

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

REQUEST FOR ADVISORY OPINION BY THE COALITION FOR THE INTERNATIONAL CRIMINAL COURT, THE LEGAL DEFENCE & ASSISTANCE PROJECT (LEDAP), THE CIVIL RESOURCE DEVELOPMENT & DOCUMENTATION CENTER (CIRDDOC) AND THE WOMEN ADVOCATES DOCUMENTATION CENTER (WARDC)

N° 001 OF 2014

ORDER

The Court composed of: Augustino S. L. RAMADHANI, President, Elsie N. THOMPSON, Vice-President, Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSÉ, Ben KIOKO, Rafâa Ben ACHOUR, Solomy B. BOSSA and Ângelo Vasco MATUSSE, Judges; and Robert ENO, Registrar.

IN THE MATTER OF

REQUEST FOR ADVISORY OPINION BY THE COALITION FOR THE INTERNATIONAL CRIMINAL COURT, THE LEGAL DEFENCE & ASSISTANCE PROJECT (LEDAP), THE CIVIL RESOURCE DEVELOPMENT & DOCUMENTATION CENTER (CIRDDOC) AND THE WOMEN ADVOCATES DOCUMENTATION CENTER (WARDC)

After deliberations;

Makes the following Order:

I. Nature of the Request.

1. The Authors of the Request state that they are Non-governmental organizations (NGOs) based and registered in Nigeria and undertake the promotion and protection of human rights and the fight against impunity across Africa, especially in West Africa.
2. The Authors submit that they "have justiciable interest in the issues raised in this Request", noting that Nigeria is a State Party to the Rome Statute of the International Criminal Court (ICC) and a member of the African Union (AU), and therefore bound by treaty obligations under the Rome Statute by virtue of Article 86 thereof and the Resolutions of the AU, by virtue of Article 23 of the Constitutive Act of the African Union.

3. The Authors argue that being a coalition and NGOs working to end impunity in Nigeria and across West Africa, and engaging with these governments on ICC as well as on AU issues, they are deeply interested in the questions presented to the Court for Advisory Opinion. The Authors submit that their particular interest in the Request arises from the following:

- i. In engaging with Government officials on ICC and AU issues, as well as broader international justice issues, they need advice on which of the treaty obligations are superior when they conflict. According to the Authors, there is such a conflict because the AU, by various Resolutions, has demanded that its members should not cooperate with the ICC with respect to the arrest and surrender of President Omar Al-Bashir of Sudan who has been indicted for crimes under the Rome Statute of the ICC, while at the same time the Statute creates treaty obligations on its State parties, such as Nigeria, Ghana and other countries in West Africa, to cooperate with the ICC, especially in the arrest and surrender of any person indicted by the ICC against whom a warrant of arrest has been issued as in the case of President Omar Al-Bashir.
- ii. The applicants work on projects aimed at tackling impunity in Nigeria and in West Africa, and they rely on the treaty obligations of these countries under the Rome Statute as well as domestic laws, including the African Charter of Human and Peoples' Rights (Ratification and Enforcement) Act of Nigeria, and other international and regional instruments.
- iii. In various summits of Heads of State and Government of the AU, between 2011 and 2013, the Union adopted various resolutions calling on its members not to cooperate with the Office of the Prosecutor of the ICC with respect to the arrest and surrender of President Omar Al Bashir of Sudan.

4. The Authors submit that since 2009 when President Al Bashir was indicted by the ICC and international warrants for his arrest issued and forwarded to the Nigerian government, the said President Al Bashir has entered the territory of Nigeria twice, in 2009 and in 2013. On both occasions, the Nigerian government had obligation under the Rome Statute to arrest and surrender him to the ICC. At the same time, the Nigerian government was faced with various resolutions of the African Union referred to in paragraph 3 above, demanding that it refrained from cooperating with the ICC in that respect. They aver that as civil society organizations working to tackle impunity, including demanding the arrest and surrender of persons indicted by the ICC, they demanded the Nigeria government to arrest and surrender President Al Bashir on both occasions, noting that in his 2013 visit, one of them sought a court order from the domestic court to compel the government to fulfill its treaty obligation in this regard but the case was not heard before President Al-Bashir left the territory of Nigeria.

II. Issues for determination by the Court

5. The Authors request the Court to give its opinion on the following issues:
- i. Whether the Treaty obligation of an African state party to the Rome Statute of the ICC to cooperate with the Court is superior to the obligation of that state to comply with AU resolution calling for non-cooperation of its members with the ICC?
 - ii. If the answer to question (i) above is in the affirmative, whether all African State Parties to the ICC have overriding legal obligation above all other legal or diplomatic obligation arising from resolutions or decisions of the African Union to arrest and surrender President Omar Al Bashir any time he enters into the territory of any of the African State Parties to the ICC?.

Procedure

6. The Request was received at the Registry of the Court on 28 March 2014.
7. On 8 April 2014, the Registrar wrote to the Executive Secretary of the African Commission on Human and Peoples' Rights seeking confirmation whether the subject matter of the Request was not related to a matter being examined by the Commission.
8. By letter dated 17 April 2014, the Executive Secretary of the African Commission on Human and Peoples' Rights confirmed that the subject matter of the Request was not related to any matter before the Commission.
9. At its 33rd Ordinary Session, held from 28 May to 13 June, 2014, the Court examined the present Request and noted that it did not comply with the requirements under Rule 68 of the Rules of Court, and instructed the Registrar to notify the Authors accordingly.
10. By letter dated 30 June 2014, the Registrar notified the Authors of the Court's decision, that is, to establish that the said Request meets the requirements under Rule 68 of the Rules of Court, in particular, Rule 68(2) thereof which provides that :

Any request for advisory opinion shall specify the provisions of the Charter or of any other international human rights instrument in respect of which the advisory opinion is being sought, the circumstances giving rise to the request as well as the names and addresses of the representatives of the entities making the request.
11. At its 34th Ordinary Session, held from 8 to 19 September, 2014, the Court noted that the Authors had not responded to the Registrar's letter of 30 June 2014.
12. At its 36th Ordinary Session, held from 9 to 27 March 2015, the Court noted that the Authors had still not responded to the Court's letter of 30 June 2014.

13. As of the date of this Order, the Court notes further that the Authors have still not responded to the Registrar's letter of 30 June 2014.

Now therefore, having determined that:

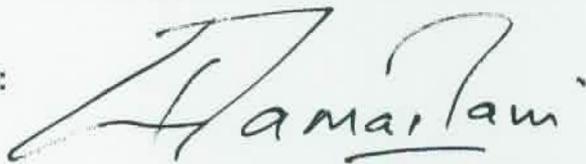
- i. The Request, as it stands, does not comply with Rule 68(2) of the Rules of Court, in that it raises issues of general Public International Law and not human rights law, and does not specify any provisions of the Charter;
- ii. The Authors have not responded to the Registrar's letter of 30 June 2014 and this has demonstrated a lack of interest to pursue the Request.

The Court, Unanimously:

Orders that this Request for Advisory Opinion BE and the same is HEREBY struck out for the reason that the Request does not comply with Rule 68(2) of the Rules of Court.

Done at Arusha, this 5 day of June, in the year Two Thousand and Fifteen, in English and French, the English version being authoritative.

Signed:



Justice Augustino S. L. Ramadhani, President

Robert Eno, Registrar

