

**Original: English****No. ICC-02/05-01/20****Date: 31 May 2023****Date of original: 6 February 2023****TRIAL CHAMBER I**

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI
KUSHAYB')***

Public redacted version**Decision on the Defence's modified request
for legal assistance dated 30 January 2023**

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

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**Victims Participation and Reparations
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Other

Competent authorities of the Republic of
Sudan

I. PROCEDURAL HISTORY

1. On 11 February 2022, Trial Chamber I (the ‘Chamber’), on request of the Defence,¹ issued a decision requesting the assistance of the Republic of Sudan (the ‘Sudanese authorities’ or ‘Sudan’) in providing documents relating to Mr Abd-Al-Rahman’s background and identity (the ‘Biographical Documents’) necessary for the preparation of his defence (the ‘Decision of 11 February 2022’).²
2. On 22 April 2022, the Defence filed a first request asking the Chamber to make a finding of systematic non-cooperation by Sudan with respect to the requests for judicial assistance and visa applications (the ‘First Request for Finding of Non-Cooperation’).³
3. On 24 May 2022, the Chamber partially rejected the First Request for a Finding of Non-Cooperation, but invited Sudan to submit observations on any issue(s) that may have impeded or prevented the execution of the Decision of 11 February 2022 (the ‘Decision of 24 May 2022’).⁴
4. On 30 June 2022, the Registry transmitted the observations of Sudan (‘Sudan’s Observations of 30 June 2022’).⁵ In their observations, the Sudanese authorities [REDACTED].⁶
5. On 11 October 2022, the Defence filed a second request seeking a finding of non-cooperation (the ‘Second Request for Finding of Non-Cooperation’).⁷

¹ Requête relative à la non-coopération du Soudan, 18 January 2022, ICC-02/05-01/20-557-Conf-Exp. A public redacted version was notified on the same day, ICC-02/05-01/20-557-Red.

² Decision on the Defence request for cooperation pursuant to Article 57(3)(b) of the Statute, ICC-02/05-01/20-590-Conf-Exp. A public redacted version was notified on the same day, ICC-02/05-01/20-590-Red.

³ Requête en vertu de l’Article 87-5-b du Statut, ICC-02/05-01/20-678-Conf (notified on 25 April 2022). A public redacted version was notified on the same day, ICC-02/05-01/20-678-Red.

⁴ Decision on the Defence’s request pursuant to Article 87(5)(b), ICC-02/05-01/20-695-Conf-Exp. A confidential redacted version was notified on the same day, ICC-02/05-01/20-695-Conf-Red.

⁵ Registry’s Transmission of Observations submitted by the Republic of Sudan pursuant to Trial Chamber I’s Decision of 24 May 2022, and Seventh Report on cooperation with the Republic of Sudan, ICC-02/05-01/20-707-Conf-Exp+707-Conf-Exp-AnxI and 707-Conf-Exp-AnxII. A confidential redacted version was notified on the same day, ICC-02/05-01/20-707-Conf-Red.

⁶ Sudan’s Observations of 30 June 2022, ICC-02/05-01/20-707-Conf-Exp-AnxI, p. 4.

⁷ Nouvelle Requête en vertu de l’Article 87-5-b du Statut à la lumière des Observations ICC-02/05-01/20-707-Conf-Exp-Anx1, ICC-02/05-01/20-768-Conf-Exp+768-Conf-Exp-Anx1 (notified on 12 October 2022). A confidential redacted version was notified on the same day, ICC-02/05-01/20-768-Conf-Red.

6. On 4 November 2022, the Chamber deferred its decision on the Second Request for Finding of Non-Cooperation, and required the Sudanese authorities to provide the Biographical Documents as soon as possible, and no later than 13 January 2023 ('Decision of 4 November 2022').⁸
7. On 8 November 2022, the Chamber issued an addendum to its Decision of 4 November 2022,⁹ requiring the Sudanese authorities to provide the Defence with additional documents by the same deadline, and inviting the Sudanese authorities to file observations on these documents by 1 December 2022 (the 'Addendum').
8. On 29 November 2022, the Chamber rejected the Defence's request for leave to appeal the Decision of 4 November 2022.¹⁰
9. On 16 January 2023, the Defence filed a third request asking the Chamber to make a finding on non-cooperation by Sudan.¹¹
10. On the same day, the Registry transmitted a communication from the Sudanese authorities pursuant to the Decision of 4 November 2022 and the Addendum ('Sudan's Communication of 12 January 2023').¹² The communication was received by the Registry on 12 January 2023.¹³ In their communication, the Sudanese authorities state that [REDACTED].¹⁴
11. On 17 January 2023, the Prosecution, Registry and Defence made oral submissions following Sudan's Communication of 12 January 2023.¹⁵

⁸ Decision on the Defence's second request pursuant to Article 87(5)(b), ICC-02/05-01/20-806-Conf.

⁹ Addendum to the 'Decision on the Defence's second request pursuant to Article 87(5)(b)', ICC-02/05-01/20-809-Conf.

¹⁰ Decision on the Defence's request for leave to appeal the Decision on the Defence's second request pursuant to Article 87(5)(b), ICC-02/05-01/20-820-Conf. *See also* Demande d'autorisation d'interjeter appel de la décision ICC-02/05-01/20-806-CONF, ICC-02/05-01/20-811-Conf (notified on 14 November 2022).

¹¹ Troisième Requête aux fins de constat de la non-coopération du Soudan, ICC-02/05-01/20-849-Conf.

¹² Registry's Transmission of a Communication Submitted by the Embassy of the Republic of Sudan pursuant to Trial Chamber I's Decisions of 4 and 8 November 2022 respectively, and Ninth Report on the status of cooperation with the Republic of Sudan, ICC-02/05-01/20-848-Conf, with Confidential Annexes I-III.

¹³ Sudan's Communication of 12 January 2023, ICC-02/05-01/20-848-Conf-AnxI, p. 2.

¹⁴ Sudan's Communication of 12 January 2023, ICC-02/05-01/20-848-Conf-AnxI, p. 2.

¹⁵ Transcript of hearing, 17 January, ICC-02/05-01/20-T-107-CONF-ENG, p. 26, line 15 to p. 47, line 15.

12. On 20 January 2023, the Chamber issued a decision requesting Sudan to provide specific reasons why they consider that the Biographical Documents [REDACTED] (the ‘Decision on the Biographical Documents’).¹⁶

13. On 27 January 2023, the Chamber issued a decision instructing the Defence to clarify and modify their request in respect of the Additional Documents (the ‘Decision on the Additional Documents’).¹⁷

14. On 1 February 2023, upon request from the Chamber,¹⁸ the Defence filed a modified request in respect of the Additional Documents (the ‘Modified Request’).¹⁹

15. On 3 February 2023, the Defence filed a request for leave to appeal the Decision on the Biographical Documents as well as the Decision on the Additional Documents.²⁰

II. ANALYSIS

16. The Chamber refers to the legal framework governing Sudan’s cooperation with the Court as set out in the Decision on the Biographical Documents.²¹

17. In respect of the Additional Documents subject of the present decision, and following Sudan’s Communication of 12 January 2023 [REDACTED], the Chamber has engaged in the process set out in [REDACTED] the Rome Statute (the ‘Statute’).²²

18. In its Modified Request, the Defence seeks to obtain the following documents from the Sudanese authorities:

[REDACTED]²³

¹⁶ Decision in relation to the documents requested from Sudan on 11 February 2022, ICC-02/05-01/20-853-Conf.

¹⁷ Decision relating to the documents requested on 8 November 2022, ICC-02/05-01/20-857-Conf.

¹⁸ Transcript of hearing, 31 January 2023, ICC-02/05-01/20-T-111-CONF-ENG, p. 88, line 25 to p. 92, line 2.

¹⁹ Exécution de la Décision ICC-02/05-01/20-857-CONF, ICC-02/05-01/20-862-Conf, with two confidential *ex parte* annexes.

²⁰ Demande d’autorisation d’interjeter appel des décisions ICC-02/05-01/20-853-CONF et ICC-02/05-01/20-857-CONF, ICC-02/05-01/20-863-Conf.

²¹ Decision on the Biographical Documents, ICC-02/05-01/20-853-Conf, paras 15-18.

²² Decision on the Additional Documents, ICC-02/05-01/20-857-CONF, para. 26.

²³ Annexe 1 à l’Exécution de la Décision ICC-02/05-01/20-857-Conf, ICC-02/05-01/20-862-Conf-Exp-Anx1, p. 3.

19. After careful review of the Modified Request, the Chamber finds that the diverse nature of the documents requested, mandates an array of actions from the Chamber.

20. With respect to the documents requested at paragraph 18(i) and (iv) above, the Chamber notes that the Defence has not substantially modified this part of their request for legal assistance.²⁴ Furthermore, the Chamber notes that these documents are currently subject to *inter partes* consultations between the Defence and the Prosecution.²⁵

21. Notwithstanding the above, the Chamber notes that documents requested at paragraph 18(i) and (iv) are straightforward and of an administrative nature. Moreover, the basis of Sudan's assertion that these documents [REDACTED] is not readily apparent. The Chamber therefore requests Sudan's cooperation in providing these documents. Should Sudan decide that the documents requested at paragraph 18(i) and (iv) still [REDACTED], the Chamber requests Sudan to provide specific reasons for this decision. These reasons may be provided on an *ex parte* basis, available only to the Chamber.

22. With respect to the documents requested at paragraph 18(ii) and (iii) above, the Chamber notes the modifications made by the Defence in order to further restrict the scope of their request. The Chamber thus requests the Sudanese authorities to provide the documents requested under paragraph 18(ii) and (iii).

23. Pursuant to [REDACTED] the Statute, if Sudan considers that there are no means or conditions under which the documents requested at paragraph 18(ii) and (iii) can be provided [REDACTED], the Chamber requests the Sudanese authorities to notify it of the specific reasons for its decision, [REDACTED]. These reasons may be provided on an *ex parte* basis, available only to the Chamber.

24. With respect to the documents requested at paragraph 18(v), the Chamber notes that the Defence has not modified this part of their request for legal assistance. The Chamber finds that, as with the Biographical Documents, the documents at paragraph

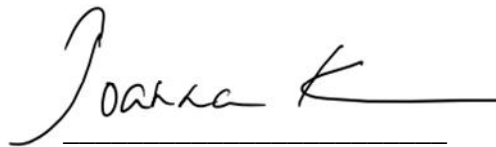
²⁴ [REDACTED]; see Decision on the Additional Documents, ICC-02/05-01/20-857-CONF, para. 18(d).

²⁵ See Email from the Prosecution, 3 February 2023, at 13:00. See also Email from the Chamber, 3 February 2023, at 15:13.

18(v) are ‘straightforward and of an administrative nature’.²⁶ The basis of Sudan’s assertion that these documents [REDACTED] is also not readily apparent.²⁷ Noting that the Chamber has already provided the Sudanese authorities the opportunity to file observations on the documents requested at paragraph 18(v),²⁸ the Chamber requests the Sudanese authorities to provide these documents within 21 days of notification of the present decision.

25. Should Sudan decide that the documents requested at paragraph 18(v) [REDACTED], the Chamber requests Sudan to provide specific reasons for this decision. These reasons may be provided on an *ex parte* basis, available only to the Chamber.

26. Considering the above, the Chamber requests the Sudanese authorities to provide the documents under paragraph 18 within 21 days of notification of the Arabic translation of the present decision. Should Sudan decide that these [REDACTED], the Chamber requests Sudan to provide specific reasons for this decision by that same deadline.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 6 February 2023

At The Hague, The Netherlands

²⁶ Decision on the Biographical Documents, ICC-02/05-01/20-853-Conf, para. 23, *referring to* Decision of 24 May 2022, ICC-02/05-01/20-695-Conf-Red, para. 9.

²⁷ Decision on the Biographical Documents, ICC-02/05-01/20-853-Conf, para. 23.

²⁸ Addendum, ICC-02/05-01/20-809-Conf, para. 6.