



Original: **English**

No.: **ICC-02/05-01/20**
Date: **15 October 2021**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Prosecution’s observations on the review of the detention of Mr Ali
Muhammad Ali Abd-Al-Rahman (“ALI KUSHAYB”)**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

Mr Karim A. A. Khan QC

Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Mr Iain Edwards

Legal Representatives of the Victims

Ms Natalie von Wistinghausen

Mr Nasser Mohamed Amin Abdalla

Legal Representatives of the Applicants**Unrepresented Victims****Unrepresented Applicants
(Participation/Reparation)****The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Ms Sarah Pellet

Ms Ludovica Vetrucchio

**The Office of Public Counsel for the
Defence****States Representatives****Amicus Curiae****REGISTRY**

Registrar

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Section****Detention Section****Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. In accordance with Trial Chamber I's ("Chamber") order of 15 September 2021, the Prosecution hereby submits its observations on the periodic review of Mr Abd-Al-Rahman's detention under rule 118(2) of the Rules of Procedure and Evidence.¹

2. Mr Abd-Al-Rahman's continued detention remains necessary as the conditions warranting his detention under article 58(1)(b)(i) and (ii) of the Rome Statute ("Statute") continue to be met. There are no changed circumstances that would warrant a change in the Pre-Trial Chamber II's ("PTC") most recent decision ("Fourth Interim Release Decision") which ordered the continued detention of Mr Abd-Al-Rahman.²

3. To the contrary, with the trial start date set and the ongoing disclosure of the identities of Prosecution witnesses, the necessity of Mr Abd-Al-Rahman's continued detention is greater in order to ensure his appearance at trial, minimise any risk to the safety and security of witnesses and ensure the integrity of the proceedings.

II. SUBMISSIONS

A. There are no changed circumstances warranting a modification of the decision to maintain Mr Abd-Al-Rahman's continued detention

4. As recalled by the PTC in its previous interim release decisions,³ including in the Fourth Interim Release Decision, when periodically reviewing Mr Abd-Al-Rahman's detention, the Chamber needs only to assess "whether there are any

¹ *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Order setting out deadlines for observations of detention of the accused", 15 September 2021, [ICC-02/05-01/20-471](#), para. 2.

² *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Decision on the review of detention", 5 July 2021, [ICC-02/05-01/20-430](#) ("Fourth Interim Release Decision").

³ *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118(2) of the Rules of Procedure and Evidence", 11 December 2020, [ICC-02/05-01/20-230-Red](#), para. 21; *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Decision on the review of detention", 12 April 2021, [ICC-02/05-01/20-338](#), paras. 17-18.

significant changes in the circumstances as described in its previous rulings that would warrant the release of Mr Abd-Al-Rahman, with or without conditions.”⁴

5. The Prosecution is not aware of any new facts or of any changes in facts that would require the Chamber to depart from the PTC’s ruling that Mr Abd-Al-Rahman should remain in detention. On the contrary, as further detailed below, given the approaching trial date, the necessity of Mr Abd-Al-Rahman’s continued detention is greater.

B. The continued detention of Mr Abd-Al-Rahman remains necessary to ensure that the investigation and court proceedings are not endangered or obstructed

6. The continued detention of Mr Abd-Al-Rahman remains necessary under article 58(1)(b)(ii) of the Statute to ensure that the investigation and court proceedings are not obstructed or endangered. In the Fourth Interim Release Decision, the PTC noted that “the fact that the suspect is now in possession of the identities of many of the key witnesses in this case presents a heightened risk that Mr Abd-Al-Rahman could seek to influence the ongoing investigation or the court proceedings, either directly or indirectly through his supporters.”⁵ This risk has increased since the last review of Mr Abd-Al-Rahman’s detention as additional identities of witnesses continue to be disclosed on a rolling basis.

7. Since the Prosecution’s last submissions on interim release dated 10 June 2021,⁶ it has disclosed the identity of an additional 14 witnesses to Mr Abd-Al-Rahman. A further 16 witnesses have recently been cleared and will be disclosed to the defence shortly without identity redactions. As a result, the accused will, in the very near future, have the identity of 162 Prosecution witnesses.

⁴ [Fourth Interim Release Decision](#), para. 27.

⁵ [Fourth Interim Release Decision](#), para. 28.

⁶ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, “Prosecution’s observations on review of the pre-trial detention of Mr Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), 10 June 2021, [ICC-02/05-01/20-419](#).

C. The continued detention of Mr Abd-Al-Rahman remains necessary to ensure his appearance at trial

8. The continued detention of Mr Abd-Al-Rahman also remains necessary to ensure his appearance at trial under article 58(1)(b)(i) of the Statute. The Prosecution is not aware of any new factors indicating that Mr Abd-Al-Rahman is less likely to abscond if released. To the contrary, since the Fourth Interim Release Decision, all subsequent developments confirm the need for his continued detention.

9. As previously indicated by the Prosecution, the gravity of the charges and the prospect of a lengthy prison sentence are relevant factors in decisions on interim release.⁷ Since the Prosecution's last submissions on interim release, the PTC confirmed all 31 counts against Mr Abd-Al-Rahman on 9 July 2021.⁸ In addition, this honourable Chamber has since been constituted⁹ and a trial date set.¹⁰

III. RELIEF REQUESTED

10. For the aforementioned reasons, the Prosecution respectfully requests that the Chamber order the continued detention of Mr Abd-Al-Rahman in accordance with articles 60 and 58(1) of the Statute.



Karim A. A. Khan QC
Prosecutor

Dated this 15th day of October 2021

At The Hague, The Netherlands

⁷ [ICC-02/05-01/20-419](#), para. 18.

⁸ *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Decision on the confirmation of the charges against Mr Ali Muhammad Ali Abd-Al-Rahman (*Ali Kushayb*)", 9 July 2021, [ICC-02/05-01/20-433](#).

⁹ *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*, "Decision constituting Trial Chamber I and referring to it the case of *Prosecutor v. Abd-Al-Rahman ("Ali Kushayb")*", 21 July 2021, [ICC-02/05-01/20-440](#).

¹⁰ [ICC-02/05-01/20-T-013-ENG](#), p. 77, l. 9-12.