

Initial Appearance

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor vs Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Single Judge Rosario Salvatore Aitala
7 Initial Appearance - Courtroom 3
8 Monday, 15 June 2020
9 (The hearing starts in open session at 11.04 a.m.)
10 THE COURT OFFICER: [11:04:52] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 JUDGE AITALA: [11:05:17] Good morning, everyone.
14 The hearing for the initial appearance of Mr Ali Kushayb is now open. I would like
15 to welcome everyone inside and outside the courtroom.
16 Before we resort to the subject matter of today's initial appearance, I would like to
17 recall that the Chamber has authorised video recording and the taking of photographs.
18 And I please ask the court officer to usher the photographers and cameramen in the
19 courtroom, if any. Thank you.
20 You have one and a half minutes.
21 (Pause in proceedings)
22 JUDGE AITALA: [11:06:20] All right. Thank you very much.
23 Madam court officer, will you please call the case.
24 THE COURT OFFICER: [11:06:26] Thank you, your Honour.
25 The situation in Darfur, Sudan, in the case of The Prosecutor vs

- 1 Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), case reference ICC-02/05-01/20.
- 2 We are in open session.
- 3 THE INTERPRETER: [11:06:46] Mr Abd-Al-Rahman made a comment.
- 4 JUDGE AITALA: [11:06:51] Thank you very much.
- 5 I now invite the parties to introduce themselves, starting with the Office of the
- 6 Prosecutor.
- 7 I would please remind everyone to observe long pauses before intervening and
- 8 speaking very slowly to allow the interpreters to translate properly and also the
- 9 communication with the detention centre by video link to run smoothly.
- 10 I will first start with you, Madam Prosecutor, will you please introduce yourself and
- 11 the members of your office present today. Good morning.
- 12 MS BENSOUA: [11:07:18] Thank you, Mr President.
- 13 Mr President, the Office of the Prosecutor is represented today by senior trial lawyer,
- 14 Mr Julian Nicholls; trial lawyer, Edward Jeremy; case manager, Biljana Popova; and
- 15 myself Fatou Bensouda, Prosecutor.
- 16 JUDGE AITALA: [11:07:40] Thank you very much, Madam Prosecutor.
- 17 I now turn to the duty counsel for Mr Ali Kushayb. You are invited to take the floor
- 18 and introduce yourself and the members of your team, if any.
- 19 MR LAUCCI: [11:07:56] (Interpretation) Thank you, Mr President.
- 20 On the Defence bench I am Cyril Laucci, duty counsel. And I am assisted today by
- 21 the representatives of the Office of Public Counsel for Defence,
- 22 Maître Xavier-Jean Keïta, principal counsel, and Ms Vedrana Residovic, case manager.
- 23 Thank you.
- 24 JUDGE AITALA: [11:08:42] Thank you very much.
- 25 I also greet the representatives of the office of the OPCD.

1 Now allow me to introduce myself and my colleagues. I am Judge Rosario Salvatore
2 Aitala. I've been designated Single Judge in this case until otherwise decided by way
3 of a decision of the Pre-Trial Chamber II dated 9 June 2020. The two other members
4 of the Chamber are Judge Antoine Kesia-Mbe Mindua, Presiding Judge, and
5 Judge Tomoko Akane.

6 Now I would like to call on Mr Kushayb to introduce himself. In light of the
7 measures adopted by the Host State and by the Court in relation to the current
8 exceptional circumstances surrounding the COVID-19 pandemic, access to the Court
9 premises is strictly limited. Safety and sanitary measures have been implemented in
10 relation to detainees at the Court's detention centre on the advice of the medical
11 officer and pursuant to Regulation 155(2) of the Regulations of the Registry. The
12 Presidency has approved, pursuant to Regulation 96(2) of the Regulations of the
13 Court, additional temporary measures relevant to detention matters.

14 As a result, it has been decided that Mr Kushayb is attending the hearing by video
15 link.

16 First of all, I would kindly ask Mr Kushayb to confirm he can properly see and hear
17 us.

18 Mr Kushayb, can you please confirm you can see and hear me and us.

19 MR ABD-AL-RAHMAN: [11:10:57] (Interpretation) I can hear you. My name is not
20 Kushayb. My name is Ali Muhammad Ali Abd-Al-Rahman. I repeat Ali
21 Muhammad Ali Abd-Al-Rahman. My name is not Ali Kushayb.

22 JUDGE AITALA: [11:11:09] Thank you. This is noted. We will call you
23 Mr Al-Rahman then from now on.

24 Secondly, I invite you, Mr Al-Rahman --

25 MR ABD-AL-RAHMAN: [11:11:20] (Overlapping speakers) (No interpretation)

1 JUDGE AITALA: [11:11:21] -- to state your full name again, the date and the place of
2 birth.

3 MR ABD-AL-RAHMAN: [11:11:38] (Interpretation) Ali Muhammad Ali

4 Abd-Al-Rahman. I was born on 15 October 1949 in al-Berdi, in a small town called
5 Rahad al-Berdi. Thank you.

6 JUDGE AITALA: [11:12:15] Thank you.

7 Finally, noting Regulation 47 of the Regulations of the Registry, I would like to ask
8 you, Mr Al-Rahman, to confirm that a direct telephone connection between yourself
9 and your legal counsel has been established and is currently in function. Would you
10 please confirm this, Mr Al-Rahman.

11 MR ABD-AL-RAHMAN: [11:12:52] (Interpretation) Thank you.

12 JUDGE AITALA: [11:12:56] Thank you, sir.

13 First of all, I believe it useful and necessary to clarify the nature and purpose of the
14 initial appearance today. Today's hearing is not a trial, it's not a hearing regarding
15 the confirmation or non-confirmation of charges. Evidence will not be adduced or
16 presented and the individual criminal responsibility of Mr Al-Rahman will not be
17 therefore discussed.

18 Pursuant to Article 60(1) of the Rome Statute and Rule 121(1) of the Rules of
19 Procedure and Evidence, the scope of today's hearing is limited to three questions:
20 First, the Single Judge must be satisfied that the person subject to the arrest warrant is
21 informed of the crimes he is alleged to have committed;
22 Second, the Single Judge must be satisfied that this person is informed of his rights
23 under the Rome Statute;
24 Third, the Single Judge must set the date on which the Chamber intends to hold the
25 hearing to confirm or decline to confirm the charges.

1 Before proceeding, I see that the counsel is asking to speak. The floor is yours.

2 MR LAUCCI: [11:14:43] (Interpretation) Thank you, your Honour. Verify briefly

3 I would like to come back to the question you asked regarding a direct line. So far

4 we have been able to prepare the hearing today through video link with the assistance

5 of an interpreter. On the other hand, I am not informed about the existence of a

6 direct line making it possible for me to communicate with him. We have not used it.

7 The second point regards the name that has been used, Mr Abd-Al-Rahman, and I am

8 thankful that you have already adopted the name. Since this case has been

9 separated, I think this file has a new number and should bear the name

10 Mr Abd-Al-Rahman and not Ali Kushayb, which is not recognised by Mr Al-Rahman.

11 JUDGE AITALA: [11:16:08] Mr Counsel, starting with your first point, I believe you

12 have just had the opportunity of speaking with Mr Al-Rahman, so this is fine. If you

13 need to speak to him, then please ask the permission to me and you will be allowed to

14 do so. And the same we can do Mr Al-Rahman.

15 As far as the name is concerned, provisionally I'm adopting the name Al-Rahman, but

16 on this specific point I ask you to --

17 MR ABD-AL-RAHMAN: [11:16:41] (Overlapping speakers) (No interpretation)

18 JUDGE AITALA: [11:16:42] -- make submissions because I will have also to -- and I

19 give the floor now to the Prosecutor to hear about this point.

20 Madam Prosecutor, please.

21 MS BENSOUA: [11:16:53] Mr President, I just wanted to rectify that it's not

22 Al-Rahman, but Mr Abd-Al-Rahman.

23 JUDGE AITALA: [11:17:01] Abd-Al-Rahman.

24 MS BENSOUA: [11:17:02] Mr Abd-Al-Rahman.

25 JUDGE AITALA: [11:17:05] Okay. Regarding the name on the filing, this will be

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1 checked in due course and please make written submissions on this because also the
2 Office of the Prosecutor may have a say on this. Thank you very much.

3 MR LAUCCI: [11:17:20] (Interpretation) This is duly noted and it will be done.
4 Thank you.

5 JUDGE AITALA: [11:17:26] Now starting with the first question, I would kindly ask
6 Mr Abd-Al-Rahman whether he has been informed of the crimes he is alleged to have
7 committed.

8 Please.

9 MR ABD-AL-RAHMAN: [11:17:52] (Interpretation) Yes, I was informed of that, but
10 this is untrue. They made me come here following this and I hope that I will face
11 justice. Thank you.

12 JUDGE AITALA: [11:18:19] Thank you very much. As I mentioned earlier, this is
13 not the hearing for presenting your defence. You will be allowed to do so in a
14 number of occasions. This is only for the Judge to be satisfied that you have been
15 informed of the crimes. Thank you.

16 And now I please ask the court officer to read out the charges as presented in the
17 public redacted versions of the warrants of arrest respectively issued on 27 April 2007
18 and 16 January 2018.

19 MR LAUCCI: [11:19:02] (Interpretation) Your Honour, with your leave,
20 Mr Abd-Al-Rahman asked me to tell you that he was waiving his rights for the
21 charges to be read to him today.

22 JUDGE AITALA: [11:19:25] Mr Counsel, it is the view of the Single Judge that the
23 charges should be appropriately read anyway. Thank you.

24 MR LAUCCI: [11:19:34] (Interpretation) Okay. That will be done.

25 THE COURT OFFICER: [11:19:41] Thank you, your Honour.

1 On 27 April 2007, Pre-Trial Chamber I concluded that there were reasonable grounds
2 to believe that Mr Abd-Al-Rahman is criminally responsible pursuant to Article
3 25(3)(a) and (d) of the Rome Statute for the crimes of:

4 (1) Persecution in the Kodoom villages and surrounding areas constituting a crime
5 against humanity (Article 7(1)(h) of the Statute): from on or about 15 August 2003 to
6 on or about 31 August 2003, Mr Abd-Al-Rahman, as part of a group of persons acting
7 with a common purpose, contributed to the persecution of the primarily Fur
8 population of the Kodoom villages and surrounding areas by acts of murder, attack of
9 the civilian population, destruction of property and forcible transfer;

10 (2) Murder of civilians in the Kodoom villages and surrounding areas constituting a
11 crime against humanity (Article 7(1)(a) of the Statute): on or about 15 August 2003,
12 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
13 contributed to the murder of civilians from the primarily Fur population of the
14 Kodoom villages and surrounding areas;

15 (3) Murder of civilians in the Kodoom villages and surrounding areas constituting a
16 war crime (Article 8(2)(c)(i) of the Statute): on or about 15 August 2003,
17 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
18 contributed to the murder of civilians from the primarily Fur population of the
19 Kodoom villages and surrounding areas;

20 (4) Murder of civilians in the Kodoom villages and surrounding areas constituting a
21 crime against humanity (Article 7(1)(a) of the Statute): on or about 31 August 2003,
22 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
23 contributed to the murder of civilians from the primarily Fur population of the
24 Kodoom villages and surrounding areas;

25 (5) Murder of civilians in the Kodoom villages and surrounding areas constituting a

1 war crime (Article 8(2)(c)(i) of the Statute): on or about 31 August 2003,
2 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
3 contributed to the murder of civilians from the primarily Fur population of the
4 Kodoom villages and surrounding areas, while those civilians were taking no active
5 part in hostilities;

6 (6) Attacks against the civilian population in the Kodoom villages and surrounding
7 areas constituting a war crime (Article 8(2)(e)(i) of the Statute): from on or about
8 15 August 2003 to on or about 31 August 2003, Mr Abd-Al-Rahman, as part of a group
9 of persons acting with a common purpose, contributed to the commission of attacks
10 against civilians from the primarily Fur population of the Kodoom villages and
11 surrounding areas and against civilians not taking direct part in hostilities;

12 (7) Attacks against the civilian population in the Kodoom villages and surrounding
13 areas constituting a war crime (Article 8(2)(e)(i) of the Statute): from on or about
14 15 August 2003 to on or about 31 August 2003, Mr Abd-Al-Rahman committed,
15 jointly with others, attacks against civilians from the primarily Fur population of the
16 Kodoom villages and surrounding areas and against civilians not taking direct part in
17 hostilities;

18 (8) Destruction of property in the Kodoom villages and surrounding areas
19 constituting a war crime (Article 8(2)(e)(xii) of the Statute): from on or about
20 15 August 2003 to on or about 31 August 2003, Mr Abd-Al-Rahman, as part of a group
21 of persons acting with a common purpose, contributed to the destruction of property
22 belonging to the primarily Fur population of the Kodoom villages and surrounding
23 areas, including the burning of houses;

24 (9) Forcible transfer from the Kodoom villages and surrounding areas constituting a
25 crime against humanity (Article 7(1)(d) of the Statute): from on or about

1 15 August 2003 to on or about 31 August 2003, Mr Abd-Al-Rahman, as a part of a
2 group of persons acting with a common purpose, contributed to the forcible transfer
3 of approximately 20,000 primarily Fur civilians from the Kodoom villages and
4 surrounding areas, resulting in the desertion of the villages.

5 (10) Persecution in the Bindisi town and surrounding areas constituting a crime
6 against humanity (Article 7(1)(h) of the Statute): on or about 15 August 2003,
7 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
8 contributed to the persecution of the primarily Fur population of Bindisi town and
9 surrounding areas by acts of murder, rape, attack of the civilian population,
10 inhumane acts, pillaging, destruction of property and forcible transfer of the
11 population;

12 (11) Murder of civilians in Bindisi town and surrounding areas constituting a crime
13 against humanity (Article 7(1)(a) of the Statute): on or about 15 August 2003,
14 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
15 contributed to the murder of over 100 civilians from the primarily Fur population of
16 Bindisi town and surrounding areas;

17 (12) Murder of civilians in Bindisi town and surrounding areas constituting a war
18 crime (Article 8(2)(c)(i) of the Statute): on or about 15 August 2003,
19 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
20 contributed to the murder of over 100 civilians from the primarily Fur population of
21 Bindisi town and surrounding areas, while those civilians were taking no active part
22 in hostilities;

23 (13) Rape in Bindisi town in surrounding areas constituting a crime against
24 humanity (Article 7(1)(g) of the Statute): on or about 15 August 2003,
25 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,

1 contributed to the rape of women and girls from the primarily Fur population of
2 Bindisi town and surrounding areas.

3 (14) Rape in Bindisi town and surrounding areas constituting a war crime (Article
4 8(2)(e)(vi) of the Statute): on or about 15 August 2003, Mr Abd-Al-Rahman, as part
5 of a group of persons acting with a common purpose, contributed to the rape of
6 women and girls from the primarily Fur population of Bindisi town and surrounding
7 areas.

8 (15) Attacks against a civilian population in Bindisi town and surrounding areas
9 constituting a war crime (Article 8(2)(e)(i) of the Statute): on or about 15 August
10 2003, Mr Abd-Al-Rahman, as part of a group of persons acting with a common
11 purpose, contributed to the commission of attacks against civilians from the primarily
12 Fur population of Bindisi town and surrounding areas while the civilians were not
13 taking direct part in hostilities;

14 (16) Attacks against the civilian population in Bindisi town and surrounding areas
15 constituting a war crime (Article 8(2)(e)(i) of the Statute): on or about
16 15 August 2003, Mr Abd-Al-Rahman committed, jointly with others, attacks against
17 civilians from the primarily Fur population of Bindisi town and surrounding areas
18 while those civilians were not taking direct part in hostilities;

19 (17) Inhumane acts in Bindisi town constituting a crime against humanity
20 (Article 7(1)(k) of the Statute): on or about 15 August 2003, Mr Abd-Al-Rahman, as a
21 part of a group of persons acting with a common purpose, contributed to the
22 infliction of great suffering, serious injury to body or to mental or physical health by
23 means of an inhumane act upon civilians from the primarily Fur population of Bindisi
24 town and surrounding areas, including the inhumane acts of shooting, resulting in
25 serious injury;

- 1 (18) Pillaging in Bindisi town and surrounding areas constituting a war crime
2 (Article 8(2)(e)(v) of the Statute): on or about 15 August 2003, Mr Abd-Al-Rahman,
3 as part of a group of persons acting with a common purpose, contributed to the
4 pillaging of property belonging to the primarily Fur population of Bindisi town and
5 surrounding areas, including the pillaging of household property;
- 6 (19) Destruction of property in Bindisi town and surrounding areas constituting a
7 war crime (Article 8(2)(e)(xii) of the Statute): on or about 15 August 2003,
8 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
9 contributed to the destruction of property belonging to the primarily Fur population
10 of Bindisi town and surrounding areas, including the burning of food storage, the
11 mosque and dwellings in the area;
- 12 (20) Forcible transfer from Bindisi town and surrounding areas constituting a crime
13 against humanity (Article 7(1)(d) of the Statute): on or about 15 August 2003,
14 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
15 contributed to the forcible transfer of approximately 34,000 primarily Fur civilians
16 from Bindisi town and surrounding areas, resulting in a desertion of the town;
- 17 (21) Persecution in Mukjar town and surrounding areas constituting a crime against
18 humanity (Article 7(1)(h) of the Statute): between August 2003 and March 2004,
19 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
20 contributed to the persecution of the primarily Fur population of Mukjar town and
21 surrounding areas by acts of murder, attacks of the civilian population, imprisonment
22 or severe deprivation of liberty, torture, pillaging and destruction of property;
- 23 (22) Murder of men in Mukjar town and surrounding areas constituting a crime
24 against humanity (Article 7(1)(a) of the Statute): between September 2003 and
25 October 2003, Mr Abd-Al-Rahman, as a part of a group of persons acting with a

1 common purpose, contributed to the murder of at least 20 men from the primarily Fur
2 population of Mukjar town and surrounding areas;

3 (23) Murder of men in Mukjar town and surrounding areas constituting a war crime
4 (Article 8(2)(c)(i) of the Statute): between September 2003 and October 2003,
5 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
6 contributed to the murder of at least 20 men from the primarily Fur population of
7 Mukjar town and surrounding areas while those men were taking no active part in
8 hostilities;

9 (24) Murder of men in Mukjar town and surrounding areas constituting a crime
10 against humanity (Article 7(1)(a) of the Statute): in or around December 2003,
11 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
12 contributed to the murder of at least 21 men from the primarily Fur population of
13 Mukjar town and surrounding areas;

14 (25) Murder of men in Mukjar town and surrounding areas constituting a crime
15 against humanity (Article 7(1)(a) of the Statute): in or around December 2003,
16 Mr Abd-Al-Rahman committed, jointly with others, the murder of at least 21 men
17 from the primarily Fur population of Mukjar town and surrounding areas by
18 transporting them under armed guards to their place of execution;

19 (26) Murder of men in Mukjar town and surrounding areas constituting a war crime
20 (Article 8(2)(c)(i) of the Statute): in or around December 2003, Mr Abd-Al-Rahman,
21 as part of a group of persons acting with a common purpose, contributed to the
22 murder of at least 21 men from the primarily Fur population of Mukjar town and
23 surrounding areas while those men were taking no active part in hostilities;

24 (27) Murder of men in Mukjar town and surrounding areas constituting a war crime
25 (Article 8(2)(c)(i) of the Statute): in or around December 2003, Mr Abd-Al-Rahman

1 committed, jointly with others, the murder of at least 21 men from the primarily Fur
2 population of Mukjar town and surrounding areas while those men were taking no
3 active part in hostilities, by transporting them under armed guards to their place of
4 execution;

5 (28) Murder of men in Mukjar town and surrounding areas constituting a crime
6 against humanity (Article 7(1)(a) of the Statute): in or around March 2004,
7 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
8 contributed to the murder of at least 32 men from the primarily Fur population of
9 Mukjar town and surrounding areas;

10 (29) Murder of men in Mukjar town and surrounding areas constituting a crime
11 against humanity (Article 7(1)(a) of the Statute): in or around March 2004,
12 Mr Abd-Al-Rahman committed, jointly with others, the murder of at least 32 men
13 from the primarily Fur population of Mukjar town and surrounding areas by
14 transporting them under armed guards to their place of execution;

15 (30) Murder of men in Mukjar town and surrounding areas constituting a war crime
16 (Article 8(2)(c)(i) of the Statute): in or around March 2004, Mr Abd-Al-Rahman, as
17 part of a group of persons acting with a common purpose, contributed to the murder
18 of at least 32 men from the primarily Fur population of Mukjar town and surrounding
19 areas while those men were taking no active part in hostilities;

20 (31) Murder of men in Mukjar town and surrounding areas constituting a war crime
21 (Article 8(2)(c)(i) of the Statute): in or around March 2004, Mr Abd-Al-Rahman
22 committed, jointly with others, the murder of at least 32 men from the primarily Fur
23 population of Mukjar town and surrounding areas while those men were taking no
24 active part in hostilities, by transporting them under armed guard to their place of
25 execution;

1 (32) Attacks against a civilian population of Mukjar town and surrounding areas
2 constituting a war crime (Article 8(2)(1) -- I'm sorry, Article 8(2)(e)(i) of the Statute):
3 between August 2003 and March 2004, Mr Abd-Al-Rahman, as part of a group of
4 persons acting with a common purpose, contributed to the commission of attacks
5 against civilians from the primarily Fur population of Mukjar town and surrounding
6 areas and against civilians not taking direct part in hostilities;

7 (33) Attacks against the civilian population in Mukjar town and surrounding areas
8 constituting a war crime (Article 8(2)(e)(i) of the Statute): between August 2003 and
9 March 2004, Mr Abd-Al-Rahman committed, jointly with others, attacks against
10 civilians from the primarily Fur population of Mukjar town and surrounding areas
11 and against civilians not taking direct part in hostilities;

12 (34) Imprisonment or severe deprivation of liberty in Mukjar town and surrounding
13 areas constituting a crime against humanity (Article 7(1)(e) of the Statute):
14 beginning in or about August 2003, Mr Abd-Al-Rahman, as part of a group of persons
15 acting with a common purpose, contributed to the imprisonment or severe
16 deprivation of the physical liberty of at least 400 civilians from the primarily Fur
17 population of Mukjar town and surrounding areas;

18 (35) Torture in Mukjar town and surrounding areas constituting a crime against
19 humanity (Article 7(1)(f) of the Statute): beginning in or about August 2003,
20 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
21 contributed to the torture of at least 60 civilians from the primarily Fur population of
22 Mukjar town and surrounding areas;

23 (36) Pillaging in Mukjar town and surrounding areas constituting a war crime
24 (Article 8(2)(e)(v) of the Statute): between August 2003 and March 2004,
25 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,

1 contributing to the pillaging of property belonging to the primarily Fur population of
2 Mukjar town and surrounding areas, including the pillaging of shops, houses and
3 livestock;

4 (37) Destruction of property in Mukjar town and surrounding areas constituting a
5 war crime (Article 8(2)(e)(xii) of the Statute): between August 2003 and March 2004,
6 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
7 contributed to the destruction of property belonging to the primarily Fur population
8 of Mukjar town and surrounding areas, including the burning of dwellings and the
9 destruction of crops and farms;

10 (38) Persecution in Arawala town and surrounding areas constituting a crime
11 against humanity (Article 7(1)(h) of the Statute): in or around December 2003,
12 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
13 contributed to the persecution of the primarily Fur population of Arawala town and
14 surrounding areas by acts of murder, rape, attack of the civilian population, outrages
15 upon personal dignity, inhumane acts, pillaging, destruction of property and forcible
16 transfer of the population;

17 (39) Murder of civilians in Arawala town and surrounding areas constituting a
18 crime against humanity (Article 7(1)(a) of the Statute): in or around December 2003,
19 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
20 contributed to the murder of at least 26 civilians from the primarily Fur population of
21 Arawala town and surrounding areas;

22 (40) Murder of civilians in Arawala town and surrounding areas constituting a war
23 crime (Article 8(2)(c)(i) of the Statute): in or around December 2003,
24 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
25 contributed to the murder of at least 26 civilians from the primarily Fur population of

1 Arawala town and surrounding areas while those civilians were taking no active part
2 in hostilities;

3 (41) Rape in Arawala town and surrounding areas constituting a crime against
4 humanity (Article 7(1)(g) of the Statute): in or around December 2003,
5 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
6 contributed to the rape of at least 10 women and girls from the primarily Fur
7 population of Arawala town and surrounding areas;

8 (42) Rape in Arawala town and surrounding areas constituting a war crime
9 (Article 8(2)(e)(vi) of the Statute): in or around December 2003, Mr Abd-Al-Rahman,
10 as part of a group of persons acting with a common purpose, contributed to the rape
11 of at least 10 women and girls from the primarily Fur population of Arawala town
12 and surrounding areas;

13 (43) Attacks against the civilian population in Arawala town and surrounding areas
14 constituting a war crime (Article 8(2)(e)(i) of the Statute): in or around
15 December 2003, Mr Abd-Al-Rahman, as part of a group of persons acting with a
16 common purpose, contributed to the commission of attacks against civilians from the
17 primarily Fur population of Arawala town and surrounding areas and against
18 civilians taking no active part in hostilities;

19 (44) Attacks against the civilian population in Arawala town and surrounding areas
20 constituting a war crime (Article 8(2)(e)(i) of the Statute): in or about -- in or around
21 December 2003, Mr Abd-Al-Rahman committed, jointly with others, attacks against
22 civilians from the primarily Fur population of Arawala town and surrounding areas
23 and against civilians not taking direct part in hostilities;

24 (45) Outrage upon personal dignity in Arawala town and surrounding areas
25 constituting a war crime (Article 8(2)(c)(ii) of the Statute): in or around

1 December 2003, Mr Abd-Al-Rahman, as part of a group of persons acting with a
2 common purpose, contributed to outrage upon personal dignity of at least 10 women
3 and girls from the primarily Fur population of Arawala town and surrounding areas;
4 (46) Outrage upon personal dignity in Arawala town and surrounding areas
5 constituting a war crime (Article 8(2)(c)(ii) of the Statute): in or around
6 December 2003, Mr Abd-Al-Rahman, committed, jointly with others, outrage upon
7 personal dignity of at least 10 women and girls from the primarily Fur population of
8 Arawala town and surrounding areas;
9 (47) Inhumane acts in Arawala constituting a crime against humanity
10 (Article 7(1)(k) of the Statute): in or around December 2003, Mr Abd-Al-Rahman, as
11 part of a group of persons acting with a common purpose, contributed to the
12 infliction of great suffering, or serious injury to body or to mental or physical health
13 by means of an inhumane act upon civilians from the primarily Fur population of
14 Arawala town and surrounding areas;
15 (48) Pillaging in Arawala town and surrounding areas constituting a war crime
16 (Article 8(2)(e)(v) of the Statute): in or around December 2003, Mr Abd-Al-Rahman,
17 as part of a group of persons acting with a common purpose, contributing to the
18 pillaging of property belonging to the primarily Fur population of Arawala town and
19 surrounding areas, including the pillaging of stores, houses and livestock;
20 (49) Destruction of property in Arawala town and surrounding areas constituting a
21 war crime (Article 8(2)(e)(xii) of the Statute): in or around December 2003,
22 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
23 contributed to the destruction of property belonging to the primarily Fur population
24 of Arawala town and surrounding areas, including the destruction of most of
25 Arawala town;

1 (50) Forcible transfer from Arawala town and surrounding areas constituting a
2 crime against humanity (Article 7(1)(d) of the Statute): in or around December 2003,
3 Mr Abd-Al-Rahman, as part of a group of persons acting with a common purpose,
4 contributed to the forcible transfer of approximately 7,000 primarily Fur civilians
5 from Arawala town and surrounding areas to the towns of Deleig, Garsila and other
6 locations, resulting in the desertion of the town.

7 On 16 January 2018, Pre-Trial Chamber II, in its previous composition, further
8 concluded that there are reasonable grounds to believe that Mr Abd-Al-Rahman is
9 criminally responsible, pursuant to Articles 25(3)(a), (b) or (d) or 28(a) of the Statute,
10 for:

11 (1) Murder of -- constituting a crime against humanity (Article 7(1)(a) of the Statute)
12 against, *inter alia*, at least 100 civilian Fur men in Deleig and surrounding areas
13 between on or about 5 to 7 March 2004;

14 (2) Murder constituting a war crime (Article 8(2)(c)(i) of the Statute) against,
15 *inter alia*, at least 100 civilian Fur men in Deleig and surrounding areas between on or
16 about 5 to 7 March 2004;

17 (3) Other inhumane acts constituting a crime against humanity (Article 7(1)(k) of the
18 Statute) against well over 100 civilian Fur men in Deleig and surrounding areas
19 between or about 7 -- on or about 5 to 7 March 2004.

20 Thank you, your Honour.

21 JUDGE AITALA: [11:52:07] Madam court officer, I thank you very much for this
22 tiring but necessary exercise.

23 Now I would like to take this opportunity to address the Office of the Prosecutor with
24 respect to the level of confidentiality of filing ICC-02/05-01/07-73 of 3 November 2017,
25 which is the Prosecutor's request to amend the first warrant of arrest against

1 Mr Abd-Al-Rahman, pursuant to Article 58(6) of the Rome Statute, which led to the
2 issuance of the second warrant of arrest against the suspect on 16 January 2018.
3 Now, I note that a public redacted version of the Prosecutor's first request for the
4 issuance of a warrant of arrest dated 27 February 2017 is available, but this is not the
5 case for the second request, the 3 November 2017, which is still classified as secret
6 ex parte only available to the Prosecutor.

7 Then I would invite you, Madam Prosecutor, to inform whether any steps have
8 already been taken in order to allow this filing to be made public.

9 Madam Prosecutor, please.

10 MS BENSOUDA: [11:53:33] Mr President, if I may request senior trial lawyer
11 Julian Nicholls --

12 JUDGE AITALA: [11:53:39] Sure.

13 MS BENSOUDA: [11:53:39] -- to respond to that question.

14 JUDGE AITALA: [11:53:44] Mr Prosecutor, you are allowed to speak.

15 MR NICHOLLS: [11:53:46] Thank you very much, your Honour. We can -- we
16 have started working on that, but we will be able to file a PRV in due course. There
17 may be some redactions necessary.

18 JUDGE AITALA: [11:54:01] Okay. Well, thank you very much. Then I will be
19 grateful for your celerity in light of the necessity of advancing the proceeding in this
20 matter.

21 I wish to inform Mr Abd-Al-Rahman that the Chamber will take the necessary steps
22 to ensure that he will receive the Prosecutor's application for this second arrest
23 warrant and supporting material as soon as this will be possible.

24 Now I will proceed with the second question to the suspect, to Mr Abd-Al-Rahman,
25 and I would like to invite you to indicate whether you have been informed of the

1 rights which are accorded to you as a suspect under the Rome Statute of the
2 International Criminal Court.

3 Mr Abd-Al-Rahman, please.

4 MR ABD-AL-RAHMAN: [11:55:05] (Interpretation) May you -- may you please
5 repeat the question.

6 JUDGE AITALA: [11:55:10] Well, I'm asking you whether you have been informed
7 of which rights you are entitled to according to the Statute of the International
8 Criminal Court. Have you been informed of such rights?

9 MR ABD-AL-RAHMAN: [11:55:27] (Interpretation) They did -- they did inform me,
10 indeed.

11 JUDGE AITALA: [11:55:33] Thank you very much. In any case, I nonetheless take
12 this opportunity to highlight some of those rights which are of fundamental
13 importance at this stage of the proceedings. Among others:

14 You have the right to be informed promptly and in detail of the nature of the cause
15 and content of the charges in a language which you fully understand and speak.

16 Mr Abd-Al-Rahman, can you please indicate which language or languages you fully
17 understand and speak.

18 MR ABD-AL-RAHMAN: [11:56:11] (Interpretation) Arabic.

19 JUDGE AITALA: [11:56:19] Thank you very much. This is noted.

20 In addition, you have the right to have free of cost the assistance of a competent
21 interpreter and such translations as are necessary to meet the requirements of fairness,
22 so you're entitled to an interpreter at all times;

23 You have the right to have adequate time and facilities for the preparation of your
24 defence and to communicate freely with counsel of your own choosing;

25 You have the right to remain silent and you cannot be compelled, you cannot be

1 forced to testify against yourself or to confess guilt;

2 You have the right to make an unsworn oral or written statement in your defence;

3 You have the right to receive, as soon as possible, material showing or tending to

4 show your innocence, or mitigating your guilt, or affecting the credibility of

5 incriminating evidence;

6 At the confirmation of charges hearing, you also have the right to object to the charges,

7 to challenge the evidence presented by the Prosecutor and to present evidence

8 yourself in your favour; there will be no trial in case the charges are not confirmed

9 and the proceedings against you would be terminated in that case;

10 Finally, you have the right to apply for interim release pending trial.

11 Now, Mr Abd-Al-Rahman, I invite you to make any observation relating to the

12 conditions of your transfer to the International Criminal Court or on the conditions of

13 your detention at the headquarters of International Criminal Court in The Hague

14 since your arrival.

15 Mr Abd-Al-Rahman, please.

16 MR ABD-AL-RAHMAN: [11:58:45] (Interpretation) I came from Sudan. I left

17 Sudan on February 13 and headed to Birao, and then from Birao to Bangui - this was a

18 tiresome two-month long trip - and from Bangui onwards to The Netherlands.

19 When arriving -- when I arrived in The Netherlands, I have been well treated, I have

20 not faced any difficulties, everything went fine.

21 Thank you.

22 JUDGE AITALA: [11:59:38] Thank you very much. This is good to hear.

23 Mr Counsel, do you need to speak? You are allowed to do it.

24 MR LAUCCI: [11:59:42] Thank you, your Honour.

25 In addition to his observations, Mr Abd-Al-Rahman has asked me to make the

1 following request:

2 (Interpretation) And I do apologise, I had decided to speak in French so I'm going to
3 switch to French now.

4 Now, on the occasion of this first hearing in this situation in Darfur,

5 Mr Abd-Al-Rahman asked me to voice his wish that, with your leave, there may be a
6 minute of silence observed in memory of all the victims of Darfur and more
7 extensively in Sudan.

8 So that is a humble request that I am making before you.

9 JUDGE AITALA: [12:00:39] Well, sir, this is -- I understand the purpose of the
10 request, but this is not the place to do this. We will all do this individually and at the
11 International Criminal Court we do this very often, we always think about the victims.
12 So this request now is rejected. We'll continue with the proceedings.

13 MR LAUCCI: [12:01:00] (Interpretation) I thank you, Mr President, your Honour.
14 Of course, it is important that the fact that Mr Abd-Al-Rahman actually made this
15 request be recorded, be put on the record. And to the extent that
16 Mr Abd-Al-Rahman, who is presumed innocent at this stage, has not been authorised
17 to observe this minute of silence after 33 minutes were given over to reading the
18 charges against him, I think that this is something that should be put on record and
19 I would like you to reason your decision on this matter at a later date.
20 Thank you.

21 JUDGE AITALA: [12:02:03] It is on record so we'll proceed further.

22 Thank you, Mr Abd-Al-Rahman.

23 Now I will set the date for the confirmation of charges hearing. After having
24 considered all relevant factors, including the need for the parties and participants to
25 prepare, the rights of Mr Abd-Al-Rahman, especially his right to be tried without

1 undue delay, and the current exceptional circumstances due to the COVID-19
2 pandemic, the date for the commencement of the confirmation of charges hearing is
3 set for Monday, 7 December 2020, this year.

4 Depending on the development of the proceedings, this date may be changed as
5 provided for in Rule 121(7) of the Rules of Procedure and Evidence upon request of
6 either the Prosecutor or the Defence, or by the Pre-Trial Chamber on its own motion.

7 Before concluding the present hearing, I would like to inform the parties of the
8 following steps in these proceedings:

9 First, it is recalled that, pursuant to Rule 121(2)(b) of the Rules of Procedure and
10 Evidence, status conferences shall be held to ensure that disclosure takes place in a
11 transparent, efficient and expeditious manner. Such status conferences may be
12 scheduled by the Single Judge *proprio motu* but also upon request of the parties.

13 Second, I would like to inform the parties that, in due course, a set of decisions will be
14 issued to ensure that the proceedings are conducted properly and expeditiously.

15 More specifically, I am referring to, among other things, a decision on the modalities
16 and procedure for evidence disclosure; a decision establishing a calendar for the
17 disclosure of evidence in order to ensure organised and smooth disclosure between
18 the parties with communication of disclosed evidence to the Chamber; a decision on
19 principles for redactions; and a decision on victims' participation.

20 Now I would kindly ask the parties if there is any additional -- if there are any
21 additional points they would like to raise in relation to what was discussed today.

22 Madam Prosecutor, you have the floor.

23 MS BENSOUA: [12:05:04] Thank you, Mr President.

24 No further observation from us.

25 JUDGE AITALA: [12:05:08] Thank you very much, Madam Prosecutor.

1 Mr Counsel, please.

2 MR LAUCCI: [12:05:13] (Interpretation) Thank you, your Honour.

3 I have appeared today before you as duty counsel. Mr Abd-Al-Rahman will now
4 proceed to designating his personal or permanent counsel and the Registrar will assist
5 him in this. But pending that, I would like to ask that all the interlocutory, all the
6 procedural matters should be suspended for now until the decision is confirmed.

7 JUDGE AITALA: [12:06:05] Well, Mr Counsel, we will be seeing if there is any news
8 on this. Meanwhile, we thank you for your commitment in defence of
9 Mr Abd-Al-Rahman.

10 Mr Abd-Al-Rahman, is there any point you would like to raise before we end the
11 hearing this morning? If you have any point, you are allowed to speak now.

12 MR ABD-AL-RAHMAN: [12:06:35] (Interpretation) I would like to say -- with
13 regards to what we spoke about today or with regards to the proceedings in general?
14 What I heard today doesn't apply to me and the different points you mentioned do
15 not concern me. I do -- and the different articles you referred to and regulations are
16 things I do not know, so I cannot answer that question.

17 JUDGE AITALA: [12:07:19] Well, thank you. Then I understand that you don't
18 have any further point. Then I thank you very much.

19 Now we have come to the end of the hearing on the initial appearance of
20 Mr Abd-Al-Rahman. I would like to thank the parties, the interpreters for their job,
21 and the courtroom staff. The hearing is now closed.

22 THE COURT OFFICER: [12:07:46] All rise.

23 (The hearing ends in open session at 12.07 p.m.)