



Original: English

**No. ICC-02/05-01/20
Date: 11 February 2022**

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 redacted version of the
Second decision on the review of detention**

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A.A. Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Nasser Mohamed Amin Abdalla
Anand Shah

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

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Harry Tjonk

**Victims Participation and Reparations
Section**

Other

1. On 27 April 2007, Pre-Trial Chamber I issued a warrant of arrest for Mr Abd-Al-Rahman.¹ On 16 January 2018, Pre-Trial Chamber II, in its previous composition, issued a second warrant of arrest for Mr Abd-Al-Rahman.²
2. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself and was transferred to the Detention Centre of the Court.
3. On 15 June 2020, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) held a hearing for Mr Abd-Al-Rahman’s initial appearance.³
4. On 14 August 2020, the Pre-Trial Chamber rejected Mr Abd-Al-Rahman’s request for interim release and ordered his continued detention.⁴ The Pre-Trial Chamber then reviewed Mr Abd-Al-Rahman’s detention on 11 December 2020,⁵ 12 April 2021,⁶ and 5 July 2021,⁷ each time ordering his continued detention.⁸
5. On 1 November 2021, Trial Chamber I (the ‘Chamber’) reviewed the accused’s detention for the first time since the transfer of the case file and decided he should remain in detention.⁹

¹ Warrant of Arrest for Ali Kushayb, ICC-02/05-01/07-3-Corr.

² Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), ICC-02/05-01/07-74-Secret-Exp. A public redacted version was notified on 11 June 2020, ICC-02/05-01/07-74-Red.

³ Transcript of hearing, 15 June 2020, ICC-02/05-01/20-T-001-ENG.

⁴ Decision on the Defence Request for Interim Release, ICC-02/05-01/20-115.

⁵ Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118 (2) of the Rules of Procedure and Evidence’, ICC-02/05-01/20-230-Conf. A public redacted version was notified on the same day, ICC-02/05-01/20-230-Red.

⁶ Decision on the review of detention, ICC-02/05-01/20-338.

⁷ Decision on the review of detention, ICC-02/05-01/20-430.

⁸ All the Pre-Trial Chamber’s decisions ordering the continued detention of the accused were confirmed by the Appeals Chamber: 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’, 8 October 2020, ICC-02/05-01/20-177 (OA2); Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II’s ‘Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118 (2) of the Rules of Procedure and Evidence’, 5 February 2021, ICC-02/05-01/20-279-Red (OA6); Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II’s ‘Decision on the review of detention’, 2 June 2021, ICC-02/05-01/20-415 (OA7); Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II’s “Decision on the review of detention” of 5 July 2021, 27 August 2021, ICC-02/05-01/20-459 (OA9).

⁹ Decision on the review of detention, ICC-02/05-01/20-502. This decision was confirmed by the Appeals Chamber: Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I’s “Decision on the review of detention”, 17 December 2021, ICC-02/05-01/20-542-Conf (OA10). A public redacted version was notified on the same day, ICC-02/05-01/20-542-Red.

6. On 8 February 2022, the parties made oral submissions pertaining to the review of detention during the fourth status conference.¹⁰
7. The Defence raised three points in relation to the review of detention: (a) the accused has received no family visits since the commencement of his detention, (b) the accused has [REDACTED], and (c) the pending request to amend the Document containing the charges, filed by the Prosecution before the Pre-Trial Chamber.¹¹
8. The Prosecution responded that there were no changed circumstances that required reconsideration of the decision maintaining the accused in detention, and that custody should thus be continued.¹²
9. The Chamber refers to the legal framework applicable to the review of detention, as established in its first decision on review of detention of 1 November 2021.¹³
10. With regard to the first two points raised by the Defence, the Chamber notes, as did the Defence in its oral submissions,¹⁴ that they are administrative matters. As such, they fall outside of the scope of the review of detention under Article 58(1) of the Rome Statute (the ‘Statute’).
11. The Chamber reiterates in relation to the third point raised by the Defence, that the ongoing procedure before the Pre-Trial Chamber on the amendment of charges, should not affect the start of the trial, which is set to commence on 5 April 2022.¹⁵
12. Considering the above, the Chamber is satisfied that no change in circumstances has been demonstrated by the Defence within the provisions under Article 58(1) of the Statute warranting the release of the accused, with or without conditions.
13. For these reasons, the Chamber decides that Mr Abd-Al-Rahman shall continue to be detained.

¹⁰ Transcript of hearing, ICC-02/05-01/20-T-022-CONF-ENG.

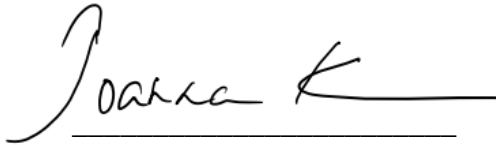
¹¹ Transcript of hearing, ICC-02/05-01/20-T-022-CONF-ENG, p. 45, line 10 to p. 50, line 19.

¹² Transcript of hearing, ICC-02/05-01/20-T-022-CONF-ENG, p. 50, line 22 to p. 51, line 3.

¹³ Decision on the review of detention, ICC-02/05-01/20-502, paras 17-21.

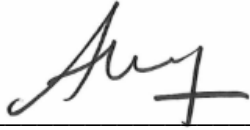
¹⁴ Transcript of hearing, ICC-02/05-01/20-T-022-CONF-ENG, p. 46, lines 22-23.

¹⁵ Transcript of hearing, ICC-02/05-01/20-T-022-CONF-ENG, p. 49, lines 14-16.

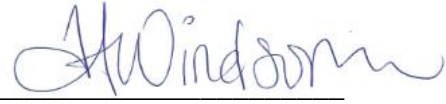


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated 11 February 2022

At The Hague, The Netherlands