

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/05**
Date: **2 March 2009**

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

SITUATION IN DARFUR, SUDAN

Public Redacted Version

**Decision on Prosecution's Request for Expedited Decision on the Prosecution's
Application of 20 November 2008**

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

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

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

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court” respectively);

NOTING the “Prosecution’s Application under Article 58”, filed by the Prosecution on 14 July 2008 in the record of the Darfur situation, whereby a request was made for the issuance of a warrant of arrest against Omar Hassan Ahmad Al Bashir (referred to hereinafter as “Omar Al Bashir”) for genocide, crimes against humanity and war crimes;¹

NOTING the supporting material and other information submitted by the Prosecution in support of its application for a warrant of arrest against Omar Al Bashir;²

NOTING the “Prosecutor’s Application under Article 58”³ (“the Prosecution Application”) filed *confidential* and *ex parte* by the Prosecution on 20 November 2008, whereby it requested the Chamber to issue warrants of arrest or alternatively summonses to appear for [REDACTED];

NOTING the “Provision of Information Pursuant to Article 58”,⁴ filed by the Prosecution on 2 December 2008, in which the Prosecution provided the Chamber with further information in relation to the Prosecution Application.

NOTING the “Decision Requesting Additional Information and Supporting Materials”⁵ (“the Decision”) issued by the Chamber on 9 December 2008, whereby it

¹ ICC-01/05-15 I-US-Exp; and ICC-02/05-151-US-Exp-Anxs1-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Anxs1 & 2; and the Public redacted version ICC-02/05-157 and ICC-02/05-157-AnxA

² ICC-02/05-161 and ICC-02/05-161-Conf-AnxsA-J; ICC-02/05-179 and ICC-02/05-179-Conf-Exp-Anxs1-5; ICC-02/05-183-US-Exp and ICC-02/05-183-Conf-Exp-AnxsA-E.

³ ICC-02/05-163-Conf-Exp.

⁴ ICC-02/05-165-Conf-Exp+Anxs1-8.

⁵ ICC-02/05-166.

requested the Prosecution to submit additional information and supporting materials in relation to specific questions of the Chamber;⁶

NOTING the notifications to the Chamber pursuant to article 58,⁷ filed by the Prosecution on 22 and 24 December 2008, in which the Prosecution requested the authorisation of the Pre-Trial Chamber to disclose [REDACTED] the names of the [REDACTED] individuals named in the Prosecution Application in order to enable them to appear before the Court at an appropriate time;

NOTING the “Decision on the “Notification to the Chamber Pursuant to Article 58”⁸ issued by Judge Anita Ušacka, acting as Single Judge of Pre-Trial Chamber I, on 24 December 2009, in which she denied the Prosecution’s requests of 22 and 24 December 2008;

NOTING the “Prosecution’s Provision of Further Information in Compliance with the “Decision Requesting Additional Information and Supporting Materials” (“the Prosecution’s Provision of Further Information”)⁹ filed by the Prosecution on 16 January 2009, whereby it provided additional information and written answers to some of the questions posed by the Chamber and additional supporting materials;

NOTING the closed session and *ex parte* hearing with the Prosecution, the Registry and the Victims and Witnesses Unit (“the Hearing”),¹⁰ held on 3 February 2009, during which the Prosecution informed the Chamber [REDACTED] and undertook to keep the Chamber informed of any developments in this regard;

⁶ ICC-02/05-166-Conf-Exp-Anx1.

⁷ ICC-02/05-167-Conf-Exp and ICC-02/05-168-Conf-Exp.

⁸ ICC-02/05-169-Conf-Exp.

⁹ ICC-02/05-172

¹⁰ ICC-02/05-T-2-Conf-Exp.

NOTING the “Submission of information on the Prosecution’s Application Pursuant to Article 58 and request for summonses to appear”,¹¹ filed by the Prosecution on 23 February 2009, in which the Prosecution requested that:

- (i) [REDACTED];
- (ii) [REDACTED]; and
- (iii) [REDACTED].

NOTING the “Request for Expedited Decision on the Prosecution’s Application of 20 November 2008”¹² (“the Prosecution Request”) filed by the Prosecution on 25 February 2009, whereby a request was made for the urgent consideration, by the Chamber, of the Prosecution Application [REDACTED];

NOTING articles 19, 54, 57 and 58 of the *Rome Statute* (“the Statute”);

CONSIDERING that, after careful consideration of all issues raised by the Prosecution’s application for a warrant of arrest for Omar Al Bashir and in light of the extensive materials and information provided by the Prosecution in support of its application, the Chamber announced that it will deliver its decision on the said Prosecution’s application on 4 March 2009;

CONSIDERING that, as this Chamber has consistently held, the Chamber will only issue a summons to appear if it is convinced that the following two questions are answered affirmatively:

- (i) Are there reasonable grounds to believe that at least one crime within the jurisdiction of the Court has been committed?

¹¹ ICC-02/05-194-Conf-Exp

¹² ICC-02/05-195-Conf-Exp

- (ii) Are there reasonable grounds to believe that persons named in the Prosecution Application have incurred criminal liability for such crime under any of the modes of liability provided for in the Statute?¹³

CONSIDERING that, as shown by the Decision and the Prosecution's Provision of Further Information, the Prosecution Application for the alleged [REDACTED] rebel leaders raises a number of issues of particular complexity;

CONSIDERING the complexity of the case, the Chamber considers, in relation to a number of aspects of the Prosecution Application for the alleged [REDACTED] rebel leaders, that a particularly detailed analysis of the materials provided in the Prosecution Application and in the Prosecution's Provision of Further Information is required;

CONSIDERING that, in complying with its duties, the Chamber shall not:

- (i) take into account any request for expedited proceedings based on considerations other than those found in article 58(1)(a) of the Statute, which are that the Chamber must first ensure that it is satisfied that there are reasonable grounds to believe that the alleged war crimes were committed and that the [REDACTED] alleged rebel leaders are criminally responsible for committing such crimes; and
- (ii) decide in a manner detrimental to the fundamental rights of the persons for whom warrants of arrest or summonses to appear are requested;

¹³ ICC-01/04-01/06-2-tEN; ICC-01/04-01/07-4-US; ICC-01/04-02/07-3-US; ICC-02/05-01/07-1-Corr.

CONSIDERING that, given the *confidential* and *ex parte* nature of the Prosecution Application, and in light of the 24 December 2008 Decision of the Single Judge rejecting the Prosecution's request to disclose the names of the [REDACTED] individuals named in the Prosecution Application, the Chamber will not hear from any individual related to the Haskanita incident [REDACTED] until a decision is taken on the Prosecution Application after an detailed overall assessment of all information and materials provided by the Prosecution;

CONSIDERING that until the Chamber issues a decision on the Prosecution Application, States have no obligation, pursuant to either the Statute or the United Nations Security Council Resolution 1593, to grant a visa to any such individual for the purpose of travelling to the Hague to appear before this Chamber;

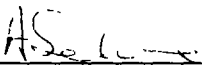
FOR THESE REASONS

REJECTS the Prosecution Request;

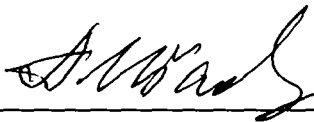
DECIDES to inform the Prosecution that, in light of the complexity of several aspects of the Prosecution Application, the Chamber is in the process of carefully reviewing all materials provided in the Prosecution Application and in the Prosecution's Provision of Further Information;

RECALLS that, until the Chamber issues a decision on the Prosecution Application, States have no obligation, pursuant to either the Statute or the United Nations Security Council Resolution 1593, to grant a visa to any such individual for the purpose of travelling to The Hague to appear before this Chamber.


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



Judge Akua Kuenyehia
Presiding



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Monday 2 March 2009

At The Hague,

The Netherlands