



Original: **English**

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

Date: **2 June 2017**

**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**

**Decision on the request of the Hashemite Kingdom of Jordan for an extension of the time limit to provide any further submissions on its failure to arrest and surrender Omar Al-Bashir to the Court**

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 the Victims**

**Legal Representatives of the 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 Hashemite  
Kingdom of Jordan

**Other**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Pre-Trial Chamber II** (“Chamber”) of the International Criminal Court (“Court”) issues this decision on the request of the Hashemite Kingdom of Jordan (“Jordan”) for an extension of time to provide any further 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 adopted Resolution 1593(2005), whereby it referred the situation in Darfur, Sudan, since 1 July 2002 to the Prosecutor of the Court.<sup>1</sup>
2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Al Bashir for war crimes, crimes against humanity and genocide allegedly committed in Darfur, Sudan, from March 2003 to, at least, 14 July 2008.<sup>2</sup> These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Jordan was notified of the requests for arrest and surrender of Omar Al-Bashir to the Court pursuant to the two warrants on 5 March 2009 and 16 August 2010 respectively.<sup>3</sup>
3. On 21 February 2017, acting on the basis of media reports of Omar Al-Bashir’s expected travel to Jordan in order to participate in the 28<sup>th</sup> Arab League Summit in Amman on 29 March 2017, the Registry transmitted to Jordan a note verbale inviting it to provide information regarding the visit and renewing the request to cooperate with the Court in the arrest and surrender of Omar Al-Bashir, in the event that he enters Jordanian territory.<sup>4</sup>
4. On 24 March 2017, the Registry received a note verbale from Jordan, wherein Jordan confirmed that its invitation had been delivered to Omar Al-Bashir for

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<sup>1</sup> S/RES/1593 (2005).

<sup>2</sup> 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.

<sup>3</sup> See reference at ICC-02/05-01/09-291-Conf-Anx1.

<sup>4</sup> ICC-02/05-01/09-291-Conf-Anx1.

participation in the Arab League summit, that the Sudanese government had registered its delegation for the summit as including Omar Al-Bashir, but that no official confirmation of the latter's attendance had yet been received.<sup>5</sup> The note verbale also stated that "Jordan adheres to its international obligations, including [the] applicable rules of customary international law, while taking into account all rights thereunder".

5. On 28 March 2017, the Registry received a second note verbale from Jordan, which stated that the Jordanian authorities had received confirmation that Omar Al-Bashir would attend the Arab League summit on 29 March 2017 and that "Jordan is hereby consulting with the ICC under article 97 of the Rome Statute".<sup>6</sup> The note verbale further stated that Jordan considers that "President Omar Al Bashir enjoys sovereign immunity as a sitting Head of State under the rules of customary international law" and that that immunity had not been waived by Sudan nor by the Security Council of the United Nations in its resolution 1593(2005). Making reference to articles 98(1) and 27(2) of the Statute, Jordan concluded that "[n]othing in the two articles mandates the State Party to the Rome Statute to waive the immunity of a third State and act inconsistently with its obligations under the rules of general international law on the immunity of a third State".
6. Omar Al Bashir eventually travelled to Jordan and attended the 28<sup>th</sup> Arab League Summit in Amman on 29 March 2017. While he was on Jordanian territory, Jordan did not arrest and surrender him to the Court.
7. On 26 April 2017, the Chamber held that Omar Al-Bashir's visit to Jordan warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Jordan with the

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<sup>5</sup> ICC-02/05-01/09-291-Conf-Anx2.

<sup>6</sup> ICC-02/05-01/09-293-Conf-Anx1-Corr.

Court's request for arrest and surrender of Omar Al-Bashir to the Court and refer the matter to the Assembly of States Parties and/or the Security Council of the United Nations, under article 87(7) of the Statute, and invited Jordan, if it wished to provide further submissions concerning its failure to arrest and surrender Omar Al-Bashir while present on its territory, to file any such submissions by 26 May 2017.<sup>7</sup>

8. On 24 May 2017, the Registry transmitted to the Chamber a note verbale received from Jordan and dated that same day, in which Jordan requests "an extension to the deadline of filing additional submissions [...] in order to give the relevant authorities the time limit to provide additional submissions".<sup>8</sup>
9. The Chamber notes regulation 35(2) of the Regulations of the Court.
10. The Chamber accepts that the need to give the relevant domestic authorities in Jordan sufficient time to provide their input before Jordan makes its submissions to the Court represents good cause for the requested extension of time. Jordan, however, does not provide submissions as to the length of the requested extension, and the Chamber considers that four weeks as of the date of the present decision is appropriate in the present circumstances.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**EXTENDS** the time limit for the Hashemite Kingdom of Jordan to provide any further submissions concerning its failure to arrest and surrender Omar Al-Bashir while present on the territory of the Hashemite Kingdom of Jordan until Friday, 30 June 2017; and

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<sup>7</sup> "Decision inviting the Hashemite Kingdom of Jordan to provide any further submissions on its failure to arrest and surrender Omar Al-Bashir to the Court", ICC-02/05-01/09-297.

<sup>8</sup> ICC-02/05-01/09-298-Conf-Anx.

**ORDERS** the Registrar to transmit this decision to the competent authorities of the Hashemite Kingdom of Jordan.

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 2 June 2017

At The Hague, The Netherlands