

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/05-01/09
Date: 15 January 2018

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 on Jordan's request for leave to reply

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 Hashemite
Kingdom of Jordan

Other

Presidency
Appeals Chamber

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 issues this decision on the “Request for leave to file a reply to the Prosecution’s response to the Hashemite Kingdom of Jordan’s notice of appeal against the article 87(7) decision, or in the alternative, application for leave to appeal the decision under article 82(1)(d)” (“Request for Leave to Reply”),¹ filed by the Hashemite Kingdom of Jordan (“Jordan”).

1. On 11 December, the Chamber issued 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”,² whereby it found that Jordan had failed to comply with its obligations under the Rome Statute by not executing the Court’s request for the arrest of Omar Hassan Ahmad Al-Bashir (“Omar Al-Bashir”) and his surrender to the Court while he was on Jordanian territory on 29 March 2017, and decided that the matter of Jordan’s non-compliance with the request for arrest and surrender of Omar Al-Bashir to the Court be referred to the Assembly of States Parties of the Rome Statute and the United Nations Security Council.
2. On 18 December 2017, Jordan filed “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”.³
3. On 21 December 2017, the Prosecutor filed the “Prosecution’s response to the Hashemite Kingdom of Jordan’s notice of appeal against the article 87(7) decision, or in the alternative, application for leave to appeal the decision under article 82(1)(d)” (“Response”).⁴

¹ ICC-02/05-01/09-314.

² ICC-02/05-01/09-309.

³ ICC-02/05-01/09-312.

⁴ ICC-02/05-01/09-313.

4. On 28 December 2017, Jordan filed the Request for Leave to Reply, making reference to regulation 24(5) of the Regulations of the Court, and stating that “[t]he main purpose of the reply would be to challenge new points raised in the Prosecution’s response, which Jordan could not reasonably have anticipated, especially the assertion that Issues 2 and 3 meet the standards for an appeal, which the inescapably linked Issues 1 and 4 do not”.⁵
5. Regulation 24(5) of the Regulations of the Court provides that participants may regularly only reply to a response with the leave of the Chamber and that, unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.
6. In light of the arguments made by the Prosecutor in the Response, including the proposed reformulation of some of the issues for the prospective appeal, the Chamber considers that a reply to the Response by Jordan is warranted. The request is therefore granted and a time limit set in accordance with regulation 34(c) of the Regulations of the Court.

FOR THESE REASONS, THE CHAMBER HEREBY

DECIDES that Jordan may reply to the Response, by 26 January 2018.

⁵ Request for Leave to Reply, para. 3.

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 15 January 2018

At The Hague, The Netherlands