

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-01/12  
Date: 13 November 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. ABDEL RAHEEM MUHAMMAD  
HUSSEIN**

**Public**

**Decision on the Cooperation of the Central African Republic Regarding Abdel  
Raheem Muhammad Hussein's Arrest and Surrender to the Court**

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

**The Office of the Prosecutor**  
 Fatou Bensouda, Prosecutor  
 James Stewart, Deputy Prosecutor

**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**  
 Competent authorities of  
 the Central African Republic

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
 Herman Von Hebel

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

**Others**

**Pre-Trial Chamber II** (the “Chamber”) of the International Criminal Court (the “Court”) renders this decision on the cooperation of the Central African Republic (the “CAR”) regarding the arrest and surrender of Abdel Raheem Muhammad Hussein (“Mr. Hussein”).

1. On 31 March 2005, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1593 (2005) referring the situation in Darfur, Sudan to the Court.<sup>1</sup>

2. On 1 March 2012, Pre-Trial Chamber I (the “PTC I”) issued the “Decision on the Prosecutor’s application under article 58 relating to Abdel Raheem Muhammad Hussein”,<sup>2</sup> and the “Warrant of Arrest for Abdel Raheem Muhammad Hussein”<sup>3</sup> for crimes against humanity and war crimes committed in Darfur, Sudan from August 2003 to March 2004. The warrant of arrest remains to be executed.

3. On 13 March 2012, the Registry, acting upon PTC I’s instruction, issued the “Request to all States Parties to the Rome Statute for the arrest and surrender of Abdel Raheem Muhammad Hussein”<sup>4</sup> as well as the “Request to United Nations Security Council members not States Parties to the Rome Statute for the arrest and surrender of Abdel Raheem Muhammad Hussein”.<sup>5</sup> These requests called for, *inter alia*, cooperation from States Parties and States not Parties to the Rome Statute (the “Statute”) in the arrest and surrender of Mr. Hussein.

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<sup>1</sup> S/RES/1593 (2005).

<sup>2</sup> Pre-Trial Chamber I, ICC-02/05-01/12-1-Red.

<sup>3</sup> Pre-Trial Chamber I, ICC-02/05-01/12-2.

<sup>4</sup> ICC-02/05-01/12-5.

<sup>5</sup> ICC-02/05-01/12-6.

4. On 15 March 2012, the Presidency issued the “Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d’Ivoire situations”, in which it re-assigned, *inter alia*, the situation in Darfur, Sudan to this Chamber.<sup>6</sup>

5. On 3 September 2013, the Chamber received the “Registry notification of purported travel of Abdel Raheem Muhammad Hussein in Central African Republic”, filed confidential together with two public annexes appended thereto (the “Registry’s Notification” or the “Registry’s First Report”).<sup>7</sup> According to the Registry’s Notification and the two annexes appended thereto, which contain media articles, Mr. Hussein travelled to the CAR on 19 August 2013 to attend the “inauguration of the new President of the Central African Republic, Michel Djotodia”.<sup>8</sup> This visit took place without prior consultation of the authorities of the CAR with the Court, as required by virtue of article 97 of the Statute.

6. On 10 September 2013, the Chamber issued the “Decision Requesting Observations on the Visit of Abdel Raheem Muhammad Hussein to the Central African Republic” (the “10 September 2013 Decision”), in which it, *inter alia*, ordered the Registry to transmit to the CAR a French translation of said 10 September 2013 Decision and of the Registry’s First Report together with a French translation of Annex 1, and Annex 2 in its original language.<sup>9</sup> The Chamber also requested the competent authorities of the CAR to submit:

[W]ithin two weeks of the transmission of the French translation of the [10 September 2013 Decision] and of the Registry’s Report together with its annexes appended thereto observations with regard to: 1) the alleged failure to execute the request for arrest and surrender of Abdel Raheem Muhammad Hussein to the Court and; 2) the alleged failure

<sup>6</sup> Presidency, ICC-02/05-01/09-143.

<sup>7</sup> ICC-02/05-01/12-13-Conf and its public annexes.

<sup>8</sup> ICC-02/05-01/12-13-Conf, paras 1-2; ICC-02/05-01/12-13-Anx1; ICC-02/05-01/12-13-Anx2.

<sup>9</sup> Pre-Trial Chamber II, ICC-02/05-01/12-14, p. 5.

to consult with the Court in case of any problem identified which might have impeded the execution of the request for arrest and surrender of Abdel Raheem Muhammad Hussein during his visit.<sup>10</sup>

7. On 9 October 2013, the Chamber was notified of the «Rapport du Greffe relative à la *Décision invitant au dépôt d'observations concernant la visite d'Abdel Raheem Muhammad Hussein en République Centrafricaine* » (the "Registry's Second Report").<sup>11</sup>

8. The Chamber notes articles 86, 87(7) and 89 of the Statute.

9. The Chamber notes that the CAR is a State Party to the Statute since 1 January 2002, and accordingly, it is under the obligation, in accordance with articles 86 and 89 of the Statute, to execute the Court's pending decisions concerning the arrest and surrender of Mr. Hussein.

10. The Chamber further recalls that according to article 87(7) of the Statute "[w]here a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute [...] the Court *may* make a finding to that effect 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" (emphasis added).

11. In considering the matter *sub judice*, the Chamber takes note of the explanation provided by the CAR authorities as contained in the Registry's Second Report. According to this report, after the political change on 24 March 2013, the new CAR authorities were not formally notified of the Court's pending

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<sup>10</sup> Pre-Trial Chamber II, ICC-02/05-01/12-14, p. 5.

<sup>11</sup> ICC-02/05-01/12-17 and its 3 confidential annexes.

request for arrest and surrender of Mr. Hussein.<sup>12</sup> In addition, Mr. Hussein stayed in Bangui only for a few hours. Further, the Minister of Justice of the CAR has formally received the Court's request set out in the 10 September 2013 Decision through the new "Directeur du Cabinet" only on 2 October 2013.<sup>13</sup> Finally, due to the pillaging that the country had suffered, the judicial police and the judiciary lacked the capacity to arrest him.<sup>14</sup> The CAR authorities were therefore not in a position to respond to the situation.

12. The Chamber wishes to point out that while it is attentive to the political situation in the country, in principle, political changes do not *per se* release the State from its international obligations towards the Court. Nor does it oblige the Court to re-notify the new authorities of the pending request for arrest and surrender, as the CAR authorities seem to suggest. Lastly, the fact that the relevant authorities have not taken the necessary internal coordination steps is not in itself a valid justification for not taking the required action upon Mr. Hussein's visit.

13. However, the Chamber is considerate of the CAR's other arguments - the lack of capacity of the relevant authorities to react due to the circumstances prevailing in the country and, more so, their inability to promptly take action, given the short visit of Mr. Hussein. In view of the CAR's justification, the Chamber does not deem it necessary, at this stage, to make a finding on non-compliance with the Court's decisions regarding the arrest and surrender of Mr. Hussein. The Chamber considers it sufficient to remind the CAR of its obligations as a State

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<sup>12</sup> ICC-02/05-01/12-17-Conf-AnxIII, p. 3.

<sup>13</sup> ICC-02/05-01/12-17-Conf-AnxIII.

<sup>14</sup> ICC-02/05-01/12-17-Conf-AnxIII, p. 3.

Party towards the Court and requests it to arrest and surrender Mr. Hussein if a similar situation arises in the future.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**a) reminds** the Central African Republic of its statutory obligations to execute the pending decisions concerning the arrest and surrender of Abdel Raheem Muhammad Hussein to the Court;

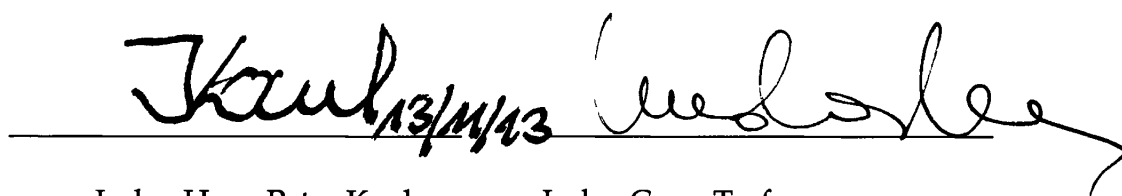
**b) requests** the Central African Republic to immediately arrest Abdel Raheem Muhammad Hussein and surrender him to the Court should he enter the territory of the country; and

**c) instructs** the Registry to transmit, as soon as practicable, a French translation of the present decision to the Central African Republic.

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



Judge Ekaterina Trendafilova  
Presiding Judge



Judge Hans-Peter Kaul

Judge Cuno Tarfusser

Dated this Wednesday, 13 November 2013

At The Hague, The Netherlands