that the Republic of Chad must be given an opportunity to be heard on this matter, pursuant to regulation 109(3) of the Regulations;

⁸ *Ibid.*

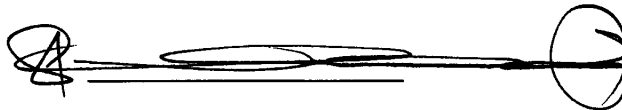
⁹ ICC-02/05-01/09-131-Conf, Annex 4.

FOR THESE REASONS

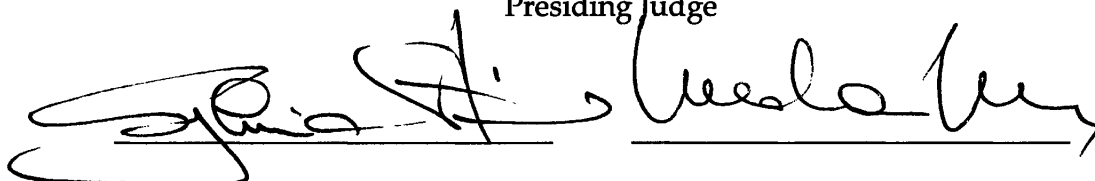
ORDERS the Registry to transmit a copy of the Report to the competent authorities of the Republic of Chad; and

INVITES the competent authorities of the Republic of Chad to submit, no later than Friday, 9 September 2011, any observations on the Report, in particular with regard to their alleged failure to comply with the Cooperation Requests issued by the Court.

Done in both English and French, the English version being authoritative.



Judge Sanji Mmasenono Monageng
Presiding Judge



Judge Sylvia Steiner

Judge Cuno Tarfusser

Dated this Thursday, 18 August 2011

At The Hague, The Netherlands