



Original: English

No.: ICC-02/15-01/09

Date: 17 May 2016

**PRE-TRIAL CHAMBER II**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Chang-ho Chung

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF**

***THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR***

**Public Document**

**Decision requesting the Republic of Djibouti to provide submissions on its failure to arrest and surrender Omar Al-Bashir to the Court**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda

James Stewart

**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  
Djibouti

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Herman von Hebel

**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 the Republic of Djibouti (“Djibouti”) to provide submissions on its failure to arrest and surrender Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”) to the Court.

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations (the “UN”) adopted Resolution 1593(2005), referring the situation in Darfur, Sudan to the Prosecutor of the Court.<sup>1</sup>
2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Al Bashir.<sup>2</sup> These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Djibouti was notified of the request for arrest and surrender of Omar Al-Bashir to the Court on 30 September 2010.<sup>3</sup>
3. Due to Djibouti’s failure to arrest and surrender Omar Al-Bashir to the Court while on its territory on 8 May 2011, Pre-Trial Chamber I, on 12 May 2011, made a finding of non-cooperation by Djibouti and referred the matter to the Assembly of States Parties to the Rome Statute and the Security Council.<sup>4</sup>
4. On 10 May 2016, the Registrar informed the Chamber that, according to media reports, Omar Al-Bashir again travelled to Djibouti on 8 May 2016 in order to attend the inauguration of President Ismail Omer Gaili.<sup>5</sup>

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<sup>1</sup> S/RES/1593 (2005).

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

<sup>3</sup> See ICC-02/05-01/09-127-Conf-Exp-Anx2 and ICC-02/05-01/09-127-Conf-Exp, para. 2.

<sup>4</sup> Pre-Trial Chamber I, “Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir’s recent visit to Djibouti”, 12 May 2011, ICC-02/05-01/09-129.

<sup>5</sup> ICC-02/05-01/09-259-Conf-Exp.

5. Notwithstanding its obligations to cooperate with the Court, Djibouti again did not arrest and surrender Omar Al-Bashir to the Court while on its territory nor did it consult with the Court, as mandated by article 97 of the Statute, in order to resolve any possible problem impeding or preventing the execution of the request for arrest and surrender of Omar Al-Bashir.

6. Pursuant to article 87(7) of the Statute, in case of non-compliance with obligations to cooperate the Court, one of the tools available to the Court is to make a finding of non-cooperation by the State 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, prior to any such step being taken, regulation 109 of the Regulations of the Court mandates that “the Chamber shall hear from the requested State”.

7. The Chamber considers that in order to determine the course of action in relation to Djibouti’s further non-compliance with its obligation to arrest and surrender to the Court Omar Al-Bashir, including on whether resort to the measures under article 87(7) is again warranted, it is appropriate to invite Djibouti to provide its observations in accordance with regulation 109 of the Regulations of the Court.

**FOR THESE REASONS, THE CHAMBER**

**REQUESTS** the competent authorities of the Republic of Djibouti to submit, by 24 June 2016, their observations with respect to their failure to arrest and surrender Omar Al-Bashir while present on the territory of the Republic of Djibouti; and

**ORDERS** the Registrar to transmit this decision to the competent authorities of the Republic of Djibouti.

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



**Judge Cuno Tarfusser**  
**Presiding Judge**



**Judge Marc Perrin de Brichambaut**



**Judge Chang-ho Chung**

Dated this 17 May 2016

At The Hague, The Netherlands