

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 March 2014

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***

**Public
With 2 public annexes**

Transmission to Pre-Trial Chamber II of the observations submitted by the Democratic Republic of Congo pursuant to the "Decision requesting observations on Omar Al-Bashir's visit to the Democratic Republic of Congo" dated 3 March 2014

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

M. 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 Democratic
Republic of the Congo

Amicus Curiae

REGISTRY

Registrar

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 Resolution 1593 (2005) of the United Nations Security Council, referring the situation in Darfur to the Court¹;

NOTING the warrants of arrest against Omar Al-Bashir dated 4 March 2009 and 12 July 2010²;

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 2009³;

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 2010⁴;

NOTING the “Prosecution’s urgent notification of travel in the case of *The Prosecutor v Omar Al Bashir*”⁵ dated 17 February 2014;

NOTING the “Decision Regarding Omar Al-Bashir’s Potential Travel to the Democratic Republic of the Congo”⁶ issued by the Chamber dated 26 February 2014;

NOTING the “Report of the Registry on the ‘Decision regarding Omar Al-Bashir’s visit to the Democratic Republic of the Congo’”⁷ submitted by the Registry on 28 February 2014;

¹ S/RES/1593 (2005)

² ICC-02/05-01/09-1; ICC-02/05-01/09-95

³ ICC-02/05-01/09-7

⁴ ICC-02/05-01/09-96

⁵ ICC-02/05-01/09-183

⁶ ICC-02/05-01/09-186

⁷ ICC-02/05-01/09-188

NOTING the “Decision requesting observations on Omar Al-Bashir’s visit to the Democratic Republic of the Congo”⁸ (“the Decision”) issued by the Chamber dated 3 March 2014;

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

CONSIDERING that in its Decision the Chamber invites the relevant authorities of the Democratic Republic of the Congo (“DRC”) to submit observations no later than Friday, 14 March 2014 on: (i) the failure to execute the requests for arrest and surrender of Omar Hassan Ahmad Al-Bashir to the Court (ii) the alleged failure to consult with the Court in case of any problems identified which might have impeded the execution of the requests for his arrest and surrender during his visit to the country;⁹

CONSIDERING that in the same Decision the Chamber ordered the Registry *inter alia* “to transmit the Decision to the DRC” and “to prepare a report to the Chamber after having received the Government’s observations to be filed in due course”¹⁰;

INFORMS the Chamber as follows:

1. On 6 March 2014, the Registry sent a note verbale transmitting the French version of the Decision to the competent authorities of the DRC (Annex 1);
2. The Congolese authorities sent their observations on 13 March 2014. They submitted that they were faced with a complex, ambiguous and annoying situation in terms of timing and conflicting legal obligations; under the circumstances they decided to act in a manner most compatible with their

⁸ ICC-02/05-01/09-189

⁹ *Ibid.*

¹⁰ *Ibid.*

obligations under the Rome Statute, while respecting their commitments towards the African Union and COMESA. (Annex 2);

3. The present filing and its annexes are classified public in line with the level of classification of the Decision. The annexes are filed public but the contact details of the staff members of the Court have been redacted.

TRANSMITS to the Single Judge the following:

- The note verbale dated 6 March 2014 sent by the Registry to the competent authorities of the DRC (Annex 1 – public).
- The observations dated 13 March 2014 submitted by the competent authorities of the DRC pursuant to the Decision (Annex 2 – public).

RESPECTFULLY SUBMITTED



Herman von Hebel
Registrar

Dated this 17 March 2014

At The Hague, The Netherlands