



**Original: English**

**No. ICC-02/05-01/20  
Date: 23 November 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 Defence Request for an Extension of the Page Limit

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**

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**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 (the ‘Court’),<sup>1</sup> in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘*Ali Kushayb*’), having regard to articles 60(3) and 85 of the Rome Statute (the ‘Statute’), rules 118 and 173, of the Rules of Procedure and Evidence (the ‘Rules’) and regulation 37(2) of the Regulations of the Court (the ‘Regulations’), issues this Decision on Defence’s Request for an Extension on the Page Limit.

## **I. PROCEDURAL HISTORY**

1. On 27 April 2007, Pre-Trial Chamber I granted the Prosecutor’s application under article 58(7) of the Statute<sup>2</sup> and decided<sup>3</sup> 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’).<sup>4</sup>
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,<sup>5</sup> issuing a second warrant of arrest against Mr Abd-Al-Rahman 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’).<sup>6</sup>
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,<sup>7</sup> Mr Abd-Al-Rahman made his first appearance before the Single Judge.<sup>8</sup>

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

<sup>2</sup> 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](#)).

<sup>3</sup> Decision on the Prosecution Application under Article 58(7) of the Statute, [ICC-02/05-01/07-1-Corr.](#)

<sup>4</sup> Warrant of Arrest for Ali Kushayb, [ICC-02/05-01/07-3-Corr.](#)

<sup>5</sup> 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](#)).

<sup>6</sup> 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](#)).

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

<sup>8</sup> Transcript of hearing of Initial Appearance, [ICC-02/05-01/20-T-001-ENG](#) (‘Initial Appearance’).

4. On 1 July 2020, Mr Abd-Al-Rahman filed a request for interim release to the territory of the host State pending trial, pursuant to article 60(2) of the Statute (the ‘Interim Release Request’).<sup>9</sup> On 14 August 2020, Pre-Trial Chamber II, Judge Rosario Salvatore Aitala acting as Single Judge, rejected the Interim Release Request (the ‘Interim Request Decision’),<sup>10</sup> which was later confirmed by the Appeals Chamber on 8 October 2020.<sup>11</sup>

5. On 19 November 2020, the Defence filed a request for extension of the page limit pursuant to regulation 37(2) of the Regulations.<sup>12</sup> In the Request, the Defence announces its intention to file a complex motion making a number of different requests that would require more than 20 pages to properly explain. The Defence argues there exist exceptional circumstances justifying the extension of the page limit from 20 to 60 pages.<sup>13</sup>

6. On 19 November 2020, the Prosecutor indicated that no response to the Request would be forthcoming.<sup>14</sup>

## II. ANALYSIS

7. The Defence submits that it intends to raise three issues: (1) a request for the annulment of the arrest warrants; (2) a request to stay of proceedings, and (3) a request for compensation pursuant to article 85(1) and (3) of the Statute.<sup>15</sup>

8. With regard to the first issue, the Single Judge notes that the Statute does not provide for a separate procedure for the annulment of arrest warrants. If the Defence wishes to make any arguments in this regard, the Single Judge considers it appropriate for these to be made in the context of the review of detention in accordance with article 60(3) of the Statute and rule 118(2) of the Rules.<sup>16</sup>

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<sup>9</sup> Requête en vertu de l’Article 60-2, [ICC-02/05-01/20-12](#).

<sup>10</sup> Decision on the Defence Request for Interim Release, [ICC-02/05-01/20-115](#), p. 11.

<sup>11</sup> Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 14 August 2020 entitled ‘Decision on the Defence Request for Interim Release’, [ICC-02/05-01/20-177](#), p. 22.

<sup>12</sup> Requête en vertu de la Norme 37-2 du Règlement de la Cour, ICC-02/05-01/20-205-Conf, (the Request).

<sup>13</sup> Requête en vertu de la Norme 37-2 du Règlement de la Cour, ICC-02/05-01/20-205-Conf, para 5.

<sup>14</sup> Email by Mr Julian Nicholls, Senior Trial Lawyer, of 19 November 2020, at 16 :02.

<sup>15</sup> Requête en vertu de la Norme 37-2 du Règlement de la Cour, ICC-02/05-01/20-205-Conf, para 3.

<sup>16</sup> Decision on the Defence Request for Interim Release, [ICC-02/05-01/20-115](#).

9. Regarding the third issue, the Single Judge observes that rule 173 of the Rules states that ‘anyone seeking compensation on any grounds indicated in article 85 of the Statute shall submit a request, in writing, to the Presidency’. It is therefore not possible for the Defence to seize this Chamber directly with a request for compensation.<sup>17</sup>

10. This leaves the second issue of the stay of proceedings. In the absence of any indication regarding the legal or factual grounds for such a request, the Chamber is not in a position to determine whether there is a genuine need for an extension of the page limit. The Single Judge notes that the Defence has previously been able to file a similar request within the page limit.<sup>18</sup> Under these circumstances, the Single Judge considers that the Defence has failed to demonstrate exceptional circumstances justifying the extension of the page limit pursuant to regulation 37(2) of the Regulations.

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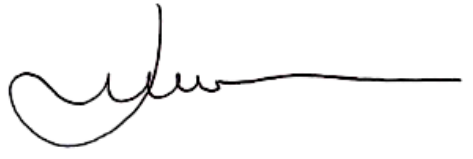
<sup>17</sup> Bemba, Decision referring the “Request for Compensation for Unlawful Detention” to Trial Chamber VI, [ICC-01/05-01/13-1329](#); Bemba, Decision on Mr Bemba’s claim for compensation and damages, [ICC-01/05-01/08-3694](#), para 5 ; Ngudjolo, Decision on the “Requête de la Défense sollicitant des instructions de la Chambre en vue de la soumission de sa requête en indemnisation sur pied de l’article 85”, [ICC-01/04-02/12-285-tENG](#), para 1 ; Ngudjolo, Decision on the “Requête en indemnisation en application des dispositions de l’article 85(1) et (3) du Statut de Rome”, [ICC-01/04-02/12-301-tENG](#), paras 3-4.

<sup>18</sup> Requête aux fins d'arrêt ou de suspension temporaire des procédures, [ICC-02/05-01/20-174](#).

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Request for an Extension of the Page Limit.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

**Judge Rosario Salvatore Aitala**  
**Single Judge**

Dated this Monday, 23 November 2020

At The Hague, The Netherlands