

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/05-01/09

Date: 1 August 2018

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN
IN THE CASE OF *THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR*

CONFIDENTIAL

Decision Regarding Reclassification of Documents

Decision 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/Reparations**

**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

Amicus Curiae

REGISTRY

Registrar
Peter Lewis, Registrar

Defence Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II (the “Chamber”) of the International Criminal Court (the “Court”) issues this Decision Regarding Reclassification of Documents.

1. On 11 December 2017, Pre-Trial Chamber II 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 or [sic] Omar Al-Bashir” (the “Article 87(7) Decision”).¹

2. On 21 February 2018, Pre-Trial Chamber II granted the Hashemite Kingdom of Jordan (“Jordan”) leave to appeal the Article 87(7) Decision.²

3. On 21 May 2018, the Appeals Chamber scheduled a hearing in the appeal against the Article 87(7) Decision, which will take place from 10 to 12 September 2018.³

4. On 25 July 2018, the Chamber received the “Prosecution’s request to reclassify its submissions and to make available a public record for the purposes of the hearing scheduled before the Appeals Chamber” (the “Prosecutor’s Request”).⁴

¹ Pre-Trial Chamber II, 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 Omar Al-Bashir, 11 December 2017, ICC-02/05-01/09-309.

² Pre-Trial Chamber II, Decision on Jordan’s request for leave to appeal, 21 February 2018, ICC-02/05-01/09-319.

³ Appeals Chamber, Decision on the requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, the request for leave to reply and further processes in the appeal, 21 May 2018, ICC-02/05-01/09-351 OA2, paras 12-13.

⁴ Prosecutor’s Request, ICC-02/05-01/09-374-Conf. Although originally addressed to the Appeals Chamber, the Prosecutor’s Request has been redirected to the Chamber, “[g]iven that all the documents sought for reclassification in the Request had been filed before Pre-Trial Chamber II [...]”; see also ICC-02/05-01/09-373-Conf.

5. The Prosecutor requests that certain documents that relate to the appeal against the Article 87(7) Decision be made public in order to ensure a public record for the aforementioned hearing before the Appeals Chamber. The documents for which reclassification is sought emanate, *inter alia*, from Jordan and the Registry.⁵

6. With regard to Jordan, the Prosecutor requests the Chamber to reclassify the following documents:

- ICC-02/05-01/09-291-Conf-Anx2 (*note verbale* dated 24 March 2017);
- ICC-02/05-01/09-293-Conf-Anx1-Corr (*note verbale* dated 28 March 2017);⁶
- ICC-02/05-01/09-298-Conf-Anx (*note verbale* dated 24 May 2017);
- ICC-02/05-01/09-301-Conf-Anx (*note verbale* dated 30 June 2017);
- ICC-02/05-01/09-306-Conf-AnxI (*note verbale* dated 6 October 2017 containing also the 1953 Convention on the Privileges and Immunities of the Arab League);
- ICC-02/05-01/09-306-Conf-AnxII-Corr (corrected version of annex II to the transmission of the *note verbale* dated 6 October 2017).⁷

7. With regard to the Registry, the Prosecutor requests the Chamber to reclassify the following document:

- ICC-02/05-01/09-291-Conf-Anx1 (*note verbale* dated 21 February 2017).

⁵ Prosecutor's Request, ICC-02/05-01/09-374-Conf, paras 3, 5-7.

⁶ This comprises the explanatory note to the corrigendum, ICC-02/05-01/09-293-Conf-Anx1-Corr-Anx.

⁷ This comprises the explanatory note to the corrigendum, ICC-02/05-01/09-306-Conf-AnxII-Corr-Anx. The Chamber further notes that the Prosecutor requests that both documents ICC-02/05-01/09-306-Conf-AnxII and ICC-02/05-01/09-306-Conf-AnxII-Corr – which is a corrected version of the former – be reclassified; *see* Prosecutor's Request, ICC-02/05-01/09-374-Conf, footnotes 5 and 13. However, document ICC-02/05-01/09-306-Conf-AnxII has been replaced by ICC-02/05-01/09-306-Conf-AnxII-Corr. The Chamber therefore refers only to the latter document in the present decision.

8. The Chamber notes regulation 23*bis*(3) of the Regulations of the Court, which provides that, "[w]here the basis for the classification no longer exists, whosoever instigated the classification, be it the Registrar or a participant, shall apply to the Chamber to reclassify the document", as well as that "[a] Chamber may also re-classify a document upon request by any other participant or on its own motion".

9. In this regard, the Chamber considers it appropriate to request the competent authorities of Jordan and the Registry to indicate whether the documents concerned can be made public without redactions or, if deemed necessary, to re-file these documents with redactions, no later than 27 August 2018 in view of the impending hearing before the Appeals Chamber. The Prosecutor already indicated that the documents she submitted may be re-classified as public.⁸ Once the Chamber receives all responses, it shall proceed to re-classify, unless the participants submit the documents in public redacted form.

FOR THESE REASONS, THE CHAMBER HEREBY

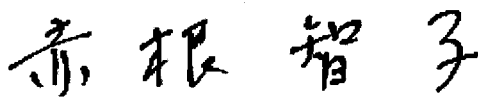
- a) **REQUESTS** the competent authorities of Jordan to indicate whether the documents referred to in paragraph 6 of the present decision can be made public without redactions or, if deemed necessary, to re-file these documents with redactions, no later than Monday, 27 August 2018; and
- b) **ORDERS** the Registry to indicate whether the document referred to in paragraph 7 of the present decision can be made public without redactions or, if deemed necessary, to re-file this document with redactions, no later than Monday, 27 August 2018.

⁸ Prosecutor's Request, ICC-02/05-01/09-374-Conf, paras 8-9.

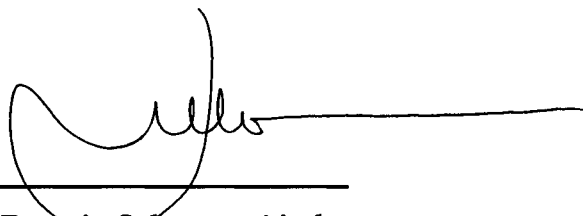
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,
Presiding Judge**



Judge Tomoko Akane



Judge Rosario Salvatore Aitala

Dated this Wednesday, 1 August 2018

At The Hague, Netherlands