

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 July 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
Urgent**

Decision Regarding Omar Al-Bashir's Visit to the Federal Republic of Nigeria

Document 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 Federal Republic of Nigeria

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”) issues this decision regarding the “Prosecution’s notification of travel in the case of *The Prosecutor v Omar Al Bashir*” (the “Prosecutor’s 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”) 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”).

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

¹ ICC-02/05-01/09-156 and its annex.

² S/RES/1593 (2005).

³ ICC-02/05-01/09-1; ICC-02/05-01/09-95.

⁴ ICC-02/05-01/09-7.

⁵ ICC-02/05-01/09-96.

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

5. On 15 July 2013, the Chamber received the Prosecutor's Notification, in which she contends that, on the basis of media reports, Omar Al-Bashir has arrived in the Nigerian capital, Abuja, to participate in the Special Summit of the African Union on HIV/AIDS, Tuberculosis and Malaria, scheduled to take place from 12 to 16 July 2013.⁷ The Prosecutor further contends that the spokesperson of the Nigerian President has stated that "[t]he Sudanese president came for an AU event and the AU has taken a position on the ICC arrest order, so Nigeria has not taken action different from the AU stand".⁸

6. The Chamber notes articles 86, 87(7) and 89 of the Statute.

7. The Chamber observes that the Federal Republic of Nigeria is a State Party to the Statute since 27 September 2001 and, accordingly, it is under the obligation pursuant to articles 86 and 89 of the Statute, to execute the pending Court's decisions concerning the arrest and surrender of Omar Al-Bashir. The Chamber expects the Federal Republic of Nigeria to immediately arrest Omar Al-Bashir and surrender him to the Court.

8. 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

⁶ ICC-02/05-01/09-143.

⁷ ICC-02/05-01/09-156, para. 8, ICC-02/05-01/09-156-AnxA.

⁸ ICC-02/05-01/09-156, para. 9.

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”.

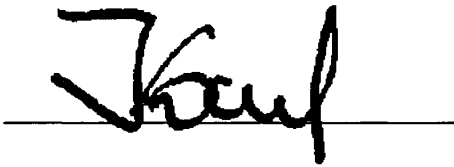
FOR THESE REASONS, THE CHAMBER HEREBY

- a) requests** the Federal Republic of Nigeria to immediately arrest Omar Al-Bashir and surrender him to the Court;
- b) instructs** the Registry to immediately transmit the present decision to the Federal Republic of Nigeria;
- c) orders** the Registry to prepare a report to the Chamber concerning Omar Al-Bashir’s visit to the Federal Republic of Nigeria.

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 Monday, 15 July 2013

At The Hague, The Netherlands