



Original: English

No.: ICC-02/05-01/09
Date: 8 December 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")

**Public document
with Public Annex A**

Prosecution's 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

Ms Fatou Bensouda

Mr James Stewart

Mr Julian Nicholls

Counsel for the Defence

Legal Representatives of Victims

Mr Nick Kaufman

Ms Wanda M. Akin

Mr Raymond M. Brown

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

Amicus Curiae

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 travel by Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”) on 8 December 2014 to the Federal Democratic Republic of Ethiopia (“Ethiopia”),¹ in order to attend the annual celebrations of the Ethiopian Federal Republic which are held in Asosa, Ethiopia. The Prosecution requests that the Chamber informs the authorities of Ethiopia about the visit and, in light of United Nations Security Council Resolution 1593 (2005),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 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 Council decided in the context of cooperation with and assistance to the Court that “...while

¹ See Annex A. See further: <http://www.sudanradio.info/english/modules/news/article.php?storyid=8301> (Last visited December 8, 2014).

² ICC-02/05-01/09-162.

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

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.

Omar Al Bashir to States Parties, Non-States Parties Members of the United Nations Security Council and the Republic of the Sudan.

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.¹⁰ To date, the Chamber issued four decisions in relation to the travels of Omar Al Bashir to Ethiopia.¹¹ In all decisions the Chamber pointed out 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.¹²

8. According to the official Sudanese news Agency Suna, Omar Al Bashir travelled on 8 December 2014 to Asosa, Ethiopia.¹³

9. The Prosecution understands that the travel of Omar Al Bashir and his accompanying delegation to Ethiopia is related to the 20th anniversary celebration of the Ethiopian Constitution.¹⁴ The Prosecution considers that the reports of Omar Al Bashir's travel and continued presence in Ethiopia are credible and warrant urgent intervention by the Chamber.

¹⁰ ICC-02/05-01/09-163, ICC-02/05-01/09-179; ICC-02/05-01/09-198; ICC-02/05-01/09-214.

¹¹ ICC-02/05-01/09-164 (10 October 2013); ICC-02/05-01/09-180 (30 January 2014); ICC-02/05-01/09-199 (29 April 2014); ICC-02/05-01/09-215 (4 November 2014).

¹² ICC-02/05-01/09-164, para 9; ICC-02/05-01/09-180, para 11; ICC-02/05-01/09-199, para 14 ; ICC-02/05-01/09-215, para 10.

¹³ See Annex A. See further: <http://suna-sd.net/suna/showNews/224655/ar> (last visited December 8, 2014).

¹⁴ See Annex A. See further:

http://www.masrawy.com/News/News_PublicAffairs/details/2014/12/8/404872/%D8%A7%D9%84%D8%A8%D8%B4%D9%8A%D8%B1-%D9%8A%D8%AA%D9%88%D8%AC%D9%87-%D8%A5%D9%84%D9%89-%D8%A3%D8%AB%D9%8A%D9%88%D8%A8%D9%8A%D8%A7-%D9%84%D9%84%D9%85%D8%B4%D8%A7%D8%B1%D9%83%D8%A9-%D9%81%D9%8A-%D8%A7%D8%AD%D8%AA%D9%81%D8%A7%D9%84%D8%A7%D8%AA%D9%87%D8%A7-%D8%A8%D8%B0%D9%83%D8%B1%D9%89-%D8%A7%D8%B9%D8%AA%D9%85%D8%A7%D8%AF-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1 (Last visited December 8, 2014).

10. Given the repeated record of Omar Al Bashir's travel to Ethiopia, should the Ethiopian authorities again fail to arrest Omar Al Bashir, the Prosecution submits that the Chamber ought to consider informing Security Council of Ethiopia's repeated failure to cooperate with the Court.

Relief Sought

11. 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 them 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.¹⁵ 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.¹⁶

12. If cooperation from the Ethiopian authorities is not forthcoming, thus preventing the Court from exercising its functions and powers under the Statute, the Chamber ought to consider informing the United Nations Security Council of the matter.



Fatou Bensouda, Prosecutor

Dated this 8th day of December 2014

At The Hague, The Netherlands

¹⁵ ICC-02/05-01/09-164 (10 October 2013); ICC-02/05-01/09-180 (30 January 2014); ICC-02/05-01/09-199 (29 April 2014); ICC-02/05-01/09-215 (4 November 2014).

¹⁶ See, e.g., ICC-02/05-01/09-162.