



Original: **English**

No.: ICC-02/05-01/09  
Date: **13 December 2017**

**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**

**Decision inviting the Republic of Chad to provide submissions concerning its failure to arrest Omar Al-Bashir and surrender him to the Court**

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 the Victims**

**Legal Representatives of the 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

**Other**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Pre-Trial Chamber II** (“Chamber”) of the International Criminal Court (“Court”) issues this decision inviting the Republic of Chad (“Chad”) to provide submissions concerning its failure to arrest Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”) and surrender him 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), whereby it referred the situation in Darfur since 1 July 2002 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 for war crimes, crimes against humanity and genocide allegedly committed in Darfur, Sudan, from March 2003 to, at least, 14 July 2008.<sup>2</sup> These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Chad was notified of the requests for arrest and surrender of Omar Al-Bashir to the Court pursuant to the two warrants on 5 March 2009 and 16 August 2010 respectively.<sup>3</sup>
3. On 1 December 2017, following the publication of press reports referring to a two-day official visit by Omar Al-Bashir to Chad, starting on the same day, the Registry attempted to transmit to Chad a note verbale reminding it of its obligation to cooperate with the Court in the arrest and surrender of Omar Al-Bashir and requesting that the Chadian authorities consult with the Court without delay in the event that they identify any problems which may impede or prevent the execution of the request for arrest and surrender.<sup>4</sup> The note verbale was only successfully notified

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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 reference at ICC-02/05-01/09-308-Conf-AnxI.

<sup>4</sup> ICC-02/05-01/09-308, paras 3-4.

to the Chadian authorities on 4 December 2017.<sup>5</sup> No response to this note verbale was received.

4. On 2 December 2017, the Registry received media reports that Omar Al-Bashir had concluded his visit to Chad.<sup>6</sup> While Omar Al-Bashir was on Chadian territory, Chad did not arrest him and surrender him to the Court.
5. Pursuant to article 87(7) of the Statute, in case of non-compliance with obligations to cooperate with 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. In the view of the Chamber, Omar Al-Bashir's reported visit to Chad warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Chad with the Court's request for arrest and surrender of Omar Al-Bashir to the Court and refer the matter to the Assembly of States Parties and/or the Security Council of the United Nations.
6. The Chamber recalls that, 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".

**FOR THESE REASONS, THE CHAMBER HEREBY**

**INVITES** the Republic of Chad to provide submissions concerning its failure to arrest Omar Al-Bashir and surrender him to the Court, while he was present on Chadian territory on or around 1-2 December 2017, by 22 January 2018; and

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<sup>5</sup> *Ibid.*, para. 3.

<sup>6</sup> *Ibid.*, para. 5; ICC-02/05-01/09-308-AnxII.

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

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 13 December 2017

At The Hague, The Netherlands