

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09
Date: 27 February 2018

THE APPEALS CHAMBER

Before: Judge Howard Morrison, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Silvia Fernández de Gurmendi
Judge Piotr Hofmański

SITUATION IN DARFUR, SUDAN

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

Public

The Hashemite Kingdom of Jordan's Application for an Extension of the Page Limit for its Appeal against 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 or [sic] Omar Al-Bashir"

Source: The Hashemite Kingdom of Jordan

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

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Unrepresented Victims

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Other

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I. Introduction

1. Pursuant to regulation 37(2) of the Regulations of the Court, the Hashemite Kingdom of Jordan (“Jordan”) requests an extension of the page limit to 50 pages for its appeal against the Pre-Trial Chamber II’s December 2017 “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” (the “December 2017 Decision”).¹
2. Jordan submits that exceptional circumstances, as required by regulation 37(2), exist and justify the requested extension.

II. Procedural history

3. In its December 2017 Decision, Pre-Trial Chamber II found “that Jordan failed to comply with its obligations under the Statute by not executing the Court’s request for the arrest of Omar Al-Bashir and his surrender to the Court while he was on Jordanian territory on 29 March 2017”. Further, the Chamber 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, through the President of the Court in accordance with regulation 109(4) of the Regulations of the Court, to the Assembly of States Parties of the Rome Statute and the United Nations Security Council”.²
4. On 18 December 2017, Jordan filed a “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” (“Notice of Appeal”).

¹*Situation in Darfur, Sudan, Prosecutor v. Omar Hassan Ahmad Al Bashir*, “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”, ICC-02/05-01/09 (11 Dec. 2017).

²*Ibid.*, pp. 21-22.

5. On 21 February 2018, Pre-Trial Chamber II issued its “Decision on Jordan’s request for leave to appeal”, granting Jordan leave to appeal the December 2017 Decision with respect to the Second, Third and Fourth Issues raised in the Notice of Appeal.³

III. Applicable law

6. Regulation 37 of the Regulations of the Court provides that:
1. A document filed with the Registry shall not exceed 20 pages, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber.
 2. The Chamber may, at the request of a participant, extend the page limit in exceptional circumstances.
7. In previous cases, exceptional circumstances justifying the extension of the page limit have been found to exist because of the nature of the issues on appeal and the type of submissions required to address those issues⁴; the novelty of the issues and the degree of complexity of the case⁵; the number of issues in appeal⁶; and the need to provide sufficient factual detail on appeal.⁷

IV. Submissions

³*Situation in Darfur, Sudan, Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Decision on Jordan’s request for leave to appeal”, ICC-02/05-01/09 (21 Feb. 2018).

⁴See, for example: *Situation in the Democratic Republic of Congo, Prosecutor v. Germain Katanga*, “Decision on the “Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II’s Decision of 21 November 2012 on Regulation 55 (Decision 3319)””, ICC-01/04-01/07 OA 13 (8 Jan. 2013), para. 7; *Situation in the Democratic Republic of Congo, Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the urgent request for an extension of page limit pursuant to regulation 37(2) of the Regulations of the Court (ICC-01/04-01/07-1540)”, ICC-01/04-01/07 (21 Oct. 2009), para. 4.

⁵See, for example: *Situation in the Central African Republic, Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on Mr Bemba’s request for an extension of page limit for his document in support of the appeal”, ICC-01/05-01/08 A (11 Jul. 2016), para. 10; *Situation in the Democratic Republic of Congo, Prosecutor v. Germain Katanga*, “Decision on the “Urgent Defence Application for Extension of Page Limit for its Document in Support of Appeal against Trial Chamber II’s Decision of 21 November 2012 on Regulation 55 (Decision 3319)””, ICC-01/04-01/07 OA 13 (8 Jan. 2013), para. 7; *Situation in the Democratic Republic of Congo, Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009, entitled “Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 52(2) of the Regulations of the Court””, ICC-01/04-01/06 OA 15 OA 16 (8 Dec. 2009), para. 21.

⁶See, for example: *Situation in the Democratic Republic of Congo, Prosecutor v. Callixte Mbarushimana*, “Decision on the Prosecution request for extension of page limit”, ICC-01/04-01/10 (24 Jun. 2011), p. 3.

⁷See, for example: *Situation in the Republic of Kenya*, “Decision on the Prosecutor’s Request for Extension of Page Limit”, ICC-01/09 (23 Nov. 2010), para. 4.

8. The three Issues certified for appeal by Pre-Trial Chamber II relate to a variety of complex and novel legal issues that are at the core of the functioning of the Court. The appeal will require an analysis of, *inter alia*, the relationship between articles 27(2) and 98(2) of the Rome Statute; the effects of referrals under article 13(b) of the Rome Statute; the interpretation of U.N. Security Council resolution 1593 (2005) and whether it affects States' obligations under customary and conventional international law to accord immunity to President Al-Bashir; the use of discretion by Pre-Trial Chambers in deciding to refer decisions on non-compliance to the Assembly of States Parties and the U.N. Security Council; and more generally the interrelationship between the Rome Statute and fundamental rules and principles of general international law.
9. Most of the questions raised in Jordan's appeal have not yet been addressed by the Appeals Chamber. Jordan recalls that it is important that States Parties have a clear understanding of their obligations under the Rome Statute, and can be confident that decisions of the Court are based on sound and consistent legal reasoning. That has not so far been the case in decisions of the Pre-Trial Chambers concerning States Parties' alleged failure to arrest and surrender President Al-Bashir to the Court.
10. It is submitted that given the importance and complexity of the appeal, not only for purposes of the proceedings undertaken against Jordan, but also for the functioning of the Court more generally, it would be in the best interests of justice to allow Jordan to advance its arguments in proper detail.

V. Relief sought

11. Jordan requests an extension of the page limit to 50 pages for its appeal against the Pre-Trial Chamber II's December 2017 Decision.



Ambassador Ahmad Jalal Said Al-Mufleh
on behalf of
The Hashemite Kingdom of Jordan

Dated 27 February 2018

At The Hague, The Netherlands

