

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/12
Date: 18 September 2013

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

THE PROSECUTOR V. ABDEL RAHEEM MUHAMMAD HUSSEIN

Public

**Decision Requesting Observations on the Visit of Abdel Raheem Muhammad
Hussein to the Republic of Chad**

Decision 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 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”) renders this decision requesting observations on the visit of Abdel Raheem Muhammad Hussein (“Mr. Hussein”) to the Republic of Chad.

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, Sudan to the Court.¹

2. On 1 March 2012, Pre-Trial Chamber I (the “PTC I”) issued the “Decision on the Prosecutor’s application under article 58 relating to Abdel Raheem Muhammad Hussein”,² and the “Warrant of Arrest for Abdel Raheem Muhammad Hussein”³ for crimes against humanity and war crimes committed in Darfur, Sudan from August 2003 to March 2004. The warrant of arrest remains to be executed.

3. On 13 March 2012, 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 Abdel Raheem Muhammad Hussein”⁴ as well as the “Request to United Nations Security Council members not States Parties to the Rome Statute for the arrest and surrender of Abdel Raheem Muhammad Hussein”.⁵ These requests called for, *inter alia*, cooperation from States Parties and States not Parties to the Rome Statute (the “Statute”) in the arrest and surrender of Mr. Hussein.

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, ICC-02/05-01/12-1-Red.

³ Pre-Trial Chamber I, ICC-02/05-01/12-2.

⁴ ICC-02/05-01/12-5.

⁵ ICC-02/05-01/12-6.

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 Congo, Darfur, Sudan and Côte d’Ivoire situations”, in which it re-assigned, *inter alia*, the situation in Darfur, Sudan to this Chamber.⁶

5. On 25 April 2013, the Chamber received the “Prosecution’s notification of possible travel in the case of *The Prosecutor v. Abdel Raheem Muhammad Hussein* pursuant to Article 97 of the Rome Statute” (the “Notification”).⁷ According to the Notification and the annex appended thereto, Mr. Hussein was expected to “participate in the fourth conference on performance evaluation of the joint Sudanese-Chadian border [forces]”, which was scheduled to take place in the Republic of Chad on 25 and 26 April 2013.⁸

6. On 26 April 2013, the Chamber issued the “Order Regarding Abdel Raheem Muhammad Hussein’s Potential Visit to the Republic of Chad”,⁹ in which it ordered the Registry to “prepare and send a note verbale to the competent authorities of the Republic of Chad enquiring about said visit, and reminding the State of its obligations with respect to the arrest and surrender of Mr. Hussein to the Court”.¹⁰ The Chamber also ordered the Registry to “prepare a report to be filed with [it] [...] in due course concerning said visit”.¹¹

⁶ Presidency, ICC-02/05-01/09-143.

⁷ ICC-02/05-01/12-11 and its annex.

⁸ ICC-02/05-01/12-11-AnxA.

⁹ Pre-Trial Chamber II, ICC-02/05-01/12-12.

¹⁰ Pre-Trial Chamber II, ICC-02/05-01/12-12, p. 5.

¹¹ Pre-Trial Chamber II, ICC-02/05-01/12-12, p. 5.

7. On 11 September 2013, the Chamber was notified of the “Report of the Registry on the ‘Order Regarding Abdel Raheem Muhammad Hussein’s Potential Visit to the Republic of Chad’” (the “Registry’s Report”).¹²

8. The Chamber notes articles 86, 87(7), 89 and 97 of the Statute and regulations 34 and 109(2) and (3) of the Regulations of the Court (the “Regulations”).

9. The Chamber notes that the Republic of Chad is a State Party to the Statute since 1 January 2007, and accordingly, it is under the obligation, in accordance with articles 86 and 89 of the Statute, to execute the Court’s pending decisions concerning the arrest and surrender of Mr. Hussein.

10. The Chamber further notes 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”. However, before making a finding to that effect, regulation 109(3) of the Regulations dictates that the “Chamber shall hear from the requested State”.

11. In this regard, the Chamber has reviewed the Registry’s Report and considers that the information concerning the visit of Mr. Hussein is unclear. According to the Registry’s Report, during several meetings which took place respectively on 17-18 July and 9 September 2013, the Prime Minister and the Minister of Justice of the Republic of Chad informed the Director of the Court Services Division that “they were not aware of [Mr. Hussein’s] visit” to the Republic of Chad and that

¹² ICC-02/05-01/12-15 and its annexes.

“[a] note verbale confirming this information will be sent by the Embassy of the Republic of Chad to the Court”.¹³ Moreover, according to the Registry’s Report, media sources reveal that such visit took place on 24 and 25 April 2013.¹⁴ Thus, given that the limited information provided so far by the Prime Minister and the Minister of Justice of the Republic of Chad does not confirm whether or not such visit took place, the Chamber deems it necessary to receive clear observations by the Chadian authorities before taking a decision pursuant to article 87(7) of the Statute.

FOR THESE REASONS, THE CHAMBER HEREBY

a) orders the Registry to transmit to the Republic of Chad, as soon as possible, a French translation of the present decision and of the Registry’s Report together with a French translation of Annex 3, and Annexes 1 and 2 in their original language;

b) requests the competent authorities of the Republic of Chad to submit, within two weeks of the transmission of the French translation of the present decision and of the Registry’s Report together with the relevant annexes appended thereto, any observations with regard to: 1) whether Abdel Raheem Muhammad Hussein’s visit to the Republic of Chad took place; 2) the alleged failure to execute the request for arrest and surrender of Abdel Raheem Muhammad Hussein to the Court in case said visit took place and; 3) the alleged failure to consult with the Court in case of any problem identified which might have

¹³ ICC-02/05-01/12-15, paras 4-5.

¹⁴ ICC-02/05-01/12-15, para. 3; ICC-02/05-01/12-15-Anx 3.

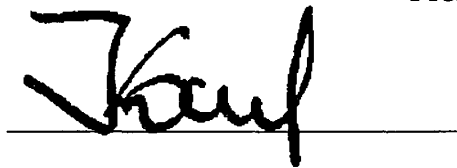
impeded the execution of the request for arrest and surrender of Abdel Raheem Muhammad Hussein during his visit; and

c) **orders** the Registry to file a report with the Chamber in due course, including any observations received by the competent authorities of the Republic of Chad.

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 Wednesday, 18 September 2013

At The Hague, The Netherlands