



**Original: English**

**No. ICC-02/05-01/20**

**Date: 25 March 2021**

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Rosario Salvatore Aitala, Presiding Judge**

**Judge Antoine Kesia-Mbe Mindua**

**Judge Tomoko Akane**

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF**

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

**Public**

Order setting time limits for submissions in relation to the Defence *Exception  
d'incompétence* (ICC-02/05-01/20-302)

**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 the Defence**

Mr Cyril Laucci

**Legal Representatives of Victims**

Ms Amal Clooney  
Mr Nasser Mohamed Amin Abdalla

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

Paolina Massidda

**The Office of Public Counsel  
for the Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach

**Other**

United Nations Security Council

**PRE-TRIAL CHAMBER II** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’), issues this Order setting time limits for submissions in relation to the Defence *Exception d’incompétence* (ICC-02/05-01/20-302):

1. On 16 March 2021, the Defence submitted a document entitled *Exception d’incompétence* (the ‘Defence Request’), in which it asks the Chamber to declare that the Court has no jurisdiction over the case against Mr Ali Muhammad Ali Abd-Al-Rahman.<sup>1</sup>
2. On 19 March 2021, the Prosecutor requested the Chamber to set out a procedure under rule 58(2) of the Rule of Procedure and Evidence with respect to the Defence Request (the ‘Prosecutor’s Request’);<sup>2</sup>
3. On 22 March 2021, both the Defence and the Office of Public Counsel for Victims (the ‘OPCV’) responded to the Prosecutor’s Request;<sup>3</sup>
4. The Chamber notes that the Defence Request is brought on the basis of article 19(2) of the Statute. Without prejudice to the Chamber’s assessment as to the correct legal qualification of the matters raised in the Defence Request, the Chamber will be guided by the procedural framework for dealing with challenges to the jurisdiction of the Court.
5. Accordingly, the Chamber considers it appropriate to invite submissions from the United Nations Security Council as the referring entity.
6. The Chamber further recalls its decisions in relation to victims participation and the representation of applicant victims and authorised victims.<sup>4</sup> In line with these decisions, it is the responsibility of the OPCV to represent victim applicants who

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<sup>1</sup> [Exception d’incompétence](#), 16 March 2021, ICC-02/05-01/20-302.

<sup>2</sup> [Prosecution’s request to set out a procedure under rule 58\(2\) with respect to the Defence’s challenge of the Court’s jurisdiction \(ICC-02/05-01/20-302\)](#), 19 March 2021, ICC-02/05-01/20-313.

<sup>3</sup> Réponse à la Requête ICC-02/05-01/20-313, 22 March 2021, ICC-02/05-01/20-315; [Response on behalf of Victims to the Prosecution’s Request to set a procedure under Rule 58\(2\) of the Rules of Procedure and Evidence](#), 22 March 2021, ICC-02/05-01/20-318.

<sup>4</sup> [Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing](#), 18 January 2021, ICC-02/05-01/20-259; [Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance](#), 5 February 2021, ICC-02/05-01/20-277; [Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position](#), 19 March 2021, ICC-02/05-01/20-314 (notified on 22 March 2021).

have already communicated with the Court in relation to this case but whose applications have not yet been assessed by the Chamber. The Victims Participation and Reparations Section is thus instructed to provide the OPCV with the necessary information in relation to all victim applicants related to this case whose applications for participation in the proceedings have not yet been communicated to the Chamber.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DETERMINES** that the Prosecutor, the United Nations Security Council, the victims as well as victim applicants who have already communicated with the Court in relation to the present case, may submit written observations by no later than **Friday, 16 April 2021, at 16:00 hours;**

**ORDERS** the Registrar to provide the OPCV with information about victim applicants who have already communicated with the Court in relation to the present case as well as any necessary assistance to contact such victims as soon as possible; and

**ORDERS** the Registrar to notify the present decision as well as document ICC-02/05-01/20-302 to the United Nations Security Council.

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



**Judge Rosario Salvatore Aitala**  
**Presiding Judge**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated this Thursday, 25 March 2021

At The Hague, The Netherlands