

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09 OA2

Date: 18 May 2018

APPEALS CHAMBER

Before: Judge Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN DARFUR, SUDAN

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

Public

**African Union Notification of Acceptance of the Appeals Chamber Invitation to
Submit *Amicus Curiae* Observations in the Appeal of the Hashemite Kingdom of
Jordan**

Source: African Union Commission

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

Office of Public Counsel for Victims

Office of Public Counsel for Defence

States' Representatives

Competent Authorities of the Hashemite
Kingdom of Jordan

Competent Authorities of the Other States
Parties to the Rome Statute

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other
United Nations
European Union
League of Arab States
Organization of American States

I. BACKGROUND

1. On 11 December 2017, Pre-Trial Chamber II found, by majority, that the Hashemite Kingdom of Jordan (“Jordan”) had failed to comply with its obligations to cooperate under Article 87(7) of the *Rome Statute of the International Criminal Court* by not arresting and surrendering President Omar Al Bashir of Sudan who stands charged with crimes against humanity and genocide during his March 2017 visit.¹ The Chamber also decided to refer Jordan, in accordance with Regulation 109(4) of the Regulations of the Court, to the Assembly of States Parties of the Rome Statute as well as the United Nations Security Council.²
2. On 18 December 2017, Jordan lodged a notice of its intention to appeal the decision to the Appeals Chamber.³ The Pre-Trial Chamber ruled in Jordan’s favour on 21 February 2018.⁴
3. On 29 March 2018, the Appeals Chamber issued an order in which it noted that the decision on Jordan’s non-compliance and referral in relation to the Al Bashir appeal “raises legal issues that may have implications beyond the present case.”⁵ In the circumstances, the Appeals Chamber considered “it desirable to invite observations from international organisations, States Parties and Professors of International Law on these issues to assist the

¹ “Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender or [sic] Omar Al-Bashir,” 11 December 2017, ICC-02/05-01/09-309, p. 21; “Minority Opinion of Judge Marc Perrin de Brichambaut,” 14 December 2017, ICC-02/05-01/09-309-Anx-tENG.

² ICC-02/05-01/09-309, p. 21-22.

³ “The Hashemite Kingdom of Jordan’s Notice of Appeal of the Decision under Article 87(7) of the Rome Statute on the Non-Compliance by Jordan with the Request by the Court for the Arrest and Surrender of Omar Al-Bashir; or, in the Alternative, Leave to Seek Such an Appeal,” 18 December 2017, ICC-02/05-01/09-312.

⁴ “Decision on Jordan’s request for leave to appeal,” 21 February 2018, ICC-02/05-01/09-319, p. 9.

⁵ “Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence),” 29 March 2018, ICC-02/05-01/09-330, para. 1.

Appeals Chamber in its determination.”⁶ Consequently, the Appeals Chamber invited observations on the “merits of the legal questions presented”⁷, in accordance with Rule 103 of the Regulations of the Court, to the United Nations, the African Union, the European Union, the League of Arab States, and the the Organization of American States.⁸

II. The African Union Position

4. The AU and its Member States are committed to the fight against impunity for serious crimes under international law, in line with the Constitutive Act of the African Union adopted in Togo in 2000. Thirty-three of the 55 AU Member States are also parties to the *Rome Statute of the International Criminal Court*. Several African States are also signatories. The AU considers that the Appeals Chamber was right that, in view of the complex legal issues involved and their wider implications for states parties to the *Rome Statute of the International Criminal Court* as well as for non-parties, it is important to hear and take into account the views of interested international and regional organizations as well as states parties. The AU therefore welcomes the opportunity to engage in a form of legal dialogue with the ICC on the important institution and role of immunity under general international law.⁹ For this purpose, and in accordance with decision of the Appeals Chamber of 29 March 2018, the AU intends to submit its observations no later than 16 July 2018.

⁶ *Id.*

⁷ *Ibid.*, pp. 3-5.

⁸ *Ibid.* para. 2.

⁹ “African Union Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence on the Rule 68 Amendments at the Twelfth Session of the ICC Assembly of States Parties,” 5 October 2015, ICC-01/09-01/11-1983-Anx, para 10.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dire Negm", is written over a circular blue stamp. The stamp contains the text "AFRICAN UNION COMMISSION" and "LEGAL COUNSEL" around a central emblem.

Ambassador Doctor Namira Negm
Legal Counsel
African Union Commission

Prof. Dr. Charles Jalloh
External Counsel
African Union Commission

Prof. Dr. Dire Tladi
External Counsel
African Union Commission

Dated this 18th day of May 2018
At Addis Ababa, Ethiopia and New York, USA.