



Original: English

No.: ICC-02/05-01/09
Date: 13 December 2017

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

SITUATION IN DARFUR, SUDAN

IN THE CASE OF *THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR*

Public

Decision inviting the Republic of Uganda to provide submissions concerning its failure to arrest Omar Al-Bashir and surrender him to the Court

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the 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
Uganda

Other

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”) issues this decision inviting the Republic of Uganda (“Uganda”) to provide submissions concerning its failure to arrest Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”) and surrender him to the Court.

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations adopted Resolution 1593 (2005), whereby it referred the situation in Darfur since 1 July 2002 to the Prosecutor of the Court.¹
2. On 4 March 2009 and 12 July 2010, Pre-Trial Chamber I issued two warrants of arrest against Omar Al-Bashir for war crimes, crimes against humanity and genocide allegedly committed in Darfur, Sudan, from March 2003 to, at least, 14 July 2008.² These warrants of arrest remain to be executed. As a State Party to the Rome Statute, Uganda was notified of the requests for arrest and surrender of Omar Al-Bashir to the Court pursuant to the two warrants on 5 March 2009 and 16 August 2010 respectively.³
3. On 8 November 2017, following the publication of press reports referring to an official visit by Omar Al-Bashir to Uganda during the week of 13 November 2017, the Registry transmitted to Uganda a note verbale reminding it of its obligation to cooperate with the Court in the arrest and surrender of Omar Al-Bashir and requesting that the Ugandan authorities consult with the Court without delay in the event that they identify any problems which may impede or prevent the execution of the request for arrest and surrender.⁴ No response to this note verbale was received.

¹ S/RES/1593 (2005).

² Pre-Trial Chamber I, “Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/05-01/09-1; “Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir”, 12 July 2010, ICC-02/05-01/09-95.

³ See reference at ICC-02/05-01/09-307-Conf-AnxI.

⁴ ICC-02/05-01/09-307, paras 3-4.

4. On 14 November 2017, the Registry received media reports that Omar Al-Bashir had entered the territory of Uganda.⁵ While Omar Al-Bashir was on Ugandan territory, Uganda did not arrest him and surrender him to the Court.
5. Pursuant to article 87(7) of the Statute, in case of non-compliance with obligations to cooperate with the Court, one of the tools available to the Court is to make a finding of non-cooperation by the State 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. In the view of the Chamber, Omar Al-Bashir's reported visit to Uganda warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Uganda with the Court's request for arrest and surrender of Omar Al-Bashir to the Court and refer the matter to the Assembly of States Parties and/or the Security Council of the United Nations.
6. The Chamber recalls that, prior to any such step being taken, regulation 109 of the Regulations of the Court mandates that "the Chamber shall hear from the requested State".

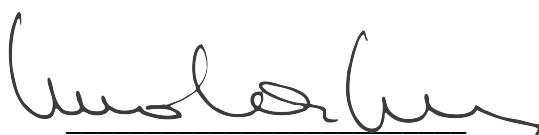
FOR THESE REASONS, THE CHAMBER HEREBY

INVITES the Republic of Uganda to provide submissions concerning its failure to arrest Omar Al-Bashir and surrender him to the Court, while he was present on Ugandan territory on or around 14 November 2017, by 22 January 2018; and

ORDERS the Registrar to transmit this decision to the competent authorities of the Republic of Uganda.

⁵ *Ibid.*, para. 6; ICC-02/05-01/09-307-AnxII.

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



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated 13 December 2017

At The Hague, The Netherlands