



Original: **English**

No.: **ICC-02/05-01/20**
Date: **12 October 2020**

THE PRESIDENCY

Before: **Judge Chile Eboe-Osuji, President**
 Judge Robert Fremr, First Vice-President
 Judge Marc Perrin de Brichambaut, Second Vice-President

SITUATION IN DARFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR V. ALI MUHAMMAD ALI ABD-AL-RAHMAN

Public

**Decision on the ‘Requête en vertu des Articles 38-3-a, 43-2 et 115-b’ dated 25 September
2020 (ICC-02/05-01/20-165)**

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 the Defence for Mr Abd-Al-Rahman
Mr Cyril Luccci

Legal Representatives of the Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**
Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Detention Section

Victims and Witness Unit

Other
Pre-Trial Chamber II
Mr Marc Dubuisson

**Victims Participation and Reparations
Section**

The Presidency of the International Criminal Court (the ‘Court’) has before it the request filed by Mr Abd-Al-Rahman on 25 September 2020 (the ‘Request’), referring to articles 38(3)(a), 43(2) and 115(b) of the Rome Statute (the ‘Statute’), requesting that the Presidency take appropriate measures to obtain funding from the United Nations (the ‘UN’) in respect of the Darfur situation.¹

1. Mr Abd-Al-Rahman submits that such measures may consist of ordering the Registrar or any other competent authority of the Court to: (i) submit a funding request to the UN pursuant to article 115(b) of the Statute; and (ii) immediately commence negotiations with the UN on a separate arrangement for this purpose, pursuant to article 13(1) of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations (the ‘ICC-UN Agreement’).² In addition, the Presidency is requested to instruct the Registrar to address periodic reports to Pre-Trial Chamber II and Mr Abd-Al-Rahman on the progress made in order to obtain UN funding of the Court’s activities in the present case.³ Mr Abd-Al-Rahman submits that the absence of UN funding in relation to the Darfur situation, in alleged violation of article 115(b) of the Statute, has a direct impact on the financing of the Court’s operations and has the potential to impact Mr Abd-Al-Rahman’s right to a fair and impartial hearing pursuant to article 67(1) of the Statute.⁴
2. The Request provides as a legal basis articles 38(3)(a) and/or 43(2) of the Statute,⁵ which define certain of the responsibilities of the Presidency and President, respectively. Alternatively, should the Presidency decline its competence, Mr Abd-Al-

¹ Defence for Mr Abd-Al-Rahman, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Requête en vertu des Articles 38-3-a, 43-2 et 115-b, 25 September 2020, ICC-02/05-01/20-165, paras 16-19, 29, 34.

² Request, ICC-02/05-01/20-165, para. 34.

³ Request, ICC-02/05-01/20-165, para. 34.

⁴ Request, ICC-02/05-01/20-165, para. 22. Mr Abd-Al-Rahman submits that a request for interpretation and translation services has been refused, *inter alia*, in light of its financial impact, which demonstrates that the Court’s budgetary situation directly affects his rights to have: (i) adequate time and facilities for the preparation of his defense pursuant to article 67(1)(b) of the Statute; and (ii) the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness pursuant to article 67(1)(f) of the Statute. Request, ICC-02/05-01/20-165, para. 23 referring to Registrar, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Registrar’s observations on the ‘Mémoire d’appel de la décision ICC-02/05-01/20-94’, (ICC-02/05-01/20-111), 27 August 2020, ICC-02/05-01/20-136, paras 20-21. In addition, Mr Abd-Al-Rahman submits that the Office of the Prosecutor requested postponement of the confirmation of charges hearing up to one year after his initial appearance, *inter alia*, because of lack of resources to prepare its case, which directly affects Mr Abd-Al-Rahman’s right to be tried without undue delay pursuant to article 67(1)(c) of the Statute. Request, ICC-02/05-01/20-165, para. 24 referring to Office of the Prosecutor, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, ‘Public Redacted Version of “Corrected Version of “Prosecution’s request to postpone the confirmation hearing”’, 17 September 2020’, 17 September 2020, ICC-02/05-01/20-157-Corr-Red (the ‘Request to Postpone Confirmation Hearing’), paras 4, 29, 34, 36, 51, 53-54.

⁵ Request, ICC-02/05-01/20-165, paras 16-17.

Rahman requests that the matter be referred to the President for a decision pursuant to article 43(2) of the Statute.⁶

3. Following a similar request by Mr Abd-Al-Rahman to Pre-Trial Chamber II on 26 June 2020,⁷ the Single Judge of that Chamber issued a decision on 23 July 2020 rejecting said request (the ‘Single Judge Decision’).⁸ The Single Judge noted that the request plainly falls outside the ambit of the Defence and that the Defence has no legal standing to either evaluate or provide recommendations regarding the Court’s financial management.⁹ Furthermore, the Single Judge determined that 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.¹⁰ On 13 August 2020, Pre-Trial Chamber II, sitting as a full Chamber, denied leave to appeal the Single Judge Decision (the ‘Decision on Leave to Appeal’).¹¹ On 23 September 2020, the Pre-Trial Chamber rejected Mr Abd-Al-Rahman’s request for reconsideration of its Decision on Leave to Appeal.¹²
4. The Request concerns the financial resource management of the Court’s activities, more specifically the question of funding provided by the UN, subject to the approval of the UN General Assembly, in particular in relation to expenses incurred due to referrals by the UN Security Council.¹³ The Presidency considers that issues concerning the general administration of the Court, including in matters of diplomatic relations, do not give rise to an entitlement to a remedy for parties in proceedings. Mr Abd-Al-Rahman’s references to generic responsibilities of the Presidency or President in this respect¹⁷ plainly do not implicate any specific entitlement of the Defence.

⁶ Request, ICC-02/05-01/20-165, para. 19 *referring to* article 43(2) of the Statute, regulation 107(1) of the Regulations of the Court, article 13(1) of the ICC-UN Agreement.

⁷ Defence for Mr Abd-Al-Rahman, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Requête en vertu de l’article 115-b, 26 June 2020, ICC-02/05-01/20-10.

⁸ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on the Defence request under article 115(b) of the Rome Statute, 23 July 2020, ICC-02/05-01/20-101, p. 5.

⁹ Single Judge Decision, ICC-02/05-01/20-101, para. 7.

¹⁰ Single Judge Decision, ICC-02/05-01/20-101, para. 8.

¹¹ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on Defence Request for Leave to Appeal the ‘Decision on the Defence request under article 115(b) of the Rome Statute’, 13 August 2020, ICC-02/05-01/20-110, p. 7.

¹² Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Décision relative à la demande aux fins de réexamen de la décision ICC-02/05-01/20-110 présentée par la défense (ICC-02/05-01/20-113), 23 September 2020, ICC-02/05-01/20-163, p. 7.

¹³ Request, ICC-02/05-01/20-165, paras 1, 3-7, 22-24, 26-34.

¹⁷ Mr Abd-Al-Rahman bases his Request on references to generic responsibilities of the Presidency or President regarding the administration of the Court (Request, ICC-02/05-01/20-165, paras 16-17 *referring to* articles 38(3)(a) and 43(2) of the Statute) or, alternatively, on the President’s authority to negotiate arrangements and

5. To the extent that a matter involves fair trial rights, jurisdiction lies with the Chamber in charge of the relevant proceedings and not with the Presidency.¹⁸ Mr Abd-Al-Rahman makes reference to his rights under sub-articles 67(1)(b), (c) and (f) of the Statute and submits that they have been affected by a refusal of interpretation and translation services and the Office of the Prosecutor's request to postpone the confirmation of charges hearing.¹⁹ The Presidency observes that these matters are currently pending before Pre-Trial Chamber II and the Appeals Chamber, respectively.²⁰

6. The Presidency further observes that Mr Abd-Al-Rahman was informed by the Single Judge that the relief requested plainly falls outside the ambit of the Defence and that the Defence has no legal standing to either evaluate or provide recommendations regarding the Court's financial management.²² Following rejection of leave to appeal the Single Judge Decision and rejection of his request for reconsideration of the Decision on Leave to Appeal, Mr Abd-Al-Rahman nevertheless brought an almost identical request before the Presidency, which is clearly devoid of any legal basis. Such duplication of proceedings is unwarranted, interferes with the expeditious administration of justice and may even be considered an abuse of process. The Request could have been rejected on this basis alone.

The Presidency *hereby* dismisses the Request *in limine*.

agreements on cooperation (Request, ICC-02/05-01/20-165, para. 19 *referring to* article 43(2) of the Statute, regulation 107(1) of the Regulations of the Court, article 13(1) of the ICC-UN Agreement).

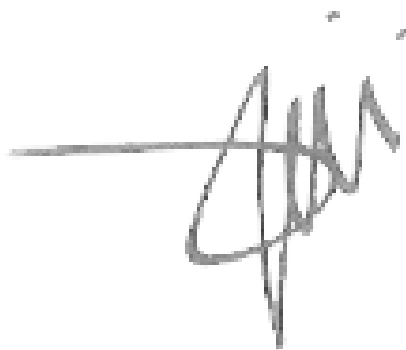
¹⁸ See article 67(1) of the Statute.

¹⁹ Request, ICC-02/05-01/20-165, paras 22-24 *referring to* Registrar, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Registrar's observations on the "Mémoire d'appel de la décision ICC-02/05-01/20-94", (ICC-02/05-01/20-111), 27 August 2020, ICC-02/05-01/20-136, paras 20-21; Office of the Prosecutor, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, 'Public Redacted Version of "Corrected Version of "Prosecution's request to postpone the confirmation hearing"', 17 September 2020, 17 September 2020, ICC-02/05-01/20-157-Corr-Red (the 'Request to Postpone Confirmation Hearing'), paras 4, 29, 34, 36, 51, 53-54.

²⁰ Request to Postpone Confirmation Hearing, paras 1, 59, 64; Defence for Mr Abd-Al-Rahman, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Appeal Brief against Decision ICC-02/05-01/20-94, 13 August 2020, ICC-02/05-01/20-111-tENG, para. 1, p. 20.

²² Single Judge Decision, ICC-02/05-01/20-101, para. 7.

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

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Judge Chile Eboe-Osuji
President

Dated this 12 October 2020

At The Hague, The Netherlands