

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 August 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

**Prosecution’s response to “Soumission relative au réexamen de la detention”, 22
July 2022, ICC-02/05-01/20-718**

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
Ms Nazhat Shameem Khan
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci
Mr Iain Edwards

Legal Representatives of the Victims

Ms Natalie von Wistinghausen
Mr Anand Shah

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. Trial Chamber I (“Chamber”) should reject the Defence’s “*Soumission relative au réexamen de la détention*” (“Request”)¹ as (i) the review of detention after the commencement of trial is not automatic; and (ii) the Defence has failed to indicate any change in facts or circumstances that would provide grounds for such a review.

II. PROCEDURAL BACKGROUND

2. On 20 July 2022, the Defence made oral submissions requesting a hearing for the review of Mr Ali Muhammad Ali Abd-Al-Rahman’s detention.² The Chamber noted that the review of his detention is no longer automatic given that the trial had commenced,³ and ordered the Defence to file written submissions on the issue.⁴

3. On 22 July 2022, the Defence filed a request for a hearing on the review of Mr Abd-Al-Rahman’s detention, pursuant to rule 118(3) of the Rules of Procedure and Evidence.⁵ In its Request, the Defence argued that the review of detention by the Chamber is a function “inherited” by the Chamber from Pre-Trial Chamber II, following the confirmation of charges.⁶ The Defence further argued that a periodic review of Mr Abd-Al-Rahman’s detention should be conducted at least once a year, regardless of the stage of the proceedings,⁷ and indicated that it would make substantive submissions on the subject matter during the requested hearing.⁸

III. SUBMISSIONS

4. The Prosecution submits that the periodic review of detention under article 60(3) of the Statute and rule 118(3) of the Rules only applies prior to the commencement of trial. This interpretation is consistent with paragraph 85 of the

¹ [ICC-02/05-01/20-718 \(“Request”\)](#).

² ICC-02/05-01/20-T-066-CONF-ENG-RT, p. 38, l. 17-p. 39, l. 14.

³ ICC-02/05-01/20-T-066-CONF-ENG-RT, p. 38, l. 10-15.

⁴ ICC-02/05-01/20-T-066-CONF-ENG-RT, p. 60, l. 24-p. 61, l. 2.

⁵ Request.

⁶ Request, para. 4.

⁷ Request, para. 5.

⁸ Request, para. 6.

Chambers Practice Manual, which provides that periodic reviews of detention “no longer occur automatically after the trial’s commencement, but the Trial Chamber may review a ruling pursuant to Article 60(3) at any time on its own initiative or at the request of the detained person or the Prosecutor”.⁹

5. The Defence may submit a request for Mr Abd-Al-Rahman’s detention to be reviewed, however, it must meet the review of detention standard. As stated by the Presiding Judge, for a hearing on the review of detention to be held during the trial stage, there must be new circumstances which would make it possible to grant Mr Abd-Al-Rahman’s release.¹⁰

6. The Request fails to provide any grounds for the review of Mr Abd-Al-Rahman’s detention other than the incorrect argument that such reviews are “automatic”. Furthermore, the Defence has failed to meet the review of detention standard as they did not indicate that any change in circumstances has occurred or that any new facts exist since the last review of Mr Abd-Al-Rahman’s detention on 11 February 2022.¹¹

IV. CONCLUSION

7. For the foregoing reasons, the Chamber should dismiss the Request.



Karim A. A. Khan QC
Prosecutor

Dated this 15th day of August 2022

At The Hague, The Netherlands

⁹ [Chambers Practice Manual](#), Fifth Edition, Chapter II, Section D, para. 85.

¹⁰ ICC-02/05-01/20-T-066-CONF-ENG-RT, p. 38, l. 10-15.

¹¹ ICC-02/05-01/20-591-Red.