

## Situation in Darfur, Sudan

Update: May 2021

### *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*

## Confirmation of charges hearing in the Abd-Al-Rahman case,

24-27 May 2021

### WHAT IS A "CONFIRMATION OF CHARGES HEARING"?

The confirmation of charges hearing is not a trial. The confirmation of charges hearing is a public hearing during which a Pre-Trial Chamber of the International Criminal Court (ICC) decides whether or not to confirm all or any of the charges brought by the Prosecutor against a suspect – Abd-Al-Rahman, in this case. If any of the charges are confirmed, the suspect is committed for trial before a Trial Chamber.

At the hearing, in the presence of the suspect and his Counsel, the Prosecution is required to support each of the charges with sufficient evidence to establish substantial grounds to believe that Mr Abd-Al-Rahman committed the crimes with which he is charged. The hearing will take place before Pre-Trial Chamber II, composed of Judge Rosario Salvatore Aitala (Presiding judge), Judge Antoine Kesia-Mbe Mindua and Judge Tomoko Akane. The Chamber will hear oral submissions in turn from the Prosecution, the Legal Representatives of the Victims and the Defence. The hearing is [scheduled](#) from 24 to 27 May 2021 at the seat of the Court in The Hague, The Netherlands.

### WHO IS MR ABD-AL-RAHMAN AND WHAT IS HE SUSPECTED OF?

According to the [Prosecution's submission of the Document Containing the Charges](#), between at least August 2003 and at least April 2004, Mr Abd-Al-Rahman was a senior leader of the Militia/Janjaweed in the Wadi Salih and Mukjar Localities, West Darfur State, Sudan.

Mr Abd-Al-Rahman is suspected of 31 counts of war crimes and crimes against humanity allegedly committed between August 2003 and at least April 2004 in Darfur, Sudan, including: Intentionally directing attacks against the civilian population as such, as a war crime; murder as a crime against humanity and as a war crime; pillaging as a war crime; destruction of the property of an adversary as a war crime; other inhumane acts as a crime against humanity; outrages upon personal dignity as a war crime; rape as a crime against humanity and a war crime; forcible transfer as a crime against humanity; persecution as a crime against humanity; torture as a crime against humanity and a war crime; cruel treatment as a war crime; attempted murder as a crime against humanity and a war crime.

Mr Abd-Al-Rahman was transferred to the ICC's custody on 9 June 2020, after surrendering himself voluntarily in the Central African Republic. His initial appearance before the ICC took place on 15 June 2020.

### WILL VICTIMS BE PARTICIPATING IN THIS HEARING?

Yes, the judges have given 151 victims permission to participate in the hearing. They will not be in the courtroom but will be represented by their Legal representatives, lawyers Ms Paolina Massidda, Ms Amal Clooney and Mr Nasser Mohamed Amin Abdalla. The Legal representatives of victims will attend the hearing and will make oral submissions before the judges to present their arguments on the merits.

### WHO IS DEFENDING MR ABD-AL-RAHMAN?

Mr Cyril Laucci is the Counsel for the defence of Mr Abd-Al-Rahman. Defence Counsel may object to the charges, respond to Prosecution evidence and present exculpatory evidence.

### WHO PAYS FOR MR ABD-AL-RAHMAN'S DEFENCE?

The ICC bears the cost of the Defence of the suspect, in accordance with the legal aid scheme. Pending verification by the Court, Mr Abd-Al-Rahman has been provisionally found indigent, meaning that he cannot afford to pay for his defence.

### WHAT ARE THE POSSIBLE OUTCOMES OF THE CONFIRMATION HEARING?

The ICC Pre-Trial Chamber will deliver its written decision within 60 days of the date on which the confirmation hearing ends. The Pre-Trial Chamber will deliver a decision, in which it may:

- confirm those charges for which the Chamber has determined that there is sufficient evidence, and commit the suspect to trial before a Trial Chamber;

- decline to confirm those charges for which it has determined that there is insufficient evidence and stop the proceedings against Mr Abd-Al-Rahman;
- adjourn the hearing and request the Prosecutor to provide further evidence, to conduct further investigations or to amend any charge for which the evidence submitted appears to establish a crime other than the one charged was committed .

The Defence and the Prosecution are not automatically entitled to appeal this decision but they can request authorisation from the Pre-Trial Chamber to do so.

#### WHAT WILL HAPPEN IF THE CHARGES ARE CONFIRMED?

If the Pre-Trial Chamber finds that there is sufficient evidence to support the charges, it will commit Mr Abd-Al-Rahman for trial. The Presidency of the Court will constitute a Trial Chamber responsible for conducting the subsequent phase of the proceedings and composed of three judges other than those who sat on the Pre-Trial bench.

Promptly after it is constituted, the Trial Chamber will hold status conferences, confer with the parties and participants in order to set the date of the trial and adopt the procedures necessary to facilitate the fair and expeditious conduct of the proceedings. The Chamber will rule on several preliminary issues, including the language(s) to be used at trial, and the timing and the manner of disclosure of evidence.

#### WHERE IS MR ABD-AL-RAHMAN CURRENTLY BEING DETAINED?

Since his transfer to the Court on 9 June 2020,, Mr Al Abd-Al-Rahman has been detained at the ICC Detention Centre in Scheveningen, The Hague, The Netherlands. The Detention Centre meets the highest international human rights standards for the treatment of detainees. Detained persons are presumed by the Court to be innocent until proven guilty beyond reasonable doubt.

#### WHO ARE THE JUDGES SITTING IN THIS CASE?

Pre-Trial Chamber II is composed of Judge Rosario Salvatore Aitala (Presiding judge, Italy), Judge Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo) and Judge Tomoko Akane.(Japan).

The Judges of the ICC are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. They are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and human rights law.