

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/12
Date: 13 November 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 on the Cooperation of the Republic of Chad Regarding Abdel Raheem
Muhammad Hussein's Arrest and Surrender 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, 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 Republic of Chad

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”) renders this decision on the cooperation of the Republic of Chad regarding the arrest and surrender of Abdel Raheem Muhammad Hussein (“Mr. Hussein”).

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 instruction, 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 25 April 2013, the Chamber received the “Prosecution’s notification of possible travel in the case of *The Prosecutor v. Abdel Raheem Muhammad Hussein* pursuant to Article 97 of the Rome Statute” (the “Notification”).⁷ According to the Notification and the annex appended thereto, Mr. Hussein was expected to “participate in the fourth conference on performance evaluation of the joint Sudanese-Chadian border [forces]”, which was scheduled to take place in the Republic of Chad on 25 and 26 April 2013.⁸

6. On 26 April 2013, the Chamber issued the “Order Regarding Abdel Raheem Muhammad Hussein’s Potential Visit to the Republic of Chad” (the “26 April 2013 Order”),⁹ in which it ordered the Registry to “prepare and send a *note verbale* to the competent authorities of the Republic of Chad enquiring about said visit, and reminding the State of its obligations with respect to the arrest and surrender of Mr. Hussein to the Court”.¹⁰ The Chamber also ordered the Registry to “prepare a report to be filed with [it] [...] in due course concerning said visit”.¹¹

⁶ Presidency, ICC-02/05-01/09-143.

⁷ ICC-02/05-01/12-11 and its annex.

⁸ ICC-02/05-01/12-11-AnxA.

⁹ Pre-Trial Chamber II, ICC-02/05-01/12-12.

¹⁰ Pre-Trial Chamber II, ICC-02/05-01/12-12, p. 5.

¹¹ Pre-Trial Chamber II, ICC-02/05-01/12-12, p. 5.

7. On 11 September 2013, the Chamber was notified of the “Report of the Registry on the ‘Order Regarding Abdel Raheem Muhammad Hussein’s Potential Visit to the Republic of Chad’”.¹²

8. On 18 September 2013, the Chamber issued the “Decision Requesting Observations on the Visit of Abdel Raheem Muhammad Hussein to the Republic of Chad” (the “18 September 2013 Decision”),¹³ in which it, *inter alia*, requested:

b) [...] the competent authorities of the Republic of Chad to submit, within two weeks of the transmission of the French translation of the present decision and of the Registry’s Report together with the relevant annexes appended thereto, any observations with regard to: 1) whether Abdel Raheem Muhammad Hussein’s visit to the Republic of Chad took place; 2) the alleged failure to execute the request for arrest and surrender of Abdel Raheem Muhammad Hussein to the Court in case said visit took place and; 3) 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; and

c) order[ed] the Registry to file a report with the Chamber in due course, including any observations received by the competent authorities of the Republic of Chad.¹⁴

9. On 23 October 2013, the Chamber received the “Rapport du Greffe relative à la ‘Décision invitant au dépôt d’observations concernant la visite d’Abdel Raheem Muhammad Hussein en République du Tchad’” (the “Registry’s First Report”),¹⁵ in which it is indicated, *inter alia*, that due to problems of communication between the Ministry of Foreign Affairs and the Ministry of Justice, the competent authorities of Chad requested an extension of time to submit their observations by 4 November 2013.¹⁶

¹² ICC-02/05-01/12-15 and its annexes.

¹³ Pre-Trial Chamber II, ICC-02/05-01/12-16.

¹⁴ Pre-Trial Chamber II, ICC-02/05-01/12-16, pp. 6-7.

¹⁵ ICC-02/05-01/12-18-Conf and its 2 confidential annexes.

¹⁶ ICC-02/05-01/12-18-Conf, p. 5.

10. On 6 November 2013, the Chamber was notified of the “Second Rapport du Greffe relative à la ‘Décision invitant au dépôt d’observations concernant la visite d’Abdel Raheem Muhammad Hussein en République du Tchad’”.¹⁷

11. The Chamber notes articles 86, 87(7) and 89 of the Statute and regulation 35 (2) of the Regulations of the Court (the “Regulations”).

12. The Chamber recalls that in the 18 September 2013 Decision, it requested the competent authorities of Chad to submit their observations in compliance with operative part (b) of said decision, within two weeks of receipt of the French translations of the relevant documents.¹⁸ These observations were due on 17 October 2013.¹⁹ However, after reviewing the Registry’s First Report which was submitted to the Chamber on 23 October 2013, it became clear that the competent authorities of Chad requested an extension of time for submitting their observations only on 22 October 2013, that is, after the 17 October 2013 deadline.²⁰

13. In this respect, the Chamber considers that it is called upon to verify whether Chad “can demonstrate that [...] it was unable to file the application [for extension of time] within the time limit for reasons outside [...] its control”, pursuant to regulation 35(2) of the Regulations.

14. The competent authorities of Chad explained relatively in detail that there were problems of communication between the Ministry of Foreign Affairs and the Ministry of Justice, which prevented them from meeting their deadline.

¹⁷ ICC-02/05-01/12-19-Conf and its confidential annex.

¹⁸ Pre-Trial Chamber II, ICC-02/05-01/12-16, pp. 6-7.

¹⁹ ICC-02/05-01/12-18-Conf-Anx2.

²⁰ ICC-02/05-01/12-18-Conf, p. 3.

Accordingly, they requested an extension of time for submitting their observations until 4 November 2013.²¹ Based on the explanation provided by the Chadian authorities, the Chamber considers that Chad was unable to request an extension within the time limit required and has shown good cause to warrant an extension of time as requested. The Chamber shall therefore admit these observations.

15. Turning to the merits, the Chamber notes that the Republic of Chad is a State Party to the Statute since 1 January 2007, and accordingly, it is under the obligation, pursuant to articles 86 and 89 of the Statute, to execute the Court's pending decisions concerning the arrest and surrender of Mr. Hussein.

16. The Chamber further recalls 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).

17. The Chamber takes note of the explanations provided by the competent authorities of Chad, which reveal that, in this particular context, they were not informed of the presence of Mr. Hussein on Chadian territory until 27 April 2013. Thus, Chad was not in a position to execute the Court's decisions, due to the departure of Mr. Hussein by the time they were informed of the 26 April 2013 Order. In this regard, the Chamber wishes to make clear that although it does not

²¹ ICC-02/05-01/12-18-Conf, paras 3-5; This justification was reiterated in the communication of the Chadian authorities, ICC-02/05-01/12-19-Conf-AnxI, p. 2.

call into question the actual intentions of the Chadian Government, it fails to understand how the competent authorities of Chad were not aware of an official visit by another State's representative for a conference on the performance of the joint Sudanese-Chadian border forces. In this respect, the Chamber believes it pertinent that the Chadian authorities put in place a system enabling their authorities to be informed when a person subject to a warrant of arrest issued by the Court enters the territory of the country. This would ensure that the State is in a position to enforce the warrant of arrest and thus fulfil its responsibilities under the Statute.

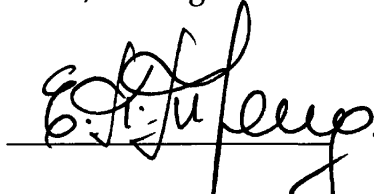
18. The Chamber still takes into consideration Chad's commitment to comply with its obligations under the Statute to arrest and surrender Mr. Hussein if he returns to the country for any other reason.²² In view of the above explanation and the trust that Chad was acting in good faith, the Chamber does not deem it necessary at this stage to make a finding on non-compliance of Chad with the Court's decisions regarding the arrest and surrender of Mr. Hussein. Given these circumstances, the Chamber finds it sufficient at this stage to remind Chad of its obligations towards the Court and requests the Chadian authorities to arrest and surrender Mr. Hussein should a similar situation arise in the future.

²² ICC-02/05-01/12-19-Conf-AnXI, p. 3.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **reminds** the Republic of Chad of its obligations to execute the pending decisions concerning the arrest and surrender of Abdel Raheem Muhammad Hussein to the Court;
- b) **requests** the Republic of Chad to immediately arrest Abdel Raheem Muhammad Hussein and surrender him to the Court should he enter the territory of the country; and
- c) **instructs** the Registry to transmit, as soon as practicable, a French translation of the present decision to the Republic of Chad.

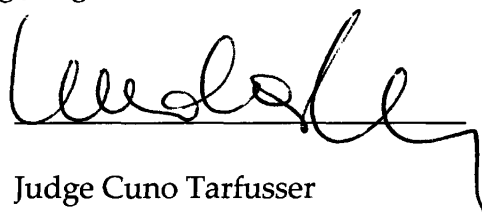
Done in both English and French, the English version being authoritative.



Judge Ekaterina Trendafilova
Presiding Judge



Judge Hans-Peter Kaul



Judge Cuno Tarfusser

Dated this Wednesday, 13 November 2013

At The Hague, The Netherlands