

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 March 2014

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

Decision Regarding Omar Al-Bashir's Potential 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

Fatou Bensouda, Prosecutor

Julian Nicholls, Senior 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

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 order regarding the “Prosecution’s urgent notification of travel of Suspect Omar Hassan Ahmad Al-Bashir in the case of *The Prosecutor v Omar Al Bashir*, pursuant to Article 97 of the Rome Statute” (the “Notification”).¹

1. On 31 March 2005, the Security Council (the “SC”) acting under Chapter VII of the Charter of the United Nations adopted Resolution 1593 (2005) referring the situation in Darfur to the Court.²

2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I (“PTC I”), formerly seized of the present case, issued two warrants of arrest against Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”)³. 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”⁴ 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”.⁵ These requests called for the 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”).

¹ ICC-02/05-01/09-193 and its annex A.

² S/RES/1593 (2005).

³ 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, “Decision on the Prosecution’s Application, for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/04-01/09-3; Pre-Trial Chamber I, “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 12 July 2010, ICC-02/05-01/09-95; Pre-Trial Chamber I, “Second Decision on the Prosecution’s Application for a Warrant of Arrest”, 12 July 2010, ICC-02/05-01/09-94.

⁴ ICC-02/05-01/09-7.

⁵ ICC-02/05-01/09-96.

4. On 27 August 2010, PTC I issued 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”.⁶

5. On 13 December 2011, PTC I also issued the “Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir”.⁷

6. 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.⁸

7. 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 Ahmad Al-Bashir”, in which, *inter alia*, it found that the Republic of Chad has failed to comply with its statutory obligations “by deliberately refusing to arrest and surrender Omar Al-Bashir [...]”,⁹ and referred its decision to the President of the Court for transmission to the Security Council and to the Assembly of States Parties.¹⁰

8. On 25 March 2014, the Chamber received the Notification, in which the Prosecutor avers that, based on media reports, Omar Al-Bashir might visit the Republic of Chad between 25 and 29 March 2014, to address a forum of tribes living in the border area

⁶ Pre-Trial Chamber I, ICC-02/05-01/09-109.

⁷ Pre-Trial Chamber I, ICC-02/05-01/09-140.

⁸ ICC-02/05-01/09-143.

⁹ Pre-Trial Chamber II, ICC-02/05-01/09-151, p. 11.

¹⁰ Pre-Trial Chamber II, ICC-02/05-01/09-151, p. 11.

between Sudan and Chad.¹¹ Accordingly, the Prosecutor requests that the Chamber take the necessary steps to a) ensure that the pending arrest warrants against Omar Al-Bashir are executed; b) enquire about said visit from the authorities of the Republic of Chad; c) remind the authorities of the Republic of Chad of the existence of the warrants of arrest against Omar Al-Bashir and of the Chamber's previous finding on non-cooperation for failing to arrest and surrender Omar Al-Bashir; d) reminds the authorities of the Republic of Chad of SC Resolution 1593 (2005); and e) inform the SC of the situation to enable it to take the necessary action.¹²

9. The Chamber notes articles 86, 87(7) and 89 of the Statute and regulation 109 of the Regulations of the Court (the "Regulations").

10. 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 pending Court's decisions concerning the arrest and surrender of Omar Al-Bashir. Thus, the Chamber expects the Republic of Chad to immediately arrest Omar Al-Bashir and surrender him to the Court should he enter its territory.

11. 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".

12. In this respect, the Chamber observes that in the Notification, the Prosecutor requests that the Chamber inform the SC of the situation to enable it to take the necessary action. Article 87(7) of the Statute, together with regulation 109 of the

¹¹ ICC-02/05-01/09-193, paras 1, 11.

¹² ICC-02/05-01/09-193, para. 13.

Regulations, aim solely at addressing a situation whereby the relevant State Party has already failed to comply with a request to cooperate by the Court, thereby preventing the Court from exercising its functions. As the visit of Omar Al-Bashir has not taken place yet, it is premature to rule on this part of the Prosecutor's request in this decision.

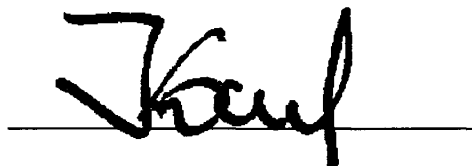
FOR THESE REASONS, THE CHAMBER HEREBY

- a) reminds** the Republic of Chad of the requests for arrest and surrender issued by the Court against Omar Hassan Ahmad Al Bashir and its obligation to execute those requests;
- b) requests** the Republic of Chad to immediately arrest Omar Hassan Ahmad Al-Bashir and surrender him to the Court;
- c) instructs** the Registry to immediately transmit the present decision to the Republic of Chad;
- d) orders** the Registry to prepare a report to be filed with the Chamber in due course concerning said visit; and
- e) rejects** the Prosecutor's request to inform the Security Council of the situation.

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 Tuesday, 25 March 2014

At The Hague, The Netherlands