

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 18 August 2011

**PRE-TRIAL CHAMBER I**

**Before:** Judge Sanji Mmasenono Monageng, Presiding Judge  
Judge Sylvia Steiner  
Judge Cuno Tarfusser

**SITUATION IN DARFUR, SUDAN**

***THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR***

**Public Document**

**Decision requesting observations about Omar Al-Bashir's recent visit to the  
Republic of Chad**

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

**The Office of the Prosecutor**  
Mr Luis Moreno-Ocampo  
Ms Fatou Bensouda

**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**

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**Registrar**  
Ms Silvana Arbia

**Deputy Registrar**  
Mr Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Pre-Trial Chamber I** of the International Criminal Court (“Chamber” and “Court” respectively),

**NOTING** United Nations Security Council Resolution 1593 (2005) (“UNSC 1593”),<sup>1</sup> whereby the United Nations Security Council referred the situation in Darfur to the Court and “urge[d] all States and concerned regional and other international organizations to cooperate fully” with the Court;

**NOTING** the warrants of arrest against Omar Hassan Ahmad Al-Bashir (“Omar Al- Bashir”) issued by the Chamber respectively on 4 March 2009 and 12 July 2010 which are yet to be executed;<sup>2</sup>

**NOTING** the “Request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”, dated 6 March 2009,<sup>3</sup> and the “Supplementary request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir”, dated 21 July 2010<sup>4</sup> (“Cooperation Requests”), issued by the Registry at the Chamber’s request and asking for cooperation from all States Parties in the arrest and surrender of Omar Al-Bashir pursuant to, *inter alia*, articles 89(1) and 91 of the Rome Statute (“Statute”);

**NOTING** the “Decision informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir’s recent visit to the Republic of Chad”, issued by the Chamber on 27 August 2010;<sup>5</sup>

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

<sup>2</sup> ICC-02/05-01/09-1; ICC-02/05-01/09-95.

<sup>3</sup> ICC-02/05-01/09-7.

<sup>4</sup> ICC-02/05-01/09-96.

<sup>5</sup> ICC-02/05-01/09-109.

**NOTING** the Registry's "Report on the second visit of Omar Al Bashir to Chad", confidentially filed on 9 August 2011 ("Report"),<sup>6</sup> whereby the Registrar informed the Chamber that, according to the media information available, Omar Al Bashir visited the Republic of Chad on 7 and 8 August 2011 to attend the inauguration ceremony of the Republic of Chad's Head of State Idriss Deby Itno;

**NOTING** the urgent correspondence sent by the Registry to the Republic of Chad Embassy in Belgium dated 5 August 2011<sup>7</sup>, wherein the Registry reminded the Republic of Chad that it had the "obligation d'arrêter et de remettre à la Cour les personnes qui font l'objet d'un mandat d'arrêt délivré par la Cour pénale internationale, obligation qui vaut pour le Président Al Bashir comme pour toute autre personne à l'encontre de laquelle un mandat d'arrêt a été délivré par la Cour";

**NOTING** articles 86, 87(7) and 89 of the Statute and regulations 109(2) and 109(3) of the Regulations of the Court ("Regulations");

**CONSIDERING** that the Republic of Chad, being a State Party to the Statute since 1 January 2007, is under the obligation, in accordance with articles 86 and 89 of the Statute, to abide by the Cooperation Requests;

**CONSIDERING** that the Registry reminded the Republic of Chad "qu'en application de l'Article 87(7) du Statut de Rome, lorsqu'un Etat partie n'exécute pas une demande d'arrestation et de remise en violation des dispositions du Statut de Rome, la Cour peut faire un constat de non

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<sup>6</sup> ICC-02/05-01/09-131-Conf.

<sup>7</sup> ICC-02/05-01/09-131-Conf, Annex 2.

coopération et en référer au Conseil de sécurité de l'Organisation des Nations Unies (ONU)";<sup>8</sup>

**CONSIDERING** that, although invited by the Registry to consult with the Court in case of any difficulty with respect to the execution of the Cooperation Requests, as provided for in article 97 of the Statute, the Embassy of the Republic of Chad in Belgium only acknowledged receipt<sup>9</sup> of the Registry's correspondence and no consultation was undertaken;

**CONSIDERING** that article 87(7) of the Statute provides that "[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";

**CONSIDERING** regulation 109(2) of the Regulations, which allows a Chamber which has made a request for cooperation to initiate proceedings under article 87(7) of the Statute;

**CONSIDERING** that the Report's allegations, if confirmed, make it the second time when the government of the Republic of Chad has allowed Omar Al-Bashir into its territory without arresting him in contravention of the Cooperation Requests;

**CONSIDERING** that the Republic of Chad must be given an opportunity to be heard on this matter, pursuant to regulation 109(3) of the Regulations;

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<sup>8</sup> *Ibid.*

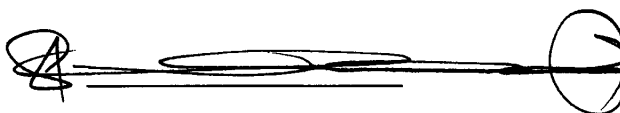
<sup>9</sup> ICC-02/05-01/09-131-Conf, Annex 4.

**FOR THESE REASONS**

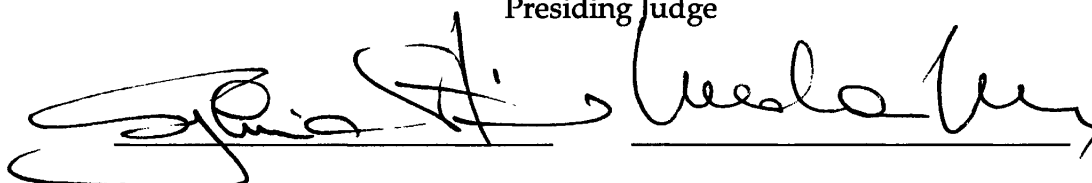
**ORDERS** the Registry to transmit a copy of the Report to the competent authorities of the Republic of Chad; and

**INVITES** the competent authorities of the Republic of Chad to submit, no later than Friday, 9 September 2011, any observations on the Report, in particular with regard to their alleged failure to comply with the Cooperation Requests issued by the Court.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, followed by a circular flourish at the end.

Judge Sanji Mmasenono Monageng  
Presiding Judge

Two handwritten signatures in black ink. The signature on the left is more fluid and cursive, while the signature on the right is more structured and blocky.

Judge Sylvia Steiner

Judge Cuno Tarfusser

Dated this Thursday, 18 August 2011

At The Hague, The Netherlands