



Original: English

No.: ICC-02/05-01/09
Date: 5 September 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

**Decision on the Cooperation of the Federal Republic of Nigeria Regarding
Omar Al-Bashir's Arrest and Surrender to the Court**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

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 Federal Republic of Nigeria

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”) issues this decision on the cooperation of the Federal Republic of Nigeria regarding Omar Hassan Ahmad Al-Bashir’s (“Omar Al-Bashir”) arrest and surrender to the Court.

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 (“PTC I”) issued two warrants of arrest against Omar Al-Bashir.² These warrants of arrest remain to be executed.

3. On 6 March 2009 and 21 July 2010, the Registry, acting upon PTC I’s request, issued the “Request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”³ as well as the “Supplementary request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”.⁴ These requests called for the cooperation of 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”).

4. 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

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-1; “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-95.

³ ICC-02/05-01/09-7.

⁴ ICC-02/05-01/09-96.

Congo, Darfur, Sudan and Côte d'Ivoire situations", in which it reassigned, *inter alia*, the situation of Darfur, Sudan to this Chamber.⁵

5. On 15 July 2013, the Chamber received the "Prosecution's notification of travel in the case of *The Prosecutor v Omar Al Bashir*" (the "Notification").⁶ In the Notification, the Prosecutor contended that, on the basis of media reports, Omar Al-Bashir arrived in the Nigerian capital, Abuja, to participate in the Special Summit of the African Union on HIV/AIDS, Tuberculosis and Malaria, which was scheduled to take place from 12 to 16 July 2013.⁷

6. On 15 July 2013, the Chamber issued the "Decision Regarding Omar Al-Bashir's Visit to the Federal Republic of Nigeria",⁸ in which it, *inter alia*, requested the Federal Republic of Nigeria to immediately arrest Omar Al-Bashir and surrender him to the Court and ordered the Registry to file a report with the Chamber on said visit.⁹

7. On 14 August 2013, the Chamber was notified of the "Report of the Registry on the 'Decision regarding Omar Al-Bashir's Visit to the Federal Republic of Nigeria'" with five annexes appended thereto (the "Registry's Report").¹⁰

8. The Chamber notes articles 86, 87(7) and 89 of the Statute.

⁵ Presidency, ICC-02/05-01/09-143.

⁶ ICC-02/05-01/09-156 and its annex.

⁷ ICC-02/05-01/09-156, para. 8, ICC-02/05-01/09-156-AnxA.

⁸ Pre-Trial Chamber II, ICC-02/05-01/09-157.

⁹ Pre-Trial Chamber II, ICC-02/05-01/09-157, p. 5.

¹⁰ ICC-02/05-01/09-158 and its annexes.

9. The Chamber observes that the Federal Republic of Nigeria is a State Party to the Statute since 27 September 2001 and, accordingly, it is under the obligation, pursuant to articles 86 and 89 of the Statute, to execute the pending Court's decisions concerning the arrest and surrender of Omar Al-Bashir.

10. The Chamber notes, in particular, that according to article 87(7) of the Statute "[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" (emphasis added).

11. In this regard, the Chamber takes note of annex 4 appended to the Registry's Report, in which the competent authorities of the Federal Republic of Nigeria repeated their commitment to cooperate with the Court and to fight against impunity¹¹ and stated that Omar Al-Bashir was not invited to "undertake a visit to Nigeria",¹² rather he appeared in Nigeria "ostensibly to attend the special Summit of the African Union (AU) on HIV/AIDS, Tuberculosis and Malaria, which took place in Abuja from 15-16 July 2013".¹³ According to the Nigerian authorities, Member States of the African Union do not require an invitation of the host Governments to attend "such Summits in line with the [decision of the Assembly of Heads of State and Government of the African Union at its Session in May 2013] and the tradition of the AU Assembly".¹⁴

¹¹ ICC-02/05-01/09-158-Anx4, pp. 3-6.

¹² ICC-02/05-01/09-158-Anx4, p. 4.

¹³ ICC-02/05-01/09-158-Anx4, p. 4.

¹⁴ ICC-02/05-01/09-158-Anx4, p. 4.

12. More importantly, “[t]he sudden departure of President Al-Bashir prior to the official end of the AU Summit occurred at the time that officials of relevant bodies and agencies of [...] Nigeria were considering the necessary steps to be taken in respect of his visit in line with Nigeria’s international obligations”, the Nigerian competent authorities added.¹⁵

13. The Chamber takes note of the above explanation provided by the Nigerian authorities and, in light of its discretionary power by virtue of article 87(7) of the Statute, considers that it is not warranted in the present circumstances to refer the matter to the Assembly of State Parties and/or to the Security Council.

FOR THESE REASONS, THE CHAMBER HEREBY

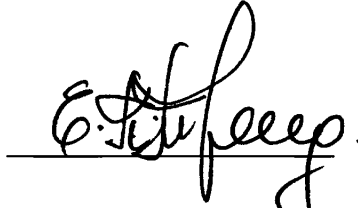
a) reminds the Federal Republic of Nigeria of its obligations to execute the pending decisions concerning the arrest and surrender of Omar Al-Bashir to the Court;

b) requests the Federal Republic of Nigeria to immediately arrest Omar Al-Bashir and surrender him to the Court should a similar situation arise in the future; and

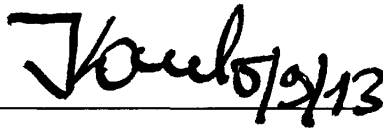
c) instructs the Registry to transmit the present decision to the Federal Republic of Nigeria.

¹⁵ ICC-02/05-01/09-158-Anx4, p. 5.

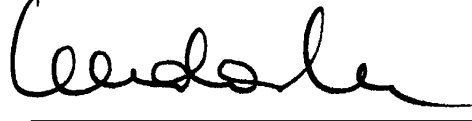
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendaklova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Thursday, 5 September 2013

At The Hague, The Netherlands