

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 2015

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFOUR (SUDAN)

**IN THE CASE OF
THE PROSECUTOR *v.* OMAR HASSAN AHMAD AL BASHIR**

PUBLIC

Six confidential annexes - only available to the Prosecutor and the competent authorities of the Republic of South Africa - and one public annex

Registry Report on the consultations undertaken under Article 97 of the Rome Statute by the Republic of South Africa and the departure of Omar Al Bashir from South Africa on 15 June 2015

Source: Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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
South Africa

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the warrants of arrest against Omar Al-Bashir dated 4 March 2009 and 12 July 2010¹;

NOTING the “Request to all States Parties to the Rome Statute for the Arrest and Surrender of Omar Ahmad Al Bashir” issued by the Pre-Trial Chamber II (“the Chamber”) dated 6 March 2009²;

NOTING the “Supplementary Request to all States Parties to the Rome Statute for the Arrest and Surrender of Omar Ahmad Al Bashir” issued by the Chamber dated 21 July 2010³;

NOTING the “Corrigendum of Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects”⁴ issued on 15 April 2015 by Pre-Trial Chamber II;

NOTING the “Urgent request from the Authorities of South Africa”⁵ filed by the Registry on 12 June 2015;

NOTING the Prosecution’s Urgent Response to the Registry’s submission titled “Urgent request from the Authorities of South Africa” (ICC-02/05-01/09-239-Conf)⁶ dated 13 June 2015;

NOTING the “Prosecution’s Urgent Request for an Order clarifying whether Article 97 Consultations with South Africa have Concluded and that South Africa is Under

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

² ICC-02/05-01/09-7.

³ ICC-02/05-01/09-96.

⁴ ICC-02/05-01/09-235-Corr.

⁵ ICC-02/05-01/09-239-Conf.

⁶ ICC-02/05-01/09-240-Conf.

an Obligation to Immediately Arrest and Surrender Omar Al Bashir” ⁷dated 13 June 2015 ;

NOTING the “Decision following the Prosecutor’s request for an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir “ ⁸ issued by Pre Trial Chamber II on 13 June 2015;

NOTING articles 87(l)(a), 89(1) and 91 of the Rome Statute and Rule 176(2) of the Rules of Procedure and Evidence;

INFORMS the Chamber as follows:

1. On Friday 12 June 2015 at 17.00, further to a request from the South African authorities for consultations with the Court in accordance with article 97 of the Statute, Single Judge Tarfusser convened a meeting with a delegation of the Embassy of South Africa to the Kingdom of The Netherlands, the representatives of the Registry and the Office of the Prosecutor with regard to the cooperation request transmitted to South Africa in the context of the planned attendance of President Al-Bashir to the African Union (AU) summit scheduled from 7 to 15 June 2015. During this meeting, the Ambassador of the Republic of South Africa read a *note verbale* referenced 39/2015 dated 12 June 2015 (annex 1). The transcripts of the discussions are annexed to the present filing (annex 2).
2. On the same day, during the above-mentioned meeting, a *note verbale* dated 12 June 2015 was sent by the Ministry of Justice to announce the imminent arrival of the Chief State Law Adviser at the Department of Justice and Constitutional Development of the Republic of South Africa (the “Chief State Law Adviser”)

⁷ ICC-02/05-01/09-241-Conf.

⁸ ICC-02/05-01/09-242.

requesting consultations in accordance with article 97 of the Statute (annex 3). The Embassy had indeed indicated shortly before the meeting that the Chief State Law Adviser was not able to travel the night before as scheduled due to a problem with his visa.

3. On Saturday 13 June 2015 at 12.40, two representatives of Registry met with the Chief State Law Adviser. During this meeting, the Chief State Law Adviser indicated that he was representing the Government of South Africa and wanted to engage in the consultations foreseen by Article 97. He mentioned that he would stay for four days in The Hague for this purpose. He also raised a number of legal and political issues to be taken into consideration by the Court. The representatives of the Registry indicated that the consultations ended the day before and reiterated that according to the Single Judge, South Africa was under an obligation to arrest Mr. Omar Al Bashir. During this meeting, a courtesy copy of the transcripts of the meeting that took place on 12 June 2015 as well as the public decision of Pre-Trial Chamber II rendered on 9 April 2014 on the cooperation of the Democratic Republic of the Congo regarding Omar Al Bashir's arrest and surrender to the Court⁹ were handed to the Chief State Law Adviser as the Single Judge had instructed the previous day to communicate such documents to the South African authorities. Those two documents were transmitted to the Embassy of South Africa on 15 June 2015 in the morning.
4. The Registry provided the contacts of the Chief State Law Adviser to the Office of the Prosecutor after this meeting. It was informed that representatives of the Office of the Prosecutor subsequently met with the Chief State Law Adviser on 13 June 2015.
5. On 13 June 2015, the Prosecutor submitted to the Chamber a "Request for an order further clarifying whether Article 97 Consultations with South

⁹ ICC-02/05-01/09-195.

Africa have Concluded and that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir". The same day, the Single Judge issued "an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir" and stated that "as there exists no issue which remains unclear or has not already been explicitly discussed and settled by the Court, the consultations under article 97 of the Statute between the Court and the Republic of South Africa have therefore ended". The Registry notified both documents to the South African Embassy on 13 June 2015 in the evening (Annex 4).

6. The Registry remained on stand by for a possible filing by the South African authorities on Sunday 14 June.
7. According to different source of media, the arrest warrant against Mr. Omar Al Bashir was referred to the High Court of Justice in Pretoria which issued on Sunday 14 June 2015 an order compelling the authorities of South Africa to prevent Mr. Bashir from leaving the country until an order was made by the Court.
8. A public hearing was held on Monday 15 June 2015 by the above-mentioned High Court to decide if the Government was required to execute the arrest warrant issued by the Court. According to the media,¹⁰ the High Court ruled that "*the failure to detain Sudan President Omar al-Bashir is inconsistent with the Constitution, and he must be detained pending a formal request from the ICC*". The Judges announced that they would provide the reasons of their decision the week after. During this hearing, the Attorney for the South African Government stated that the "*Government now [had] reliable information that*

¹⁰ See articles referred to in Annex 7 to the present filing.

Omar al-Bashir has departed” and that “the Minister of State Security [had] confirmed an investigation would be conducted into how Bashir left the country”.

9. The information was confirmed by the Sudanese Information Minister Ahmed Bilal Osman, who told different news agency (Reuters, AFP) that “*Mr Bashir’s plane was expected to land in Khartoum at about 18:30 local time (1530 GMT)*”.
10. Also on Monday 15 June 2015, the Registry addressed another *note verbale* to the Embassy of South Africa to The Netherlands referenced 2015/ER/52/ebs/CB (Annex 5) transmitting the transcript of the 12 June 2015 meeting (Annex 2) and a copy of decision ICC-02/05-01/09-195.
11. Still on the same day, at approximately 18:30 pm, the Embassy of South Africa delivered a *note verbale* dated 15 June 2015 and referenced 040/2015 submitting that as far as the authorities had been able to establish the consultations under article 97 had not taken place (annex 6).
12. Annexes 1 to 6 to the present document are filed confidential as they concern diplomatic correspondences between the South African authorities and the Court and contain contact details of staff members of the Court and representatives of South Africa.
13. The Registry finally appends some press articles selected from different media on the events of 15 June 2015 regarding the departure of M. Al-Bashir from South Africa (annex 7).

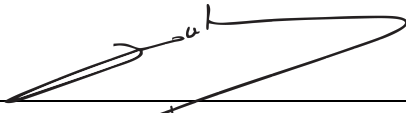
TRANSMITS to the Chamber:

- The notes verbale of the Embassy of the Republic of South Africa to Kingdom of the Netherlands (Ref: 039/2015) dated 12 June 2015 (Annex 1 - Confidential);

- Transcripts of the meeting held on 12 June 2015 in the case *The Prosecutor v. Omar Hassan Al Bashir* (ICC-02/05-01/09), with Single Judge Cuno Tarfusser, Ambassador of South Africa and representatives of the Registry and the Office of the Prosecutor (Annex 2- Confidential);
- The letter of the Office of the Chief State Law Adviser of the Department of Justice and Constitutional Development of the Republic of South Africa (ref ICC-02/05/09-3)Ref2015/ER/38/aab/CB) dated 12 June 2015 (Annex 3 - Confidential);
- The note verbale from the Registry dated 13 June 2015 transmitting to the Embassy of South Africa the “Prosecution’s Urgent Request for an Order clarifying whether Article 97 Consultations with South Africa have Concluded and that South Africa is Under an Obligation to Immediately Arrest and Surrender Omar Al Bashir” (ICC-02/05-01/09-241-Conf) and the “Decision following the Prosecutor’s request for an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir” (ICC-02/05-01/09-242), both dated on 13 June 2015 (Annex 4- Confidential);
- The note verbale from the Registry to the Embassy of South Africa dated 15 June 2015 transmitting the above-mentioned transcripts (Annex 5 - Confidential);

- The note verbale from the Embassy of South Africa (reference 040/2015) dated 15 June 2015 (Annex 6 - Confidential);
- Media report on the departure of M. Omar Al Bashir from the Republic of South Africa on 15 June 2015 (Annex 7 - Public).

RESPECTFULLY SUBMITTED



Marc Dubuisson, Director, Division of Judicial Services
On behalf of
Herman von Hebel, Registrar

Dated this 17 June 2015

At The Hague, The Netherlands