

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 22 February 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 Requesting Observations on Omar Al-Bashir's 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
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
Ms Silvana Arbia

Deputy Registrar
Mr 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 requesting observations on Omar Hassan Ahmad Al-Bashir’s (“Omar Al-Bashir”) visit 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 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 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”).

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”.⁵

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-02/05-01/09-109.

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”.⁶

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.⁷

7. 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”,⁸ 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 2013.⁹

8. On 14 February 2013, 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 (the “Order”).¹⁰

⁶ ICC-02/05-01/09-140.

⁷ ICC-02/05-01/09-143.

⁸ ICC-02/05-01/09-144 and its annex.

⁹ ICC-02/05-01/09-144.

¹⁰ Pre-Trial Chamber II, ICC-02/05-01/09-145.

9. On 19 February 2013, the Registry filed the “Report on the execution of the ‘Order Regarding Omar Al-Bashir’s Potential Visit to the Republic of Chad and the State of Libya’” (the “Registry’s Report” or “Report”).¹¹ According to the information provided in this Report, the Registry transmitted on 12 and 15 February 2013 respectively, two Notes Verbales concerning said visit, to the Embassy of the Republic of Chad in the Kingdom of Belgium reminding the relevant State of its obligations under the Statute.¹² The Registry also sent another Note Verbal regarding this visit to the Libyan authorities on 14 February 2013.¹³ Although the Embassy of Chad acknowledged receipt of the first Note Verbale sent by the Registry on 12 February 2013, no written confirmation has been provided so far regarding the receipt of the Chamber’s Order.¹⁴ The same holds true with respect to Libya, where the Registry has not been provided yet with a confirmation receipt of the Chamber’s Order.

10. According to the Registry’s Report and the relevant annexes appended thereto, Omar Al-Bashir’s visit to the Republic of Chad took place on 15 and 16 February 2013, even without prior consultation with the Court as required by virtue of article 97 of the Statute.¹⁵ However, there is no “press report indicating that [he] visited Libya”.¹⁶

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

¹¹ ICC-02/05-01/09-146 and its confidential annexes (1-5) as well as public annex (6).

¹² ICC-02/05-01/09-146, pp. 4-5.

¹³ ICC-02/05-01/09-146, p. 5.

¹⁴ ICC-02/05-01/09-146, p. 5.

¹⁵ ICC-02/05-01/09-146-Conf-Anx1.

¹⁶ ICC-02/05-01/09-146, p. 6; ICC-02/05-01/09-146-Anx6.

12. 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 and orders concerning the arrest and surrender of Omar Al-Bashir.

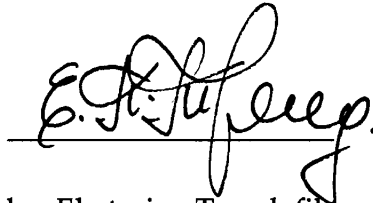
13. The Chamber further notes that according to article 87(7) of the Statute "[w]here a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute [...] the Court may make a finding to that effect and refer the matter to the Assembly of States Parties 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 [first] from the requested State".

FOR THESE REASONS, THE CHAMBER HEREBY

a) orders the Registry to immediately transmit a copy of the Report to the Republic of Chad; and

b) requests the competent authorities of the Republic of Chad to submit, no later than Thursday 14 March 2013, any observations with regard to: 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.

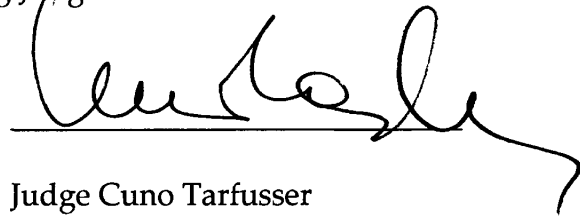
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Friday, 22 February 2013

At The Hague, The Netherlands