



Original: English

**No. ICC-02/05-01/20
Date: 23 September 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's 'Requête en vertu des normes 23bis-2, 35-1 et 37-2 du Règlement de la Cour en vue de la Réponse à ICC-02/05-01/20-157-Conf-Red'

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

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 in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')* (the '*Abd-Al-Rahman* case'), having regard to rule 81 of the Rules of Procedure and Evidence (the 'Rules'), regulations 23bis, 34, 35, and 37 of the Regulations of the Court, and regulations 14 and 24 of the Regulations of the Registry, issues this Decision on the Defence's 'Requête en vertu des normes 23bis-2, 35-1 et 37-2 du Règlement de la Cour en vue de la Réponse à ICC-02/05-01/20-157-Conf-Red'.

1. On 27 April 2007, Pre-Trial Chamber I granted the Prosecutor's application under article 58(7) of the Statute² and decided³ to issue a warrant of arrest against Mr Ali Muhammad Ali Abd-Al-Rahman ('Mr Abd-Al-Rahman') for crimes against humanity and war crimes allegedly committed in the localities of Kodoom, Bindisi, Mukjar, Arawala and their surrounding areas in Darfur, Sudan, between August 2003 and March 2004 ('First Warrant').⁴

2. On 16 January 2018, Pre-Trial Chamber II, in its previous composition, granted the Prosecutor's application to amend the First Warrant pursuant to article 58(6) of the Statute,⁵ issuing a second warrant of arrest against Mr Abd-Al-Rahman⁶ for crimes against humanity and war crimes allegedly committed in the locality of Deleig and surrounding areas in Darfur, Sudan, between on or about 5 to 7 March 2004 ('Second Warrant').

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

² 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](#)).

³ Decision on the Prosecution Application under Article 58(7) of the Statute, [ICC-02/05-01/07-1-Corr](#) (corrected version filed on 15 May 2007).

⁴ Warrant of Arrest for Ali Kushayb, [ICC-02/05-01/07-3-Corr](#) (corrected version filed on 15 May 2007).

⁵ 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](#)).

⁶ 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](#)).

3. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself and was transferred to the Detention Centre of the Court. On 15 June 2020, as ordered by the Chamber,⁷ Mr Abd-Al-Rahman made his first appearance before the Single Judge.⁸ On this occasion the confirmation of charges hearing was scheduled to take place on Monday, 7 December 2020.⁹
4. On 16 September 2020, the Prosecutor submitted a request to postpone the confirmation hearing ('Postponement Request'),¹⁰ requesting, *inter alia*, that the Chamber postpone the date of the confirmation hearing to 1 June 2021.¹¹
5. On 18 September 2020, the Defence requested ('Defence Request') the Chamber to (i) order the Prosecutor to reclassify the *ex parte* version of the Postponement Request as confidential, or in the alternative, order the Prosecutor to submit a new confidential redacted version with redactions only in paragraph 43; (ii) authorise the Defence to extend the page limit for its response to the Postponement Request to 40 pages; and (iii) postpone the deadline for the Defence to file its response to the Postponement Request to 9 October 2020.¹²
6. As instructed by the Single Judge,¹³ on 21 September 2020, the Prosecutor responded to the Defence Request (i) opposing the request for reclassification, arguing that the redactions applied to the Postponement Request were necessary and justified to safeguard the ongoing investigation, the security and safety of witnesses and their family members or the cooperation efforts of the Prosecutor; (ii) taking no position as to the request for an extension of the page limit; and (iii) opposing the

⁷ Decision on the convening of a hearing for the initial appearance of Mr Ali Kushayb, 11 June 2020, [ICC-02/05-01/07-82](#).

⁸ Transcript of hearing of Initial Appearance, [ICC-02/05-01/20-T-001-ENG](#) ('Initial Appearance').

⁹ Initial Appearance, [ICC-02/05-01/20-T-001-ENG](#), page 22, line 23 to page 23, line 3.

¹⁰ Corrected Version of "Prosecution's request to postpone the confirmation hearing", 16 September 2020, ICC-02/05-01/20-157-Conf-Exp-Corr (a confidential redacted version, ICC-02/05-01/20-157-Conf-Red-Corr, and a public redacted version, [ICC-02/05-01/20-157-Corr-Red](#), were notified on the same date) ('Postponement Request').

¹¹ Postponement Request, [ICC-02/05-01/20-157-Corr-Red](#), para. 64.

¹² Requête en vertu des normes 23bis-2, 35-1 et 37-2 du Règlement de la Cour en vue de la Réponse à ICC-02/05-01/20-157-Conf-Red, ICC-02/05-01/20-159-Conf (request filed on 17 September 2020 at 16:55 and notified on 18 September 2020).

¹³ Email instruction sent on Friday, 18 September 2020, at 11:07 hrs.

request for an extension of time, arguing that it is not warranted as the issues in dispute are legally and factually straightforward.¹⁴

7. On 21 September, the Defence requested that its Defence Request be reclassified as public, arguing that reclassification was warranted in light of the Prosecutor's filing of a public version of its Postponement Request.¹⁵

8. Having considered the arguments submitted by the Defence and the Prosecutor, the Single Judge hereby (i) rejects the requests related to the reclassification of the Postponement Request, as the Prosecutor has sufficiently demonstrated that the information contained therein is subject to restrictions on disclosure, pursuant to rule 81 of the Rules; (ii) rejects the request to extend the page limit of the Defence response, as no exceptional circumstances have been demonstrated; and (iii) partly grants the request to postpone the deadline for the Defence response to the Postponement Request, ordering the Defence to file its response by Monday, 5 October 2020, at the latest.

9. As to the request for reclassification of the Defence Request, having analysed the information contained therein, the Single Judge authorises its reclassification as public. In light of the above, the Single Judge also orders that the Prosecutor's response to the Defence Request be reclassified as public.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

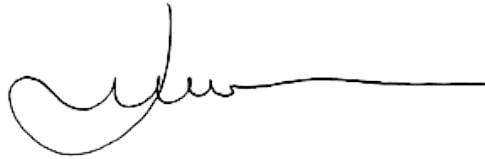
- a) **REJECTS** the request to reclassify the Postponement Request;
- b) **REJECTS** the request to extend the page limit for the Defence response to the Postponement Request;
- c) **PARTLY GRANTS** the request to postpone the deadline for the Defence response to the Postponement Request and **ORDERS** the Defence to file its response by Monday, 5 October 2020, at the latest; and

¹⁴ Prosecution's response to "Requête en vertu des normes 23bis-2, 35-1 et 37-2 du Règlement de la Cour en vue de la Réponse à ICC-02/05-01/20-157-Conf-Red", ICC-02/05-01/20-160-Conf.

¹⁵ Email from the Defence to CMS, 21 September 2020, at 10:42 hrs.

d) **ORDERS** the reclassification as public of filings ICC-02/05-01/20-159-Conf and ICC-02/05-01/20-160-Conf.

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



Judge Rosario Salvatore Aitala
Single Judge

Dated this Wednesday, 23 September 2020

At The Hague, The Netherlands