

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/05-01/2**

Date: **28 June 2023**

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
With Confidential *Ex Parte* – Defence, Registry only – Annexes 1 and 2

**Public Redacted Version of
REQUEST FOR POSTPONMENT OF DEFENCE CASE**

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

The Office of the Prosecutor

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Unrepresented Victims

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(Participation/Reparation)**

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Registrar

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**Victims Participation and Reparations
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Other

1. The present submission (“Request”) is made by the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“the Defence”, “Mr Abd-Al-Rahman”) under Regulation 35(2) of the Regulations of the Court (“RoC”) in advance of the forthcoming status conference on 5 July 2023 (“the Status Conference”). The Defence makes this Request well ahead of the next deadline of 20 July 2023 for preparations of the Defence case (filing of a Defence trial brief and disclosure of evidence (and any witnesses) to be relied upon) to build in adequate time for responses from the Office of the Prosecutor (“OTP”) and the Legal Representative for Victims (“LRV”) and for deliberations by Honourable Trial Chamber I (“the Chamber”). Full and complete information demonstrating that good cause exists for a new postponement of the Defence case is set out below, in accordance with paragraph 43 of the “Decision on the Defence’s Request for postponement of the presentation of its case” of 17 April 2023 (“Decision #916”).¹

2. The Request incorporates by reference all information already provided to the Chamber in prior updates on the advancement of the preparation of the Defence case (“1st Update” and “2nd Update”)² and on the exposition of the difficulties the Defence is encountering made in its Submission under Rule 79(1)(a) of the Rules of Procedure and Evidence (“RPE”) (“Rule 79(1)(a) Submission”).³

3. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the Request is classified “Confidential”, as it refers to developments in the preparation of the Defence case, which ought to remain confidential. A public redacted version is also filed. Annexes 1 and 2 are classified “Confidential *ex parte* – Defence, Registry only”, as they relate to confidential *ex parte* information about the support provided by the Registry to the Defence’s ongoing activities.

¹ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#).

² [ICC-02/05-01/20-941](#) and its Confidential *ex parte* – Defence, Registry only - Annexes 1 to 83; ICC-02/05-01/20-977-Conf (public redacted version [ICC-02/05-01/20-977-Red](#)) and its Confidential *ex parte* -Defence, Registry only – Annexes 1 to 13.

³ ICC-02/05-01/20-978-Conf and its public redacted version [ICC-02/05-01/20-978-Red](#), par. 19-32.

CURRENT DEADLINES

4. The Defence first applied for a postponement of its case on 14 March 2023 (“1st Application”).⁴ It was rejected as formulated in Decision #916⁵ with some amendments to certain preparatory deadlines.⁶ The Defence sought reconsideration or leave to appeal that ruling.⁷ This was also denied.⁸

5. The current deadlines of which the Defence seeks amendment are:

- **20 July 2023:** filing of pre-trial brief and disclosure of evidence (and any witnesses) to be relied upon by the Defence;⁹
- **14 August 2023:** filing of applications under Rule 68 of the RPE;¹⁰ and
- **28 August 2023:** opening statement followed by testimony of witnesses.¹¹

APPLICABLE LAW

6. Regulation 35(2) of the RoC provides the general framework applicable to the extension of time limits. Articles 64(2), 64(6)(d) and (f), and 69(3) of the Rome Statute (“Statute”) allow a Trial Chamber to authorise the extension of time limit in the interests of justice.

SUBMISSIONS

7. The 1st Application was rejected as formulated largely on the basis “*that many of the delays in the preparation of, and investigations relating to, the Defence’s case are attributable to the Defence*”.¹² The context of and reasons for these delays were fully explained in the 1st Update and oral submissions made at the *ex parte* Status Conference of 24 May 2023.¹³ On that date, the Chamber noted that [REDACTED].¹⁴ In light of the information provided by the Defence, the Chamber stated that it now

⁴ ICC-02/05-01/20-902-Conf-Exp and its public redacted version [ICC-02/05-01/20-902-Red](#).

⁵ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#).

⁶ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44.

⁷ ICC-02/05-01/20-920-Conf-Exp and its public redacted version [ICC-02/05-01/20-920-Red](#).

⁸ ICC-02/05-01/20-938-Conf and its public redacted version [ICC-02/05-01/20-938-Red](#).

⁹ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 B.

¹⁰ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 C.

¹¹ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 D.

¹² ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 40.

¹³ [REDACTED].

¹⁴ [REDACTED].

[REDACTED].¹⁵ The Chamber then scheduled the Status Conference to examine the progress made by that date by the Defence with the support of the Registry.¹⁶

8. The Defence provided its 2nd Update on 22 June 2023.¹⁷ At paragraph 4 of the 2nd Update, the Defence highlighted the most significant progress achieved since 24 May 2023. It concluded at paragraph 5 that, despite its best efforts, it had achieved very little progress in the preparation of its case.¹⁸

9. Since 22 June 2023, the most significant progress is the exchange of emails annexed to the Request. On 16 June 2023, the Defence had requested an updated from the Registry on issues discussed with the Registrar on 5 June 2023.¹⁹ The requested update was provided on 23 June 2023.²⁰ The Defence responded thereto on 26 June 2023²¹, attaching an email dated 5 June 2023.²² The Defence also requested to receive from the Registry regular updates on progress.²³

10. In sum, the essential information resulting from these exchanges is as follows:

- Since 5 June 2023, the Registry has been in possession of all relevant information for [REDACTED]. The Defence has requested these to take place as soon as possible, [REDACTED]. Daily updates on the progress of this option have been requested;
- On 23 June 2023, the Registry informed the Defence of [REDACTED]. The Defence has sought additional information as to [REDACTED],²⁴ and is awaiting a response. This option has been identified as a possible alternative to [REDACTED]; and

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ ICC-02/05-01/20-977-Conf (public redacted version [ICC-02/05-01/20-977-Red](#)) and its Confidential *ex parte* - Defence, Registry only – Annexes 1 to 13.

¹⁸ ICC-02/05-01/20-977-Conf (public redacted version [ICC-02/05-01/20-977-Red](#)), par. 5.

¹⁹ ICC-02/05-01/20-977-Conf-Exp-Anx7; see also ICC-02/05-01/20-977-Conf-Exp-Anx9.

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ ICC-02/05-01/20-977-Conf-Exp-Anx13, entry nr 23.

- On 23 June 2023, the Registry informed the Defence for the first time that it had not yet submitted a formal request for judicial assistance [REDACTED]. On 26 June 2023, the Defence replied that it would have appreciated receiving that information when the Defence's initial request had first been submitted to the Registry in February 2023.²⁵ It should be noted that [REDACTED] the requested support would require a formal request from the Court, not the Defence team. No other progress has been made on the option of conducting investigations from [REDACTED]. In any event, given the location of the majority of Defence witnesses, [REDACTED], the information provided by the Registry suggests that [REDACTED]. This is also consistent with the information independently received by the Defence.
11. This exchange confirms that limited progress has been achieved since 24 May 2023:
- (i) The non-functioning of a reliable telephone and internet network has thus far prevented any progress [REDACTED]. The approaching rainy season in the region²⁶ is likely to add complexity and delay to this process. [REDACTED]. The fact of the matter is the Defence is unlikely to have [REDACTED] by 20 July 2023. The Defence has no idea when [REDACTED], but the time remaining until that first deadline now appears definitely too short. [REDACTED] will require an extension of time;
 - (ii) The [REDACTED] and the non-functioning of a reliable telephone and internet network means that the Defence has made only limited progress in terms of [REDACTED];
 - (iii) The report of a first Defence expert is expected to be received this week, and can be submitted by 20 July 2023;
 - (iv) The preliminary report of a second Defence expert will be ready by 20 July 2023; a final report will be submitted thereafter as soon as possible thereafter;

²⁵ ICC-02/05-01/20-941-Conf-Exp-Anx44.

²⁶ [REDACTED].

- (v) No responses to pending Requests for Judicial Assistance addressed to Sudan²⁷ and to [REDACTED]²⁸ have been received;
- (vi) The Defence is considering the option of issuing a further Request for Judicial Assistance to a State Party to assist in the interviewing of another potential witness. This will largely depend on information recently sought from the OTP.

12. In light of the above, the Defence submits that there is good cause for granting a reasonable extension of the time limits listed in paragraph 5 above by two months. Having said that, the volatile situation in Sudan being what it is, the Defence has no guarantee that it will be able to complete its investigation within that period. This depends on factors which are essentially out of its control, in the first place the unfolding of the current armed conflict in Sudan. Postponement by a period of two months is appropriate and proportionate. The Chamber has held that a *sine die* postponement is inappropriate²⁹ and the proposed period is even inferior to the amount of time lost between the outbreak of the current armed conflict in Sudan on 15 April 2023, which prevented any significant progress, and the current deadline of 20 July 2023. The proposed postponement of two months is thus both reasonable and justified. The Defence relies on the progress that will be made in the coming weeks with the assistance of the Registry in the feasibility to conduct interviews.

13. Should the Chamber grant the requested postponement, the deadlines listed in paragraph 5 above would be amended as follows, subject to availability of courtrooms in ICC judicial calendar:

- **29 September 2023:** filing of pre-trial brief and disclosure of evidence;³⁰
- **13 October 2023:** submissions under Rule 68 of the RPE;³¹ and
- **30 October 2023:** Opening statement followed by appearance of witnesses.³²

²⁷ ICC-02/05-01/20-263-Conf-Exp-AnxA; ICC-02/05-01/20-263-Conf-Exp-AnxB; ICC-02/05-01/20-768-Conf-Exp-Anx1.

²⁸ ICC-02/05-01/20-977-Conf-Exp-Anx1.

²⁹ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#).

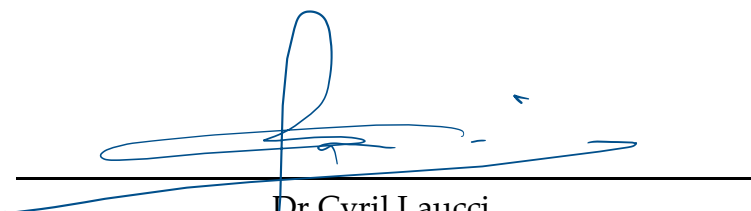
³⁰ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 B.

³¹ ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 C.

³² ICC-02/05-01/20-916-Conf-Exp and its public redacted version [ICC-02/05-01/20-916-Red](#), par. 44 D.

14. The two-month period of time may be used for the completion of the LRV's Case, as postponed by the Chamber for some of the reasons preventing progress in the preparation of the Defence case.³³ Depending on the Chamber's ruling on the [REDACTED],³⁴ this period may also be used [REDACTED].

FOR THE FOREGOING REASONS, THE DEFENCE PRAYS THE CHAMBER TO POSTPONE the Defence Case **AND AMEND** the deadlines listed in paragraph 5 as described in paragraph 13 above.



Dr Cyril Laucci,
Lead Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 28 June 2023,
at The Hague, The Netherlands.

³³ [ICC-02/05-01/20-939](#).

³⁴ [REDACTED].