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No.: ICC-02/05-01/09
Date: 4 November 2014

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Cuno Tarfusser
Judge Christine Van den Wyngaert

**SITUATION IN DARFUR, SUDAN
IN THE CASE OF**

The Prosecutor v Omar Hassan Ahmad AL BASHIR ("Omar Al Bashir")

**URGENT
Public document
with public Annex A**

Prosecution's Urgent Notification of Travel in the Case of *The Prosecutor v Omar Al Bashir*

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

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Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

**The Office of Public Counsel for
Victims**

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

States Representatives

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Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

Introduction

1. The Prosecution hereby notifies Pre-Trial Chamber II (“Chamber”) of the reported travel by Omar Al Bashir (“Omar Al Bashir”) on 5 November 2014 to the Federal Democratic Republic of Ethiopia (“Ethiopia”),¹ in order to attend the IGAD summit on the South Sudan crisis which is expected to take place in Bahir Dar, Ethiopia. The Prosecution requests that the Chamber inform the authorities of Ethiopia about the visit and, in light of United Nations Security Council Resolution 1593,² urge them to arrest Omar Al Bashir. The Prosecution submits that the Chamber should request information from the Ethiopian authorities regarding Omar Al Bashir’s visit and take any measures the Chamber deems appropriate to secure execution of the pending warrants of arrest against Omar Al Bashir.

Submission as an Urgent Filing

2. This notification is filed as “Urgent” because the relief being sought would be rendered moot if a decision is not made by the Chamber prior to Omar Al-Bashir’s departure from Ethiopia.

Procedural Background

3. On 31 March 2005, the United Nations Security Council acting under Chapter VII of the Charter of the United Nations adopted Resolution 1593 (2005) referring the situation in Darfur to the Court. The United Nations Security

¹ See Annex A. See further: <https://radiotamazuj.org/en/article/president-omar-al-bashir-attend-igad-summit>; <http://www.sudaress.com/alhadag/10262> (last visited November 4, 2014).

² ICC-02/05-01/09-162.

Council decided in the context of cooperation with and assistance to the Court that it "...while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully".³

4. On 14 July 2008, the Prosecution filed its application for an arrest warrant for Omar Al Bashir.⁴ On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant for Omar Al Bashir for seven counts of crimes against humanity and war crimes. In the decision, Pre-Trial Chamber I 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."⁵

5. On 5 and 6 March 2009, the Registry submitted three filings to Pre-Trial Chamber I, detailing transmission of the warrant of arrest and the requests for its implementation to the Government of the Sudan,⁶ to all Rome Statute States Parties⁷ and to all United Nations Security Council members that are not states parties to the Rome Statute.⁸

6. On 12 July 2010, Pre-Trial Chamber I issued a second arrest warrant for Omar Al Bashir for three counts of genocide.⁹ The Registry subsequently transmitted 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.

³ Resolution 1593 (2005), adopted by the Security Council at its 5158th meeting, on 31 March 2005 S/RES/1593 (2005), Operative Paragraph 2.

⁴ ICC-02/05-157.

⁵ ICC-02/05-01/09-1.

⁶ ICC-02/05-01/09-5.

⁷ ICC-02/05-01/09-7.

⁸ ICC-02/05-01/09-8.

⁹ ICC-02/05-01/09-95.

Reports of Omar Al Bashir's planned travel to the Federal Democratic Republic of Ethiopia

7. This is the fifth time Omar Al Bashir has travelled to Ethiopia since the arrest warrant against him was issued. On 10 October 2013 the Chamber ordered the Registrar to transmit to the authorities of Ethiopia the requests for arrest and surrender of Omar Al Bashir issued by the Registry on 6 March 2009 and 21 July 2010; or to request, in accordance with article 92 of the Statute, the provisional arrest of Omar Al-Bashir.¹⁰ On 29 April 2014, the Chamber being notified by the Prosecutor,¹¹ issued the "Decision Regarding the Visit of Omar Hassan Ahmad Al Bashir to the Federal Republic of Ethiopia" (the "29 April Decision").¹² It reminded the authorities of Ethiopia of the previous requests transmitted on 10 October 2013,¹³ and of the decisions issued in relation to the previous travels on 30 January 2014¹⁴ and 17 February 2014.¹⁵ The Chamber pointed out that it has issued three decisions in relation to past visits of Omar Al Bashir on the territory of the Federal Republic of Ethiopia. It recalled that the Court has no enforcement mechanism and thus relies on the States' cooperation, without which it cannot fulfil its mandate and contribute to ending impunity.¹⁶

8. According to media reports, Omar Al Bashir will be travelling to Ethiopia on 5 November 2014 in order to participate in the IGAD summit on the South Sudan crisis, scheduled to take place on 5 November 2014 in Bahir Dar, Ethiopia.¹⁷ The Prosecution considers that the reports of Omar Al Bashir's travel to Ethiopia are credible and warrant urgent intervention by the Chamber.

¹⁰ ICC-02/05-01/09-164.

¹¹ ICC-02/05-01/09-198 and annex A.

¹² ICC-02/05-01/09-199

¹³ ICC-02/05-01/09-167 with two confidential and two public annexes.

¹⁴ ICC-02/05-01/09-180

¹⁵ ICC-02/05-01/09-184

¹⁶ ICC-02/05-01/09-199, para 14.

¹⁷ See Annex A. See further: <https://radiotamazuj.org/en/article/president-omar-al-bashir-attend-igad-summit> (Last visited November 4, 2014).

Relief Sought

9. The Prosecution requests that the Chamber take all necessary steps to ensure that the arrest warrants against Omar Al Bashir are executed. In particular, the Chamber should seek information from the relevant authorities of Ethiopia regarding the visit of suspect Omar Al Bashir and remind the authorities of the existence of warrants of arrest against Omar Al Bashir and of the Chamber's previous decisions regarding Omar Al-Bashir's travel to Ethiopia.¹⁸ The Chamber should also consider reminding the authorities of Ethiopia of the decision of the Security Council in Resolution 1593 (2005) urging "all States" to cooperate fully with the Court.¹⁹



Fatou Bensouda
Prosecutor

Dated this 4th day of November 2014
At The Hague, The Netherlands

¹⁸ ICC-02/05-01/09-164, ICC-02/05-01/09-180.

¹⁹ See, e.g., ICC-02/05-01/09-162.

