



**Original: English**

**No. ICC-02/05-01/20  
Date: 10 September 2020**

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

**Public**

Order in relation to the 'Prosecution's urgent request for an extension of time'

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  
Mr Julian Nicholls

**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*

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**REGISTRY**

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Pre-Trial Chamber II** of the International Criminal Court, in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ('*Ali Kushayb*') (the '*Abd-Al-Rahman* case'), having regard to article 67 of the Rome Statute (the '*Statute*'), rule 121(1) of the Rules of Procedure and Evidence (the '*Rules*'), and regulations 23*bis*, 24, 34, and 35 of the Regulations of the Court (the '*Regulations*'), issues this Order in relation to the 'Prosecution's urgent request for an extension of time'.

1. The Single Judge recalls the procedural history of the *Abd-Al-Rahman* case, as set out in previous decisions.<sup>1</sup>
2. On 17 August 2020, the Single Judge of Pre-Trial Chamber II issued the 'Order on disclosure and related matters' (the '*Order*') in which, *inter alia*, ordered that 'any applications for the authorisation of the non-disclosure of witnesses' identities and/or the non-disclosure of entire items of evidence shall be submitted to the Chamber no later than Friday, 11 September 2020 and such applications shall also be notified, with appropriate redactions, to the receiving party' (the '*11 September 2020 deadline*').<sup>2</sup>
3. On 9 September 2020, the Prosecutor submitted – as Confidential EX PARTE, only available to the Prosecutor – the 'Prosecution's urgent request for an extension of time' (the '*Request*'),<sup>3</sup> requesting the Chamber to vacate the 11 September 2020 deadline.
4. At the outset, the Chamber recalls its duty to ensure that the confirmation proceedings are conducted in a fair and impartial manner and with full respect for the rights of the suspect.
5. The Chamber notes that the Request, submitted as urgent some 36 hours before the expiration of the 11 September 2020 deadline and allegedly showing good cause for an indefinite extension, is substantiated on grounds that were all already known to the Prosecutor by the date the Order was issued. The Chamber deprecates the Prosecutor's disingenuous attitude in this regard, for any urgency in this matter is entirely due to the decision to leave this Request to the last minute. In addition, filing

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<sup>1</sup> See e.g. Order on disclosure and related matters, 17 August 2020, ICC-02/05-01/20-116, paras 1-5.

<sup>2</sup> ICC-02/05-01/20-116, para. 12(iii).

<sup>3</sup> ICC-02/05-01/20-149-Conf-Exp.

the Request at such a late stage, as an *ex parte* document, did not give the Defence any opportunity to be heard in a matter that directly affects the rights of the suspect.

6. In light of the above, the Chamber considers it appropriate to order the Prosecutor to file, by 11 September 2020 at 9:00 hours at the latest, one or more versions of the Request for the benefit of the Defence and the public. Considering the nature of the information contained in the Request, if redactions are to be applied, they should be kept to the minimum.

7. The Defence may file a response within five days of notification.

8. The Chamber will decide on the Request in due course.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** the Prosecutor to file one or more versions of the Request for the benefit of the Defence and the public, in accordance with paragraph 6 above; and

**INSTRUCTS** the Defence to file any response to the Request within five days of notification.

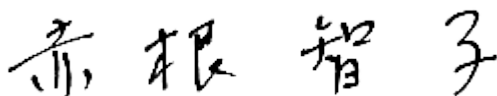
Done in both English and French, the English version being authoritative.




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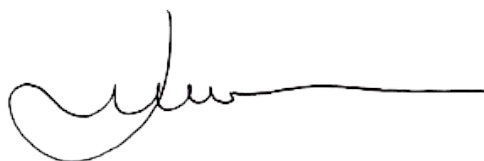
**Judge Antoine Kesia-Mbe Mindua**

**Presiding Judge**




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**Judge Tomoko Akane**




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**Judge Rosario Salvatore Aitala**

Dated this Thursday, 10 September 2020

At The Hague, The Netherlands