



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 Uganda 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
Uganda

Amicus Curiae

REGISTRY

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 Uganda (“Uganda”) 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.¹
2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Al Bashir.² These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Uganda was notified of the requests for arrest and surrender of Omar Al-Bashir to the Court pursuant to the two warrants on 18 March 2009³ and 31 August 2010⁴ respectively.
3. On 11 May 2016, acting on the basis of media reports of Omar Al Bashir’s travel to Uganda in order to attend the inauguration ceremony of President Yoweri Museveni, transmitted to the Ugandan authorities a note verbale reminding them of their obligations, as a State Party to the Rome Statute, to cooperate with the immediate arrest and surrender of Omar Al-Bashir to the Court, pursuant to article 89(1) of the Statute, in the event that he attends said ceremony.⁵ This note verbale also reminded Uganda of its obligation to consult with the Court, should it foresee any difficulties in implementing the request for cooperation.

¹ S/RES/1593 (2005).

² 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.

³ See reference in ICC-02/05-01/09-260-Conf-AnxII, p. 3.

⁴ See ICC-02/05-01/09-113-Conf-Exp-Anx1, pp. 244-246.

⁵ This note verbale was also filed in the record of the case: ICC-02/05-01/09-260-Conf-AnxII.

4. On 12 May 2016, the Registrar informed the Chamber that media reports suggested that Omar Al-Bashir had indeed travelled to Uganda and had attended the inauguration ceremony of President Yoweri Museveni in Kampala, and that no reply to the Registrar's note verbale had been received by the Court from the authorities of Uganda.⁶

5. Notwithstanding its obligations to cooperate with the Court, Uganda 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 Uganda's 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 warranted in the present circumstances, it is appropriate to invite Uganda to provide its observations in accordance with regulation 109 of the Regulations of the Court.

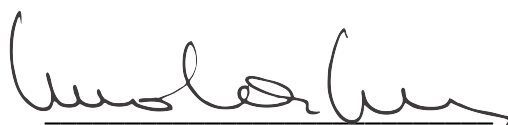
⁶ ICC-02/05-01/09-260-Conf and its annexes.

FOR THESE REASONS, THE CHAMBER

REQUESTS the competent authorities of the Republic of Uganda 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 Uganda; and

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

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