

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/12
Date: 10 September 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF THE PROSECUTOR V. ABDEL RAHEEM MUHAMMAD
HUSSEIN**

Public

**Decision Requesting Observations on the Visit of Abdel Raheem Muhammad
Hussein to the Central African Republic**

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 Central African Republic

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”) renders this decision requesting observations on the visit of Abdel Raheem Muhammad Hussein (“Mr. Hussein”) to the Central African Republic.

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, Sudan to the Court.¹

2. On 1 March 2012, Pre-Trial Chamber I (the “PTC I”) issued the “Decision on the Prosecutor’s application under article 58 relating to Abdel Raheem Muhammad Hussein”,² and the “Warrant of Arrest for Abdel Raheem Muhammad Hussein”³ for crimes against humanity and war crimes committed in Darfur, Sudan from August 2003 to March 2004. The warrant of arrest remains to be executed.

3. On 13 March 2012, 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 Abdel Raheem Muhammad Hussein”⁴ as well as the “Request to United Nations Security Council members not States Parties to the Rome Statute for the arrest and surrender of Abdel Raheem Muhammad Hussein”.⁵ These requests called for, *inter alia*, cooperation from States Parties and States not Parties to the Rome Statute (the “Statute”) in the arrest and surrender of Mr. Hussein.

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, ICC-02/05-01/12-1-Red.

³ Pre-Trial Chamber I, ICC-02/05-01/12-2.

⁴ ICC-02/05-01/12-5.

⁵ ICC-02/05-01/12-6.

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

5. On 3 September 2013, the Chamber received the “Registry notification of purported travel of Abdel Raheem Muhammad Hussein in Central African Republic”, filed confidential together with two public annexes appended thereto (the “Registry’s Notification” or “Registry’s Report”).⁷ According to the Registry’s Notification and the two annexes appended thereto, which are based on media articles, Mr. Hussein travelled to the Central African Republic on 19 August 2013 to attend the “inauguration of the new President of the Central African Republic, Michel Djotodia”.⁸ This visit apparently took place without prior consultation with the Court, as required by virtue of article 97 of the Statute.

6. The Chamber notes articles 86, 87(7), 89 and 97 of the Statute and regulations 23 *bis* (3) and 109(2) and (3) of the Regulations of the Court (the “Regulations”).

7. The Chamber notes that the Central African Republic is a State Party to the Statute since 1 January 2002, and accordingly, it is under the obligation, in accordance with articles 86 and 89 of the Statute, to execute the Court’s pending decisions concerning the arrest and surrender of Mr. Hussein.

⁶ Presidency, ICC-02/05-01/09-143.

⁷ ICC-02/05-01/12-13-Conf and its public annexes.

⁸ ICC-02/05-01/12-13-Conf, paras 1-2; ICC-02/05-01/12-13-Anx1; ICC-02/05-01/12-13-Anx2.

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 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”. However, before making a finding to that effect, regulation 109(3) of the Regulations dictates that the “Chamber shall hear from the requested State”.

9. Finally, the Chamber notes that the Registry filed its Report confidential without stating the reasons for this level of classification. Upon review of the content of the Registry’s Report, the Chamber does not see a reason to withhold it from the public and to retain this level of classification.

FOR THESE REASONS, THE CHAMBER HEREBY

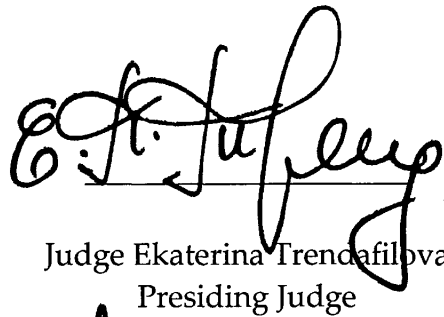
a) orders the Registry to transmit to the Central African Republic, as soon as possible, a French translation of the present decision and of the Registry’s Report together with a French translation of Annex 1, and Annex 2 in its original language;

b) requests the competent authorities of the Central African Republic to submit, within two weeks of the transmission of the French translation of the present decision and of the Registry’s Report together with its annexes appended thereto, any observations with regard to: 1) the alleged failure to execute the request for arrest and surrender of Abdel Raheem Muhammad Hussein to the Court and; 2) the alleged failure to consult with the Court in case of any problem identified which might have impeded the execution of the request for arrest and surrender of Abdel Raheem Muhammad Hussein during his visit;

c) **orders** the Registry to file a report with the Chamber in due course, including any observation received by the competent authorities of the Central African Republic; and

d) **orders** the Registry to reclassify as public the Registry's Report, document number: ICC-02/05-01/12-13-Conf.

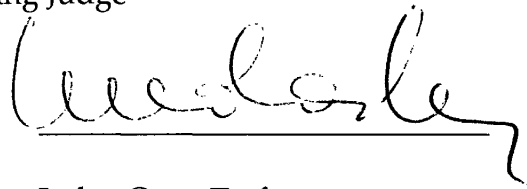
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Tuesday, 10 September 2013

At The Hague, The Netherlands