

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 April 2013**

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

**Public Document
URGENT**

**Decision Requesting Observations from the Republic of Chad on the Possible
Reclassification of Document ICC-02/05-01/09-150-Conf-Anx1**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

Ade Omofade, Trial Lawyer

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

Herman Von Hebel

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”) issues this decision requesting observations from the Republic of Chad on the reclassification of document: ICC-02/05-01/09-150-Conf-Anx1.

I. PROCEDURAL HISTORY

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1593 (2005) referring the situation in Darfur to the Court.¹

2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”).² These warrants of arrest remain to be executed.

3. On 15 March 2012, the Presidency issued the “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, in which it re-assigned, *inter alia*, the situation of Darfur, Sudan to this Chamber.³

4. On 14 February 2013, the Chamber received the “Prosecution’s notification of possible travel in the case of *The Prosecutor v. Omar Al Bashir*, pursuant to Article 97 of the Rome Statute”,⁴ in which the Prosecutor averred, based on media reports, that Omar Al-Bashir might visit the Republic of Chad and the State of Libya during the weekend of 16-17 February 2013.

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05-01/09-1; Pre-Trial Chamber I, Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir, 12 July 2010, ICC-02/05-01/09-95.

³ Presidency, ICC-02/05-01/09-143.

⁴ ICC-02/05-01/09-144 and its annex.

5. On the same day, the Chamber requested the Registry to send *notes verbales* to the Republic of Chad and the State of Libya, enquiring about said visit, and reminding the former of its obligations with respect to the arrest and surrender of Omar Al-Bashir to the Court. This was reiterated in the Chamber's "Order Regarding Omar Al-Bashir's Potential Visit to the Republic of Chad and to the State of Libya" of 15 February 2013.⁵

6. On 22 February 2013, the Chamber issued the "Decision Requesting Observations on Omar Al-Bashir's Visit to the Republic of Chad", in which it, *inter alia*, requested the Republic of Chad to submit observations, no later than Thursday 14 March 2013, on "1) the alleged failure to execute the requests for arrest and surrender of Omar Al-Bashir to the Court and; 2) the alleged failure to consult with the Court in case of any problems identified which might have impeded the execution of the requests for arrest and surrender of Omar Al-Bashir during his visit".⁶

7. On 21 March 2013, the Chamber received the "Report of the Registry on the observations submitted by the Republic of Chad on Omar Al-Bashir's visit to the Republic of Chad" (the "Registry's Report or "Report"),⁷ in which it is mentioned that on 20 March 2013 the Registry received the requested observations lacking any explanation regarding their late submission.

8. On 26 March 2013, the Chamber issued the "Decision on the Non-compliance of the Republic of Chad with the Cooperation Requests Issued by the Court Regarding the Arrest and Surrender of Omar Hassan Ahmed Al-Bashir".⁸

⁵ Pre-Trial Chamber II, ICC-02/05-01/09-145.

⁶ Pre-Trial Chamber II, ICC-02/05-01/09-147, p. 6.

⁷ ICC-02/05-01/09-150 and its annex.

⁸ Pre-Trial Chamber II, ICC-02/05-01/09-151.

II. APPLICABLE LAW

9. The Chamber notes articles 21(1)(a), (3), 67(1) of the Rome Statute, rule 15(1) of the rules of Procedure and Evidence and regulations 20 and 23 *bis* of the Regulations of the Court (the “Regulations”).

III. DETERMINATION BY THE CHAMBER

10. The Chamber considers that one of the fundamental aspects guaranteeing the fairness of the proceedings lies in the transparency of these proceedings. As such transparency is reflected in the principle that all hearings and the records related thereto should be public, unless there are compelling reasons which justify a deviation from said principle.

11. According to regulation 23 *bis* (3) of the Regulations, “[w]here the basis for the classification [of a document filed by a party or participant to the proceedings] no longer exists, [...] [the] Chamber may also reclassify [such document] [...] on its own motion”. Since the Republic of Chad requested that document ICC-02/05-01/09-150-Conf-Anx1 be filed as confidential, the Chamber deems it appropriate to first request observations on the reasons for retaining said classification and the possibility of reclassifying it as public.

FOR THESE REASONS, THE CHAMBER HEREBY

a) **requests** the Republic of Chad to submit its observations on the classification chosen for document ICC-02/05-01/09-150-Conf-Anx1 and on the possibility to reclassify it as public, by no later than **Wednesday 1 May 2013**;

b) **orders** the Registry to immediately translate the present decision into French in order to transmit it urgently to the competent authorities of the Republic of Chad through the appropriate channel of communication.

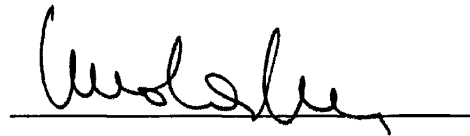
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Thursday, 18 April 2013

At The Hague, The Netherlands