

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-02/05  
Date: 19 February 2009

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**SITUATION IN DARFUR, SUDAN**

**Public**

**Decision on the Application for Leave to Appeal the Decision on Application  
under Rule 103**

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

**The Office of the Prosecutor**  
Mr Luis Moreno-Ocampo, Prosecutor  
Mr Essa Faal, Senior Trial Lawyer

**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**

**Others**  
Sir Geoffrey Nice, QC  
Rodney Dixon

**REGISTRY**

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**Registrar**  
Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER I** of the International Criminal Court (“the Chamber” and “the Court”, respectively);

**NOTING** the “Prosecutor’s Application under Article 58”<sup>1</sup> (“the Prosecution Application”), regarding a request for a warrant of arrest against Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”), filed on 14 July 2008, and the supporting and other information submitted by the Prosecution;

**NOTING** the Prosecution Application under Article 58 whereby a request was made for the issuance of a warrant of arrest for three alleged commanders of organised armed groups named therein (“the Prosecution Second Application”)<sup>2</sup> filed on 20 November 2008;

**NOTING** the “Application on behalf of Citizens’ Organisations of The Sudan in relation to the Prosecutor’s Applications for Arrest Warrants of 14 July 2008 and 20 November 2008” (“the Application”),<sup>3</sup> filed on 11 January 2009 by the Sudan Workers Trade Unions Federation and the Sudan International Defence Group (“the Applicants”), whereby:

The Applicants request that no arrest warrants are issued by the Pre-Trial Chamber at this time on grounds that (1) issuing such warrants would have grave implications for the peace building process in Sudan and that deference must be given to considerations of national interest and security; (2) that the interests of justice will not be served particularly in light of the Prosecutor’s conduct in bringing these applications; (3) that such warrants could entrench the negative perceptions of the ICC and thus contribute to a deterioration of the situation in Sudan; and, (4) that alternative means of transitional justice and resolution are being and will pursued without the need for any consideration of involvement of the ICC at this stage.<sup>4</sup>

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<sup>1</sup> ICC-02/05-151-US-Exp and ICC-02/05-151-US-Exp-Anxs1-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Anxs1 & 2; ICC-02/05-161 and ICC-02/05-161-Conf-AnxsA-J.

<sup>2</sup> ICC-02/05-163-Conf-Exp

<sup>3</sup> The Application, ICC-02/05-170.

<sup>4</sup> The Application, para. 8.

**NOTING** the “Supplement to the Application and Annexes to the Application on behalf of Citizens Organisations of The Sudan in relation to the Prosecutor’s Applications for Warrants of 14 July 2008 and 20 November 2008”,<sup>5</sup> filed by the Applicants on 4 February 2009, in which the Applicants provide further information in support of the Application under Rule 103;

**NOTING** the “Decision on the Application under Rule 103”<sup>6</sup> (“the Decision”) issued by the Chamber on 4 February 2009, in which the Chamber rejected the request made by the Sudan Workers Trade Unions Federation and the Sudan International Defence Group pursuant to rule 103 of the Rules as, according to the Statute and the Rules, “the Chamber neither has the power to review, nor is it responsible for, the Prosecution’s assessment that, under the current circumstances in Sudan, the initiation of a case against Omar Al Bashir and three alleged commanders of organised armed groups would not be detrimental to the interests of justice”;<sup>7</sup>

**NOTING** the “Application for Leave to Appeal Against Decision on Application under Rule 103”<sup>8</sup> (“The Application for Leave to Appeal”) filed by the Applicants on 11 February 2009, according to which the Sudan Workers Trade Unions Federation and the Sudan International Defence Group seek, pursuant to paragraph (d) of article 82 (1) of the *Rome Statute* (“the Statute”), the leave of the Chamber to appeal the Decision;

**NOTING** that the Prosecution has not filed any response to the Application for Leave to Appeal within the time limit provided for in regulation 65 of the *Regulations of the Court* (“the Regulations”);

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<sup>5</sup> ICC-02/05-182.

<sup>6</sup> ICC-02/05-185.

<sup>7</sup> ICC-02/05-185, para. 29.

<sup>8</sup> ICC-02/05-187

**NOTING** article 82(1)(d) of the Statute, rule 155 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 24(5), 65 and 77 of the Regulations;

**CONSIDERING** that according to the express wording of the *chapeau* of article 82 (1) of the Statute and rule 155 of the rules:

- (i) “Either party may appeal” a decision included in paragraph (d) of article 82 (1)(d) of the Statute; and that
- (ii) “When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal”;

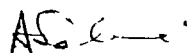
**CONSIDERING** that the Sudan Workers Trade Unions Federation and the Sudan International Defence Group are not “a party” to the proceedings relating to the investigation into the Darfur situation within the meaning of this expression in the *chapeau* of article 82(1) of the Statute and rule 155 of the Rules;

**CONSIDERING** that, as a result, they have no procedural standing to appeal the Decision pursuant to article 82(1)(d) of the Statute and rule 155 of the Rules;

**FOR THESE REASONS,**

**REJECTS** the Application for Leave to Appeal *in limine*.

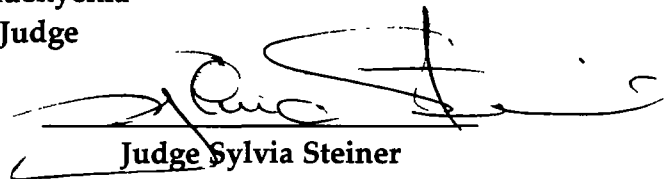
Done in both English and French, the English version being authoritative.



**Judge Akua Kuenyehia**  
**Presiding Judge**



**Judge Anita Ušacka**



**Judge Sylvia Steiner**

Dated this Thursday 19 February 2009

At The Hague

The Netherlands