



Original: **English**

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

Date: **22 March 2021**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Keisa-Mbe Mindua  
Judge Tomoko Akane

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF  
THE PROSECUTOR *v.*  
ALI MUHAMMAD ALI ABD-AL-RAHMAN ("ALI KUSHAYB")**

**Public**

**Response on behalf of Victims to the Prosecution's Request to set a procedure  
under Rule 58(2) of the Rules of Procedure and Evidence**

**Source:** Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Mr James Stewart

Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

Ms Sarah Pellet

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

## I. INTRODUCTION

1. Counsel representing the interests of the applicants victims<sup>1</sup> – and more generally the victims’ interests in the proceedings –<sup>2</sup> supports the Prosecution request<sup>3</sup> asking Pre-Trial Chamber II (the “Chamber”) to set a procedure in accordance with rule 58(2) of the Rules of Procedure and Evidence (the “Rules”) for the Prosecution and other participants to provide observations on the Challenge to the jurisdiction of the Court filed by the Defence on 16 March 2021.<sup>4</sup>

2. In particular, Counsel supports the request for the participants (including the United Nations Security Council) to file observations by 16 April 2021. However, she disagrees with the request in the part asking the Chamber to allow Sudan to file observations by 3 May 2021. In this regard, while she considers appropriate for Sudan to file observations, she submits that to ensure the effectiveness and expeditiousness of the proceedings, Sudan should be invited to file said observations by the deadline eventually set by the Chamber for the submissions of all other participants in these proceedings.

---

<sup>1</sup> See the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-259](#), 18 January 2021. See also, See the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-277](#), 5 February 2021.

<sup>2</sup> See Regulation 81 of the Regulations of the Court.

<sup>3</sup> See the “Prosecution’s request to set out a procedure under rule 58(2) with respect to the Defence’s challenge of the Court’s jurisdiction (ICC-02/05-01/20-302)”, [No. ICC-02/05-01/20-313](#), 19 March 2021 (the “Request”).

<sup>4</sup> See the “Exception d’incompétence”, [No. ICC-02/05-01/20-302](#), 16 March 2021 (dated 15 March 2021) (the “Defence Challenge”).

## II. PROCEDURAL HISTORY

3. On 16 March 2021, the Defence filed a Challenge to the Jurisdiction of the Court (the “Defence Challenge”).<sup>5</sup>

4. On 19 March 2021, the Prosecution filed the Request.<sup>6</sup>

## III. SUBMISSIONS

5. Counsel supports the Request relating to an order by the Chamber establishing the procedure for the participants to file observations on the Defence Challenge. In particular, Counsel notes that the Defence raises several complex legal matters and that the legal issues *sub-judice* are of paramount importance to the victims since they could potentially halt all proceedings before the Court in the present case.

6. Counsel underlines the right of victims having communicated with the Court to make observations on the Defence Challenge. In order for victims to make meaningful observations on the matter at stake, they need first to understand the grounds on which the admissibility of the case has been challenged. In this regard, Counsel needs time to explain the particularly complex legal issues underlying the Defence Challenge and to take instructions in order to be able to convey the concerns of the victims to the Chamber.

7. Moreover, while Counsel is able to contact and communicate with victims in Sudan, some logistical difficulties arise. Indeed, victims with whom Counsel is in contact reside in areas in Sudan where communication is difficult due to limited – or lack thereof – of Internet access and difficulties with regard to phone communication. Moreover, interpretation is necessary since victims speak diverse local languages and Counsel needs to organise in such a way that victims can be

---

<sup>5</sup> *Ibid.*

<sup>6</sup> See the Request, *supra* note 3.

consulted in a place where their safety and security is preserved. Furthermore some victims can only be consulted during weekends, or late in the evening, because of their working schedule. Last but not least, Counsel informs the Chamber that victims with whom she is in contact outside Sudan reside in several different countries which has an impact on the organisation set in place to contact them.

8. As a result of the above-mentioned challenges, Counsel believes that she will need at least 4 weeks to be able to present meaningful submissions on behalf of the victims.

9. Concerning the possibility for Sudan to present observations, while agreeing with the Prosecution that such observations appear appropriate, Counsel disagrees on the proposal to allow the State to file said observations by 3 May 2021. In her view, such a different time-frame is not justified. Sudan does not need to be appraised with the observations of the other participants for making its arguments. Counsel submits therefore that to ensure the effectiveness and expeditiousness of the proceedings, Sudan should be invited to file its observations by the deadline eventually established by the Chamber for the submissions of all other participants in these proceedings.

Respectfully submitted.



**Paolina Massidda**  
**Principal Counsel**

Dated this 22<sup>nd</sup> day of March 2021

At The Hague, The Netherlands