

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 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 Requesting Observations on Omar Al-Bashir's Visit to the Democratic
Republic of the Congo**

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 Democratic Republic of the Congo

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” or the “ICC”) issues this decision requesting observations on Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”) most recent visit to the Democratic Republic of the Congo.

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 of 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 S/RES/1593 (2005).

² Pre-Trial Chamber I, “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-1; “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, ICC-02/05-01/09-95.

³ ICC-02/05-01/09-7.

⁴ ICC-02/05-01/09-96.

Congo, Darfur, Sudan and Côte d'Ivoire situations", in which it reassigned, *inter alia*, the situation of Darfur, Sudan to this Chamber.⁵

5. On 26 February 2014, the Chamber was notified of the "Prosecution's Notification of Possible Travel in the Case of *The Prosecutor v Omar Al Bashir*" (the "Notification").⁶ In the Notification, the Prosecutor contended that, on the basis of media reports, there is a possibility that Omar Al-Bashir travels to the Democratic Republic of the Congo (the "DRC") to attend the "Common Market for Eastern and Southern Africa (COMESA) summit in Kinshasa" scheduled to take place on 26 and 27 February 2014.⁷ Accordingly, the Prosecutor requested that the Chamber takes 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 DRC; and c) remind the DRC authorities of their "standing obligation to arrest persons for whom warrants of arrest have been issued by the ICC".⁸

6. On 26 February 2014, the Chamber issued the "Decision Regarding Omar Al-Bashir's Visit to the Democratic Republic of the Congo", in which it, *inter alia*, requested the DRC to immediately arrest and surrender Omar Al-Bashir to the Court and ordered the Registry to prepare a report concerning said visit to be submitted to the Chamber in due course.⁹

⁵ Presidency, ICC-02/05-01/09-143.

⁶ ICC-02/05-01/09-185 and its annex A.

⁷ ICC-02/05-01/09-185, paras 1 and 8; ICC-02/05-01/09-185-AnxA.

⁸ ICC-02/05-01/09-185, para. 10.

⁹ Pre-Trial Chamber II, ICC-02/05-01/09-186, p. 5.

7. On 26 February 2014, the Prosecutor filed the “Addendum to the Prosecution’s Notification of Possible Travel in the Case of The Prosecutor v Omar Al Bashir”.¹⁰

8. On 3 March 2014, the Chamber was notified of the “Registry’s Report on the ‘Decision Regarding Omar Al-Bashir’s Visit to the Democratic Republic of the Congo’” (the “Registry’s Report”).¹¹ According to the Registry’s Report, Omar A-Bashir’s visit took place and it is confirmed by the DRC authorities that he left the country in the morning of 27 February 2014.¹²

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

10. The Chamber observes that the DRC is a State Party to the Statute since 1 July 2002 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. Thus, the Chamber expected the DRC to immediately arrest Omar Al-Bashir and surrender him to the Court when he entered its territory.

11. The Chamber notes, in particular, 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” (emphasis added). However, before making a finding to that effect, regulation

¹⁰ ICC-02/05-01/09-187 and its annex A.

¹¹ ICC-02/05-01/09-188 and its confidential annexes.

¹² ICC-02/05-01/09-187, p. 4.

109(3) of the Regulations dictates that the “Chamber shall hear [first] from the requested State”.

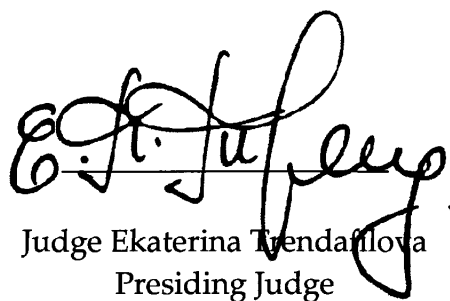
FOR THESE REASONS, THE CHAMBER HEREBY

a) invites the competent authorities of the Democratic Republic of the Congo to submit, no later than Friday 14 March 2014, any observations with regard to: (1) the failure to execute the requests for arrest and surrender of Omar Hassan Ahmad Al-Bashi 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 his arrest and surrender during his visit to the country;

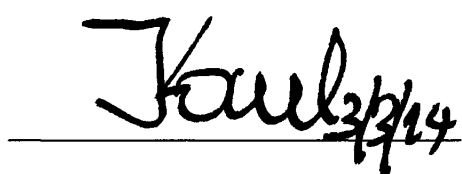
b) instructs the Registry to transmit the present decision to the Democratic Republic of the Congo; and

c) orders the Registry to prepare a report to the Chamber after having received the Government’s observations to be filed in due course.

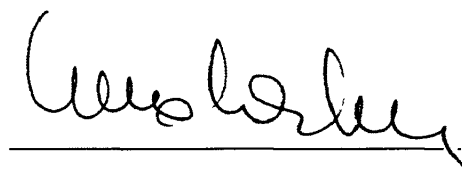
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Monday, 3 March 2014

At The Hague, The Netherlands