



Original: English

No. ICC-02/05-01/20

Date: 23 July 2020

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

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

Public

Decision on the Defence request under article 115(b) of the Rome Statute

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart

Counsel for Mr Abd-Al-Rahman
Mr Cyril Laucci

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

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court,¹ having regard to Articles 1, 2, 34, 38(3), 39, 40, 57 to 61, 112(2)(d), 113, and 115 of the Rome Statute (the ‘Statute’), issues this Decision on the Defence request under article 115(b) of the Rome Statute (the ‘Request’).²

1. On 27 April 2007, Pre-Trial Chamber I granted the Prosecutor’s application under article 58(7) of the Statute³ and decided⁴ to issue a warrant of arrest against Mr Ali Muhammad Ali Abd-Al-Rahman (‘Mr Abd-Al-Rahman’),⁵ for crimes against humanity and war crimes allegedly committed in the localities of Kodoom, Bindisi, Mukjar, Arawala and their surrounding areas in Darfur, the Sudan, between August 2003 and March 2004.

2. On 16 January 2018, Pre-Trial Chamber II, in its previous composition, granted the Prosecutor’s application to amend the first warrant of arrest pursuant to article 58(6) of the Statute,⁶ by issuing a second warrant of arrest against Mr Abd-Al-Rahman,⁷ for crimes against humanity and war crimes allegedly committed in the locality of Deleig and surrounding areas in Darfur, the Sudan, between on or about 5 to 7 March 2004.

3. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself and was transferred to the Court’s Detention Centre.

4. On 15 June 2020, Mr Abd-Al-Rahman made his first appearance before the Single Judge.⁸

¹ Decision on the designation of a Single Judge, 9 June 2020, ICC-02/05-01/07-80.

² Requête en vertu de l’Article 115-b, 26 June 2020, ICC-02/05-01/20-10.

³ Prosecutor’s Application under Article 58 (7), 27 February 2007, ICC-02/05-55-US-Exp (public redacted version notified on the same day, ICC-02/05-56).

⁴ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr.

⁵ Warrant of Arrest for Ali Kushayb, ICC-02/05-01/07-3-Corr.

⁶ Prosecution’s application pursuant to article 58(6) of the Rome Statute to amend the warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) by adding new crimes, 3 November 2017, ICC-02/05-01/07-73-Secret-Exp (confidential redacted and public redacted versions notified on 26 June 2020, ICC-02/05-01/20-6-Conf-Red and ICC-02/05-01/20-6-Red2).

⁷ Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), ICC-02/05-01/07-74-Secret-Exp (public redacted version notified on 11 June 2020, ICC-02/05-01/07-74-Red).

⁸ Transcript of hearing, ICC-02/05-01/20-T-001-ENG.

5. On 26 June 2020, the Defence submitted the Request asking the Single Judge to (i) order the Registry or any other competent authority to: (a) submit a funding request to the United Nations (the 'UN') pursuant to article 115(b) of the Statute, for an amount not less than the total updated costs of the Court's activities carried out to date in relation to the Situation in Darfur, Sudan; and (b) immediately engage with the UN for the negotiation of separate arrangements on the matter, under article 13(1) of the Negotiated Relationship Agreement between the International Criminal Court and the UN (the 'ICC-UN Agreement'); (ii) order the Registry to submit regular reports to Pre-Trial Chamber II and the Defence of Mr Abd-Al-Rahman, on any progress made with regard to the financing of Court activities in the present case by the UN, the progress on the negotiations of the separate arrangements on financial matters pursuant to Article 13(1) of the ICC-UN Agreement, the authorisation of such expenditure by the UN, and the payment of any financial contribution to the Court's activities; and (iii) in the alternative, and in case the Single Judge would be of the view that such Request falls within the competence of the Presidency pursuant to Article 38(3) of the Statute, refer the Request to the Presidency for its consideration.

6. The Defence argues that the UN has made no financial contribution to the Court's budget allocated to its activities in the Darfur situation and related cases; that the Court has spent at least € 47,510,100.00 in relation to these proceedings, as reported by the Registry to the Assembly of States Parties in 2018; and that the Court has not submitted any request for financial contributions from the UN in relation to the Darfur situation under article 115(b) of the Statute. It further submits that the Court currently faces a series of financial difficulties and that the situation has reached the point where it is legitimate to fear that the financial independence of the Court could potentially be affected, including its ability to conduct judicial proceedings independent of financial constraints. Accordingly, and recalling that the suspect surrendered himself voluntarily to the Court in order to seek justice, the Defence argues that Mr Abd-Al-Rahman has a legitimate interest in ensuring that the Court's financial state is satisfactory, in accordance with the Statute, in order to ensure his right to a fair, impartial and independent trial. Accordingly, and in light of the concerning financial situation of the Court, the Defence submits that it is necessary for the Single Judge to grant the Request.

7. At the outset, the Single Judge notes that the request plainly falls outside the ambit of the Defence, and that the Defence has no legal standing to either evaluate nor provide recommendations regarding the Court's financial management. As such, the request is moot and does not require further consideration.

8. Moreover, the Single Judge recalls that the Court's statutory framework clearly distinguishes the role of the Court, as a judicial institution entrusted with the power to exercise its jurisdiction over persons for the most serious crimes of international concern; the position of the Assembly of States Parties, which is responsible for considering and deciding on the Court's budget; and the duties of the judiciary and Chambers. The judiciary, indisputably, cannot play any role in the budgetary process, let alone in the negotiation of any financial agreements. There is no legal basis for the Chamber to engage in the financial matters of the Court, nor has the Single Judge authority to refer such a request to the Presidency. Accordingly, the request must be rejected in its entirety.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY
REJECTS** the Request.

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

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a series of loops and a long horizontal stroke extending to the right.

Judge Rosario Salvatore Aitala
Single Judge

Dated this Thursday, 23 July 2020

At The Hague, The Netherlands