



Original: English

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

Date: 9 July 2020

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, THE SUDAN

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

Public

Public Redacted Version of

**"Prosecution's request for evidence in the custody of the Registry", 11 June 2020,
ICC-02/05-01/07-83-US-Exp**

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. Further to its ongoing investigation in relation to Ali Kushayb, the Prosecution requests, under articles 54(1)(a) and (b), 54(3)(a) and 57(3)(a) of the Rome Statute, that Judge Rosario Salvatore Aitala, acting as the Single Judge (“Single Judge”) for Pre-Trial Chamber II (“Chamber”),¹ order the Registry to promptly transmit to the Prosecution any relevant evidence obtained by the Registry in connection with Ali Kushayb’s surrender, arrest and transfer to the International Criminal Court (“ICC” or “the Court”).

II. CLASSIFICATION

2. Pursuant to regulation 23bis(2) of the Regulations of the Court, the Prosecution files this request under seal, *ex parte*, only available to the Prosecution, since it refers to documents and decisions marked with the same classification.

III. BACKGROUND

3. On 27 April 2007, Pre-Trial Chamber I, following an application by the Prosecution,² issued a public warrant of arrest for Ali Kushayb.³

4. On 16 January 2018, following an application by the Prosecution,⁴ the Chamber issued the second warrant of arrest for Ali Kushayb as secret, *ex parte*, Prosecution only. A public redacted version was issued on 11 June 2020.⁵

¹ ICC-02/05-01/07-80.

² ICC-02/05-55-US-Exp.

³ ICC-02/05-01/07-3-Corr.

⁴ ICC-02/05-01/07-73-Secret-Exp.

⁵ ICC-02/05-01/07-74-Red.

5. On 9 June 2020, Ali Kushayb was transferred to the custody of the ICC, following his surrender in the Central African Republic ("CAR").

IV. SUBMISSIONS

6. Article 54(1)(a) requires that the Prosecutor shall, in order to establish the truth, extend its investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under the Statute. Article 54(1)(b) confers on the Prosecution the duty and power to take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court. In doing so, in accordance with article 54(3)(a), the Prosecutor may collect and examine evidence. Under article 57(3)(a), the Chamber may, at the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation.

7. The Prosecution requests that the Chamber order the Registry to transfer to the Prosecution any evidence it obtained in connection with the surrender, arrest and transfer of Mr Kushayb to the ICC. Such evidence is reasonably believed to be of potential relevance to the Prosecution's investigation of the crimes referred to in the first and second arrest warrants for Mr Kushayb.

8. The Prosecution understands that the material in the custody of the Registry relates to personal effects of Mr Kushayb which were seized by the CAR authorities during the course of their taking him into custody. This was done spontaneously by the CAR authorities in compliance with their own domestic procedures and not pursuant to any request from the Court.⁶ These materials were then transferred to the Registry upon delivery of the suspect from the custody of the CAR authorities to the ICC.

⁶ [REDACTED].

9. Relevant evidence included amongst Mr Kushayb's personal effects may include weapons (including firearms or ammunition), communication devices (including mobile telephones, satellite telephones and Subscriber Identity Module (SIM) cards), data storage devices (including digital cameras and computers) and documentation (including photographs, diaries, address books, notes, memoranda, decisions, orders, reports, minutes of meetings or conversations, military, militia or police or intelligence or judicial documents, birth certificates, identity documents, documents showing his military service number, passports and other travel documents, as well as military appointments or promotions or decrees).⁷

10. In connection with any order from the Chamber, the Prosecution requests that the Registry provide the Chamber and the Prosecution with a list of items in their custody, so that the Chamber, in consultation with the Prosecution, can make a determination of which items amongst Mr Kushayb's personal effects are relevant evidence that should be provided to the Prosecution.

11. Following any order from the Chamber, the Prosecution requests that any such items in the custody of the Registry should be promptly transferred to the Office of the Prosecutor, ensuring that they are handled in a manner that preserves their forensic integrity and that the entire process is adequately documented (including, as appropriate, by videos or photographs). In particular, the Prosecution requests that a detailed record is made of the chain of custody and control of the seized items until such time as they are delivered to the Office of the Prosecutor for registration and processing.

⁷ The Prosecution notes that Pre-Trial Chambers have granted search and seizure requests in relation to similar categories of evidence, *see e.g.* [REDACTED].

12. The Prosecution is ready to provide any further information or respond to any questions, as required by the Chamber.

V. RELIEF SOUGHT

13. The Prosecution requests, under articles 54(1)(a) and (b), 54(3)(a) and 57(3)(a), that the Chamber order the Registry, following consultation with the Chamber and the Prosecution, to promptly transmit to the Prosecution any relevant evidence obtained by the Registry in connection with Ali Kushayb's surrender, arrest and transfer to the Court.



Fatou Bensouda, Prosecutor

Dated this 9th day of July 2020

At The Hague, The Netherlands