



**Original: English**

No. **ICC-02/05**  
Date: **24 January 2022**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane

**SITUATION IN DARFUR, SUDAN**

**Public**

Order for clarification as to the Prosecutor's statements before the United Nations  
Security Council

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

**The Office of the Prosecutor**  
Mr Karim A. A. Khan

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel  
for the Defence**

**States Representatives**

*Amicus Curiae*

## **REGISTRY**

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**Registrar**  
Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER II** of the International Criminal Court issues this Order for clarification as to the Prosecutor’s statements before the United Nations Security Council.

1. On 31 March 2005, the United Nations Security Council (the ‘UNSC’) referred the situation in Darfur, Sudan, since 1 July 2002 to the Prosecutor,<sup>1</sup> which informed Pre-Trial Chamber I of the decision to initiate an investigation on 1 June 2005.<sup>2</sup>

2. Pursuant to applications filed by the Prosecutor under article 58 of the Rome Statute (the ‘Statute’),<sup>3</sup> over the years several warrants of arrest were issued, including for: (i) Ahmad Muhammad Harun (‘Mr Harun’), on 27 April 2007;<sup>4</sup> (ii) Ali Muhammad Ali Abd-Al-Rahman (‘Mr Abd-Al-Rahman’), on 27 April 2007<sup>5</sup> and 16 January 2018;<sup>6</sup> (iii) Omar Hassan Ahmad Al Bashir (‘Mr Al Bashir’), on 4 March 2009<sup>7</sup> and 12 July 2010;<sup>8</sup> (iv) Abdel Raheem Muhammad Hussein (‘Mr Hussein’), on 1 March 2012;<sup>9</sup> and (v) Abdallah Banda Abakaer Nourain (‘Mr Banda’), on 11 September 2014.<sup>10</sup> To date, the warrants of arrest against Mr Harun, Mr Al Bashir, Mr Hussein and Mr Banda remain unexecuted.

3. The Chamber notes the Prosecutor’s statement before the UNSC on 17 January 2022, as well as the ‘Thirty-fourth report of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to resolution 1593 (2005)’ (the ‘Thirty-fourth Report’). The Prosecutor stated that he started ‘conducting a review of the evidence to look at the strength’ of the cases in the Sudan situation; that he ‘realised that the evidence particularly against Mr al-Bashir and Mr Hussein needs strengthening’ and that, accordingly, in relation to those two cases, ‘we need to make sure we do better’. Similar statements are contained in paragraphs 34-37 of the Thirty-fourth Report.

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

<sup>2</sup> ICC-02/05-2.

<sup>3</sup> See ICC-02/05-56, 27 February 2007; ICC-02/05-157-AnxA, 14 July 2008; ICC-02/05-163-Conf, 20 November 2008; ICC-02/05-237-Red, 2 December 2011; ICC-02/05-01/07-73-Secret-Exp, 3 November 2017.

<sup>4</sup> ICC-02/05-01/07-2-Corr.

<sup>5</sup> ICC-02/05-01/07-3-Corr.

<sup>6</sup> ICC-02/05-01/07-74-Red.

<sup>7</sup> ICC-02/05-01/09-1.

<sup>8</sup> ICC-02/05-01/09-95.

<sup>9</sup> ICC-02/05-01/12-2.

<sup>10</sup> ICC-02/05-03/09-606.

4. The Chamber notes these statements with serious concern. In accordance with article 57(3)(a) of the Statute and upon application of the Prosecutor, the Pre-Trial Chamber has the power to issue a warrant of arrest if it is satisfied that the requirements enumerated at article 58(1) of the Statute are fulfilled. Pursuant to article 58(4) of the Statute, '[t]he warrant of arrest shall remain in effect until otherwise ordered by the Court'; the Pre-Trial Chamber also remains responsible *inter alia* for ensuring that, 'if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, [...] all reasonable measures have been taken to locate and arrest the person' under rule 123(3) of the Rules of Procedure and Evidence.

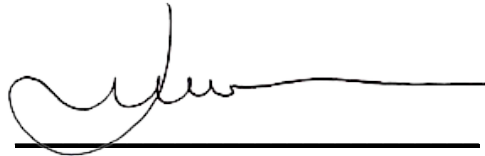
5. For these reasons, the Chamber considers it imperative that the Prosecutor clarifies the background, meaning and implications of the statements made before the UNSC and contained in the Thirty-fourth Report, by way of filing submissions in the record. To the extent that sections of these submissions would need to remain confidential, the Prosecutor is instructed to simultaneously file a public redacted version.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** the Prosecutor to file submissions clarifying the statements made before the UNSC, by no later than Thursday, 27 January 2022;

**ORDERS** the Prosecutor, to the extent that sections of the submissions would need to remain confidential, to simultaneously file a public redacted version.

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



**Judge Rosario Salvatore Aitala**  
Presiding Judge



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated this Monday, 24 January 2022

At The Hague, The Netherlands