

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 19 October 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 Malawi

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 Malawi

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 (the “Chamber” and the “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 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 (the “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 (the “Statute”);

NOTING the Registry’s “Report on the visit of Omar Al Bashir to Malawi”, confidentially filed on 18 October 2011 (the “Report”),⁵ whereby the Registrar informed the Chamber that

- (i) various media had reported that Omar Al Bashir had visited the Republic of Malawi on 14 October 2011 and had “attended a summit of

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-02/05-01/09-136-Conf + Conf Anx 1 to 4.

the Common Market for Eastern and Southern Africa (COMESA) in Malawi's capital Lilongwe that took place from 4 to 15 October”;

- (ii) the Registrar had sent a *note verbale* to the Embassy of the Republic of Malawi in Brussels on 13 October 2011 (“*Note Verbale*”)⁶, reminding the Republic of Malawi of its legal obligations under the Statute and asking for its cooperation for the arrest and surrender of Omar Hassan Al Bashir “in the event that the latter would enter Malawi's territory”; and
- (iii) no reply had been received so far;

NOTING that, in its *Note Verbale*, the Registrar reminded the Republic of Malawi that the obligation to arrest and surrender persons subject to an arrest warrant issued by the Court applied “to all persons subject to an arrest warrant including President Al Bashir”;⁷

NOTING that the Registrar also warned the Republic of Malawi that, pursuant to article 87(7) of the Statute, “where a State Party fails to comply with a request for cooperation by the Court contrary to the provisions of the Statute, the Court may make a finding of non-cooperation and refer the matter to the UN Security Council”;⁸

NOTING furthermore that, although the *Note Verbale* invited the competent authorities of the Republic of Malawi 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, no consultation has yet been undertaken;

⁶ ICC-02/05-01/09-136-Conf, Anx 4.

⁷ *Ibid.*

⁸ *Ibid.*

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

CONSIDERING that the Republic of Malawi, being a State Party to the Statute since 19 September 2002, is under the obligation to abide by the Cooperation Requests in accordance with articles 86 and 89 of the Statute,;

CONSIDERING that article 87(7) of the Statute indicates 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 for a Chamber who has made a request for cooperation to initiate proceedings under article 87(7) of the Statute;

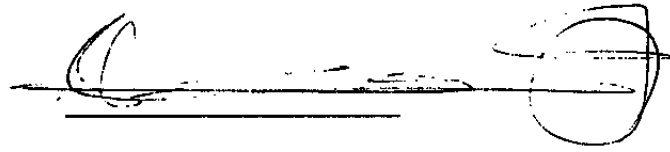
CONSIDERING that the Republic of Malawi must be given an opportunity to be heard on this matter, pursuant to regulation 109(3) of the Regulations;

FOR THESE REASONS

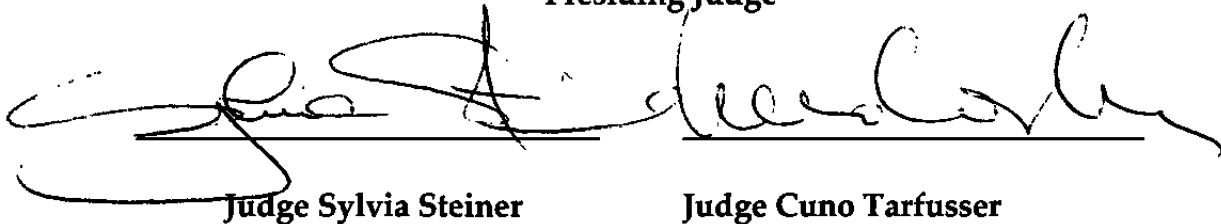
ORDERS the Registrar to transmit a copy of the Report to the competent authorities of the Republic of Malawi;

INVITES the competent authorities of the Republic of Malawi to submit, no later than Friday, 11 November 2011, any observations on the Report, in particular with regard to the alleged failure by the Republic of Malawi 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 Wednesday, 19 October 2011

At The Hague, The Netherlands