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No.: ICC-02/05-01/09  
Date: 18 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 Omar Hassan Ahmad AL BASHIR ("Omar Al Bashir")*

**Public  
with Public Annex A**  
Prosecution's urgent notification of travel in the case of *The Prosecutor v Omar Al  
Bashir*

**Source:** Office of the Prosecutor

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

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**Unrepresented Applicants for  
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**The Office of Public Counsel for the  
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**States Representatives**

**Amicus Curiae**

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**Registrar & Deputy Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **Introduction**

1. The Prosecution hereby notifies Pre-Trial Chamber II (the “Chamber”) of the possibility of travel by President Omar Al Bashir (“Omar Al Bashir”) to attend the 68<sup>th</sup> regular session of the General Assembly of United Nations at the UN Headquarters due to start on 17 September 2013 in New York, United States of America (“United States”).
2. The Prosecution requests that the Chamber seek information from the relevant authorities of the United States regarding the above and take any measures the Chamber deems appropriate to secure execution of the pending warrants of arrest against Omar Al Bashir, including informing the U.N. Security Council of the impending travel.

## **Procedural Background**

3. 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. The Security Council decided in the context of cooperation with and assistance to the Court that “...while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully”.
4. On 14 July 2008, the Prosecution filed its application for an arrest warrant for Omar Al Bashir.<sup>1</sup> On 4 March 2009, the Chamber issued an arrest warrant for Omar Al Bashir for seven counts of crimes against humanity and war crimes. In the decision, the Chamber found that “under Article 58(1) of the Statute, the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court; (ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the above-mentioned crimes.”<sup>2</sup>
5. On 5 and 6 March 2009, the Registry submitted 3 filings to the Chamber, detailing transmission of the warrant of arrest and the requests for its implementation to the Government of the Sudan,<sup>3</sup> to all Rome Statute States Parties<sup>4</sup> and to the members of the UN Security Council.<sup>5</sup>

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<sup>1</sup> ICC-02/05-157.

<sup>2</sup> ICC-02/05-01/09-3.

<sup>3</sup> ICC-02/05-01/09-5.

<sup>4</sup> ICC-02/05-01/09-7.

<sup>5</sup> ICC-02/05-01/09-8.

6. On 12 July 2010, the Chamber issued a second arrest warrant for Omar Al Bashir for three counts of genocide.<sup>6</sup> The Registry subsequently transmitted requests and supplementary requests for the arrest and surrender of Omar Hassan Ahmad Al Bashir to States Parties, Non-States Parties Members of the United Nations Security Council and the Republic of the Sudan.

### **Reports of Omar Al Bashir's planned travel to the United States**

7. News reports indicate that Omar Al Bashir has applied for a U.S. visa to attend the United Nations General Assembly meetings taking place this month at UN headquarters in New York, United States.<sup>7</sup> A State Department spokeswoman has reportedly confirmed in a press statement the receipt of a visa application for Omar al-Bashir to attend events related to the opening of the UN General Assembly.<sup>8</sup>
8. The statement reportedly added that the United States condemns any potential effort by Omar Al Bashir to travel to New York, given that he stands accused of genocide, war crimes and crimes against humanity by the International Criminal Court.<sup>9</sup> The Permanent Representative of the United States to the United Nations reportedly observed that the above mentioned visit by Omar Al Bashir to the United States would be "deplorable, cynical and hugely inappropriate".<sup>10</sup>
9. The Prosecution considers that the reports are credible and warrant intervention by the Chamber.

### **Relief Sought**

10. The Prosecution requests that the Chamber take steps to ensure that the arrest warrants are executed. In particular, the Chamber should seek information from the relevant authorities of the United States regarding the possible visit of Omar Al Bashir and remind those authorities of the existence of warrants of arrest against Omar Al Bashir for serious crimes under the Statute. The Chamber should also consider reminding the relevant authorities of the United States of the decision of the Security Council in Resolution 1593 (2005) urging "all States" to cooperate fully with the Court. Finally,

<sup>6</sup> ICC-02/05-01/09-95.

<sup>7</sup> See Annex A.

<sup>8</sup> <http://www.africareview.com/News/Washington+asks+Bashir+not+to+set+foot+in+the+US+/-/979180/1995584/-/248wpy/-/index.html>. See further Annex A.

<sup>9</sup> <http://www.africareview.com/News/Washington+asks+Bashir+not+to+set+foot+in+the+US+/-/979180/1995584/-/248wpy/-/index.html>. See further Annex A.

<sup>10</sup> <http://usun.state.gov/briefing/statements/214290.htm>. See further Annex A.

the Chamber should consider informing the U.N. Security Council of the situation<sup>11</sup> in order to enable the Council to take appropriate action.



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**Fatou Bensouda**

Prosecutor

Dated this 18<sup>th</sup> day of September 2013

At The Hague, the Netherlands

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<sup>11</sup> See in this context ICC-02/05-01/09-129.