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

Date: 15 March 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 Omar Hassan Ahmad AL BASHIR ("Omar Al Bashir")

URGENT

Public

with Public Annex A

Prosecution notification of possible travel in the case of *The Prosecutor v Omar Al Bashir* pursuant to Article 97 of the Rome Statute

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr Ade Omofade, Trial Lawyer

Counsel for the Defence

Legal Representatives of Victims

Mr Nick Kaufman

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Other

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Introduction

1. The purpose of this filing is to notify the Chamber of the possibility of travel by President Omar Al Bashir to the Republic of Chad to attend a summit scheduled for 18 March 2013 and to request that the Republic of Chad be informed of its obligation to arrest pursuant to the arrest warrant of this Court.

Submission as an Urgent Filing

2. This notification is classified as “Urgent” because the proposed travel by President Bashir is imminent – on 17 March 2013 – and the relief being sought would be rendered moot if a decision is not made by the Chamber prior to the date of his travel.

Procedural Background

3. On 14 July 2008, the Prosecution filed its application for an arrest warrant for Omar Al Bashir.¹
4. On 4 March 2009, the Chamber issued an arrest warrant for Omar Al Bashir for seven counts of crimes against humanity and war crimes. In the decision, the Chamber found that “under Article 58(1) of the Statute, the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court; (ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the above-mentioned crimes.”²
5. On 5 and 6 March 2009, the Registry submitted 3 filings to the Chamber, detailing transmission of the warrant of arrest and the requests for its implementation to the Government of the Sudan,³ to all Rome Statute States Parties⁴ and to the members of the UN Security Council.⁵

¹ ICC-02/05-151-US-Exp.

² ICC-02/05-01/09-2-Conf.

³ ICC-02/05-01/09-5 REQUEST TO THE REPUBLIC OF THE SUDAN FOR THE ARREST AND SURRENDER OF OMAR AL BASHIR.

⁴ ICC-02/05-01/09-7 REQUEST TO ALL STATES PARTIES TO THE ROME STATUTE FOR THE ARREST AND SURRENDER OF OMAR AL BASHIR.

⁵ ICC-02/05-01/09-8 REQUEST TO ALL UNITED NATIONS SECURITY COUNCIL MEMBERS THAT ARE NOT STATES PARTIES TO THE ROME STATUTE FOR THE ARREST AND SURRENDER OF OMAR AL BASHIR.

6. On 12 July 2010, the Chamber issued a second arrest warrant for Omar Al Bashir for three counts of genocide.
7. The Registry submitted additional filings on 15 September 2010 on the transmission of the requests and supplementary requests for the arrest and surrender of Omar Hassan Ahmad Al Bashir to States Parties, Non-States Parties Members of the United Nations Security Council and the Republic of the Sudan.
8. On 14 February 2013 the Prosecution submitted a notification of possible travel by Omar Al Bashir to Chad for a CEN-SAD summit on 16-17 February.⁶
9. On 15 February 2013 the Chamber requested the Registry to send a Note Verbale to the Republic of Chad, enquiring about said visit, and reminding Chad of its obligations with respect to the arrest and surrender of Omar Al-Bashir to the Court.⁷
10. Omar Al Bashir subsequently travelled to Chad on 15 February to attend the summit and departed on 17 February. A number of states, and also the European Union subsequently publicly called for Chad to abide by its obligations under the Rome Statute. The President of the ASP on 20 February called on Chad to respect and fully comply with its obligations under the Rome Statute, regretting the fact that despite ICC orders and widespread calls by the international community for Chad to respect its obligations of cooperation with the Court, the visit of Omar-Al Bashir to Chad had taken place on 16 February 2013.⁸

Reports of Omar Al Bashir's possible travel to the Republic of Chad

11. News reports indicate⁹ that Omar Al Bashir might attend the extraordinary meeting of the Community of Sahel-Saharan (CEN-SAD) summit which is scheduled to take place in the Republic of Chad on 18 March 2013.
12. Furthermore, the Prosecution understands that a number of States Parties are working bilaterally and within the framework of regional organisations to try to discourage the visit, and that civil society organisations are also active in seeking to ensure Chad abides by its Rome Statute obligations.
13. The Prosecution believes, in line with earlier submissions to the Chamber that this information may be of interest to the Chamber. The Prosecution will submit any

⁶ ICC-02/05-01/09-144.

⁷ ICC-02/05-01/09-145.

⁸ Press release No. ICC-ASP-20130220-PR874.

⁹ See annex A.

additional confirmation it receives of Omar Al Bashir's planned visit to the Republic of Chad.

Relief Sought

14. The Prosecution proposes that the Chamber request information from the authorities of the Republic of Chad about the alleged visits while communicating to said authorities its standing obligation to arrest persons indicted by the ICC.
15. For this purpose, the Chamber may wish to have resort to the procedure outlined in Regulation 109 of the Regulations of the Court in order to hear from the requested State.



Fatou Bensouda
Prosecutor

Dated this 15th day of March 2013
At The Hague, the Netherlands