



ICC-PIDS-PR-20070502-214C_En
The Hague, 2 May 2007

Situation: Darfur, Sudan

Case: *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb")*

Course of action and procedure following the issue of warrant of arrest

Co-operation of the States

The competent Sudanese authorities and all States Parties to the Rome Statute will receive a request for the arrest and surrender of Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb"). States that are not party to the Rome Statute but are members of the Security Council will also receive the request. The Pre-Trial Chamber recalled that the Security Council, acting pursuant to Chapter VII of the Charter of the United Nations, in its resolution 1593, stated that the Government of the Sudan and all other parties to the Darfur conflict, shall co-operate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution and, while recognising that States not party to the Statute have no obligation under the Statute, urged all States and concerned regional and other international organisations to co-operate fully. Other countries such as Egypt, Eritrea, Ethiopia and Libya will also be requested to arrest and surrender the persons named in the warrants. Once they have received the requests, the States concerned shall immediately take steps to arrest the person in question.¹ Once ordered to be surrendered, the person shall be delivered to the Court.²

Initial proceedings before the Court³

Upon the surrender of the person to the Court, the Pre-Trial Chamber will hold a hearing in the presence of the person to satisfy itself that the person has been informed of the crimes, which he is alleged to have committed, and of his rights under the Statute⁴, including the right to apply for interim release pending trial.⁵

¹ Rome Statute, Article 59

² Rome Statute, Article 59 (7)

³ Rome Statute, Article 60

⁴ Rome Statute, Article 67 (1)

⁵ Rome Statute, Article 60 (1)

Confirmation of charges before trial

Within a reasonable time after the person's surrender or voluntary appearance, the Pre-Trial Chamber will hold a hearing to confirm the charges.⁶ Exceptionally, the Pre-Trial Chamber may hold this hearing in the absence of the person charged.⁷ At the close of the confirmation hearing the Pre-Trial Chamber may:

- a) confirm the charges and commit the person for trial.⁸ Upon confirmation, the Presidency of the Court will constitute a Trial Chamber responsible for subsequent proceedings.⁹
- b) decline to confirm the charges, a decision that does not prevent the Prosecutor from returning with a subsequent request on the basis of additional evidence.¹⁰
- c) adjourn the hearing and ask the Prosecutor to consider providing further evidence or to pursue further investigation or, alternatively, to amend the charges because the available evidence shows a different crime.¹¹

Trial

The trial will take place at the seat of the Court, in The Hague, unless otherwise decided.¹² The accused must be present at the trial,¹³ and the trial shall be held in public¹⁴ except when the Chambers, in order to protect safety of victims and witnesses or sensitive information to be given in evidence, determines to conduct certain proceedings in closed session.¹⁵

The accused has the right to a lawyer assigned in any case where the interests of justice so require and, if the accused cannot afford it, to have free legal assistance assigned by the Court.¹⁶

The accused will be asked to plead guilty or not guilty.¹⁷

- When an accused makes an admission of guilt, the Trial Chamber will consider the admission of guilt, together with any additional evidence presented and may convict the accused of that crime.¹⁸

- If the Trial Chamber is not satisfied that the accused understands the nature and consequences of the admission, that the admission is voluntarily made after

⁶ Rome Statute, Article 61(1)

⁷ Rome Statute, Article 61(2)

⁸ Rome Statute, Article 61(7) (a)

⁹ Rome Statute, Article 61(11)

¹⁰ Rome Statute, Article 61 (7) (b), 61 (8)

¹¹ Rome Statute, Article 61 (7) (c)

¹² Rome Statute, Article 62, Rules of Procedure and Evidence, Rule 100

¹³ Rome Statute, Article 63

¹⁴ Rome Statute, Article 64 (7)

¹⁵ Rome Statute, Article 68 (2)

¹⁶ Rome Statute, Article 67(1) (d)

¹⁷ Rome Statute, Article 64(8)(a)

¹⁸ Rome Statute, Article 65 (1), 65 (2)

sufficient consultation with defence counsel, or that the admission is supported by the facts of the case, it will consider the admission of guilt as not having been made, in which case the trial will be continued under the ordinary trial procedures.¹⁹

- Alternatively, the Trial Chamber may consider that ‘a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims’, and request additional evidence to be adduced or that the trial be continued under the ordinary trial procedures.²⁰

Presentation of Evidence

The parties may submit evidence relevant to the case.

Everyone shall be presumed innocent until proved guilty in accordance with law²¹.

The burden of proof is on the Prosecutor. The accused’s guilt must be proved beyond reasonable doubt.²²

The accused may examine the witnesses against him or her, and obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

When their personal interests are affected, victims can participate in the proceedings, as determined to be appropriate by the Court and in a manner not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Their views and concerns may be presented by legal representatives.²³

Once the parties have presented their evidence, the prosecution and defence present their final arguments. The defence always has the opportunity to speak last.²⁴

The Court may order reparations to victims²⁵, including restitution, compensation and rehabilitation, and may make an order directly against a convicted person.²⁶

The sentence will be pronounced in public, and whenever possible, in the presence of the accused, as well as, victims or their legal representatives if they have taken part in the proceedings.²⁷

Appeal and Revision

The judgement of the Trial Chamber is subject to appeal.²⁸

The Appeals Chamber may reverse or amend the decision or sentence, or order a new trial before a different Trial Chamber. The Appeals Chamber can remand a factual issue back to the original Trial Chamber and also call evidence itself in order to determine the issue.²⁹

It is also possible to seek revision of a conviction or sentence.³⁰

¹⁹ Rome Statute, Article 65(3)

²⁰ Rome Statute, Article 65(4)

²¹ Rome Statute, Article 66(1)

²² Rome Statute, Article 66

²³ Rome Statute, Article 68(3)

²⁴ Rules of Procedure and Evidence, Rule 141

²⁵ Rome Statute, Article 75(1)

²⁶ Rome Statute, Article 75 (2)

²⁷ Rome Statute, Article 76; Rules of Procedure and Evidence, Rule 144

²⁸ Rome Statute, Article 77

²⁹ Rome Statute, Article 103 (a)

³⁰ Rome Statute, Article 81

Anyone who has been the victim of unlawful arrest or detention will have the right to compensation.³¹

Penalties

The Court can not impose the death penalty. The Court can impose terms of imprisonment of up to 30 years or, in exceptional circumstances, life imprisonment. The Court may, in addition, order a fine, forfeiture of proceeds, property or assets derived from the committed crime.³²

A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons.³³

³¹ Rome Statute, Article 83.

³² Rome Statute, Article 84

³³ Rome Statute, Article 85